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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)

The Ontario Securities Commission

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

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Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from insider reporting requirements. Reporting issuer has a deferred profit sharing plan for employees. Plan participants can invest in units of a segregated fund which in turn invests in shares of the issuer. Under the plan, the issuer established a committee that has various rights and responsibilities, including advising the plan trustee on how voting rights are to be exercised in relation to the shares of the issuer held by the fund. The committee members therefore have “control or direction” over those shares. Since the fund owns more than 10% of the common shares of the issuer, committee members may be considered significant shareholders of the issuer (or directors of a significant shareholder of the issuer) and therefore reporting insiders of the issuer. Committee members want relief from insider reporting requirements in respect of trades of shares made to reflect investment decisions of plan participants. Relief granted, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, ss. 107, 121(2)(a)(ii).

National Instrument 55-104 Insider Reporting Requirements and Exemptions, Parts 3, 4 and 10.

May 5, 2014

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 TIRE CORPORATION, LIMITED AND ROBYN A. COLLVER,
HUGH LYNAR AND DEAN C. MCCANN,
AS MEMBERS OF THE CAPITAL ACCUMULATION PLAN COMMITTEE OF
THE DEFERRED PROFIT SHARING PLAN OF CANADIAN TIRE CORPORATION, LIMITED
(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**) that the insider reporting requirements contained in the Legislation shall not apply to the DPSP CAP Committee Members (as defined below) in respect of certain acquisitions and dispositions of Class A non-voting Shares (the **Class A Non-Voting Shares**) of Canadian Tire Corporation, Limited (the Corporation) forming part of the CTC Share Fund (as defined below) under the Group Annuity Policy (as defined below) by the Insurer and the Trustee (each as defined below) and any involvement therewith by the DPSP CAP Committee Members (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 provinces and territories 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:

1. The Corporation is a corporation incorporated under *The Ontario Companies Act* pursuant to Letters Patent dated December 1, 1927 and is now governed by the *Business Corporations Act* (Ontario). The registered and principal offices of the Corporation are located at 2180 Yonge Street, Toronto, Ontario, M4S 2B9.
2. As of February 28, 2014, the Corporation was authorized to issue 3,423,366 common shares (the **Common Shares**) and 100,000,000 Class A Non-Voting Shares, of which 3,423,366 Common Shares and 76,460,851 Class A Non-Voting Shares were issued and outstanding.
3. The Corporation is a reporting issuer under the Legislation and is not in default of any requirements under the Legislation.
4. The members of the DPSP Capital Accumulation Plan Committee (collectively, the **DPSP CAP Committee** and individually, a **DPSP CAP Committee Member** and for purposes of this decision each such term includes any successor DPSP CAP Committee Member) are not in default of any of the requirements under the Legislation.
5. The Common Shares and the Class A Non-Voting Shares are listed and posted for trading on the Toronto Stock Exchange (the **TSX**) under the symbols "CTC" and "CTC.A", respectively.
6. The Corporation has established a deferred profit sharing plan (the **Plan**) under a trust deed dated January 1, 1968, which has been amended on a number of occasions and most recently amended and restated on December 14, 2012 (the **Trust Deed**).
7. The Plan is designed to reward the Corporation's employees and those of participating subsidiaries (the **Plan Participants**) and encourages them to participate in the growth, development and success of the Corporation's enterprise.
8. Pursuant to the Plan, the Corporation is required to make an annual payment to the Trustee (as defined below), as determined by the board of directors of the Corporation, equal in the aggregate to at least one percent of the Corporation's previous year's net profits after income tax, subject to a maximum limit as set forth in subsection 147(5.1) of the *Income Tax Act* (Canada) (the **Annual Allocation**). The Corporation advises the Trustee of the amount of the Annual Allocation to be allocated to each of the Plan Participants.
9. Pursuant to the Plan, the moneys and other assets under the Plan (the **Trust Property**) may be held in cash or cash equivalents or divided into such funds (the **Funds**) as the Trustee, at the direction of the DPSP CAP Committee and with the approval of the Corporation, may determine or may be transferred to an Insurer, which may be an affiliate of the Trustee where such Trustee is an institutional Trustee, in consideration of the issuance of a Group Annuity Policy by the Insurer.
10. The Plan defines:
 - (a) an **Insurer** as an insurance company which is authorized to insure risks in Canada under the *Insurance Companies Act* (Canada) or is incorporated under a provincial or territorial statute and authorized to insure risks in one or more provinces or territories of Canada and which is selected by the Trustee to issue a Group Annuity Policy to the Trustee, and for purposes of this decision, Insurer means any such insurer or any successor insurer which has issued or issues a Group Annuity Policy to the Trustee; and

- (b) a **Group Annuity Policy** as a group annuity policy issued by an Insurer which provides the Trustee with rights which are equivalent to those the Trustee derived from the direct ownership of the Trust Property, and for purposes of this decision, Group Annuity Policy means the group annuity policy issued by Sun Life Assurance Company of Canada (**Sun Life**) to the Trustee effective November 23, 2007 and any successor group annuity policy issued by an Insurer.
11. Effective November 23, 2007 (the **Transfer Date**), the then current individual trustees of the Plan acquired a Group Annuity Policy from Sun Life in consideration for the transfer of the Trust Property to Sun Life. Accordingly, Sun Life is currently the Insurer under the Group Annuity Policy.
 12. Under the Group Annuity Policy, the Trustee and the Plan Participants have rights and benefits which are intended to mirror those to which they would have been entitled had the Group Annuity Policy not been issued and the Plan continued to be operated in the same manner as prior to the Transfer Date.
 13. Plan amendments were made as of December 14, 2012 (the **2012 Plan Amendments**) pursuant to an Amended and Restated Trust Deed governing the Plan which authorized the appointment by the Corporation of an institutional trustee of the Plan. Also on December 14, 2012, Sun Life Financial Trust Inc. was appointed as the institutional trustee as permitted under the Plan (the **Trustee**, and for purposes of this decision, Trustee includes any successor Trustee) and replaced the then current individual trustees who then became the DPSP CAP Committee Members.
 14. The Plan states that if the Corporation designates an institutional Trustee, it shall establish a DPSP CAP Committee, which has various rights and responsibilities, including, to the extent permitted at law, advising the Trustee of the manner in which all voting and other rights are to be exercised in relation to the Common Shares, the Class A Non-Voting Shares and other securities held by the Trustee and directing the Trustee as to the manner in which any right, election or other action which may be exercised or taken by the Trustee under the Plan is to be exercised or taken.
 15. In exercising any right under the Plan, the DPSP CAP Committee may, but is not required to, seek the advice of the Plan Participants and where such advice is sought, the Trustee or the DPSP CAP Committee shall use bona fide efforts to exercise their rights in a manner reasonably consistent with such advice but reserve the ability to exercise such rights in a manner determined in their discretion.
 16. The DPSP CAP Committee is comprised of three individual voting members, two of whom are nominated by the Corporation and one of whom is elected by the Plan Participants. Currently, two of the three DPSP CAP Committee Members are reporting insiders of the Corporation by virtue of their executive offices.
 17. The Trust Property is held by Sun Life as Insurer in two fund categories: (a) segregated funds that invest solely in units of existing pooled fund trusts, mutual fund trusts and similar instruments managed by investment management firms (the **External Unitized Funds**); and (b) a separate and distinct non-pooled segregated fund consisting of Common Shares and Class A Non-Voting Shares of the Corporation which constitute the CTC Share Fund of the Plan (the **CTC Share Fund**).
 18. Plan Participants are entitled to allocate their interests in the Plan between the External Unitized Funds and the CTC Share Fund. A specified minimum, as set out in the Plan, of the Annual Allocation provided by the Corporation to each Plan Participant must be invested by a Plan Participant in the CTC Share Fund.
 19. The CTC Share Fund and the External Unitized Funds are divided into units. Twenty percent of the units held for each Plan Participant vest after one full year of employment with the Corporation and participating subsidiaries. The remaining units vest after two full years of employment. If a Plan Participant wishes to increase or reduce his or her holdings in the CTC Share Fund, the Plan Participant may do so as long as a certain minimum holding in the CTC Share Fund is maintained. As Plan Participants transfer their interests in the Plan between one of the External Unitized Funds and the CTC Share Fund, Class A Non-Voting Shares may be purchased and sold in the open market by the Trustee or its agent, as required to reflect the instructions by Plan Participants or as otherwise required by the Plan. There has been no trading activity in the Common Shares forming part of the CTC Share Fund for more than 30 years (other than the transfer of the Common Shares and Class A Non-Voting Shares constituting the Trust Property to Sun Life on the Transfer Date), although Common Shares could be traded by the Trustee in the future, upon the direction of the DPSP CAP Committee.
 20. The Corporation has established a securities trading and reporting board policy and manual (the **Policy**) which governs, among other things, purchases, sales and other acquisitions or dispositions of securities and derivatives of securities of the Corporation. The Policy also applies to purchases and sales of units in the CTC Share Fund. The Policy has provisions to enable compliance with provisions in the Legislation that prohibit improper insider trading.

21. From and after the date of the 2012 Plan Amendments, the Trustee is required to purchase and sell, as set out above, the Class A Non-Voting Shares constituting part of the CTC Share Fund, other than Class A Non-Voting Shares which may be acquired under the Plan pursuant to the Corporation's dividend reinvestment plan (the **Corporation's DRIP**), through the facilities of the TSX or through another stock exchange on which the Class A Non-Voting Shares are traded (**Open Market Purchases**).
22. The Class A Non-Voting Shares constituting part of the CTC Share Fund are enrolled in the Corporation's DRIP. As a result, any dividends payable on those Class A Non-Voting Shares are paid in additional Class A Non-Voting Shares rather than cash.
23. In 2013, the Corporation made the requisite payment under the Annual Allocation to the Trustee which purchased Class A Non-Voting Shares for the CTC Share Fund by means of Open Market Purchases (the **Acquired Shares**). The Corporation will continue to do so in subsequent years. The Acquired Shares have been added to the CTC Share Fund as part of the Trust Property and each Plan Participant's account reflects his or her increased interest in the CTC Share Fund.
24. Two of the DPSP CAP Committee Members are reporting insiders of the Corporation by virtue of their executive offices. All three DPSP CAP Committee Members may be considered significant shareholders of the Corporation (or in a similar position as directors of a significant shareholder of the Corporation) since they share control and direction over more than 10% of the Common Shares which are held in the Plan. Accordingly, the DPSP CAP Committee Members are considered to be reporting insiders of the Corporation with an obligation to report the acquisitions and dispositions of securities of the Corporation in accordance with National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (**NI 55-104**) and applicable securities law. To the extent that they are otherwise reporting insiders of the Corporation, Plan Participants are also required to report acquisitions and dispositions of securities of the Corporation. The DPSP CAP Committee Members are currently filing insider reports on SEDI in respect of securities of the Corporation held by the CTC Share Fund.
25. In connection with the CTC Share Fund, as of February 28, 2014, Sun Life was the legal and beneficial owner of, and the DPSP CAP Committee had control and direction over, 419,280 Common Shares representing approximately 12.2% of the issued and outstanding Common Shares and 794,020 Class A Non-Voting Shares representing approximately 1.04% of the issued and outstanding Class A Non-Voting Shares.
26. The Trust Deed restricts the authority of the Trustee to make discrete investment decisions which are defined as individual investment decisions involving the purchase or sale of, or other dealings in, Class A Non-Voting Shares by the Trustee where such purchases, sales or other dealings:
 - (a) result from individual elections made by Plan Participants, Plan Participants achieving a specified age (as set out in the Trust Deed) or changes in the employment status of persons who become or cease to be employees of the Corporation or a participating subsidiary and require the Plan to purchase, sell or otherwise deal in Class A Non-Voting Shares in order to ensure that the assets of the Plan are reflective of such elections, Plan Participants' ages or changes in employment status; or
 - (b) relate to the investment of the Annual Allocation,(collectively referred to as the **Discrete Investment Decisions**).
27. The Trust Deed states that the Trustee is responsible for the management of the Trust Property of the respective Funds and the making of the investment decisions relating thereto, subject to such restrictions as the Trustee, with the approval of the Corporation, may determine from time to time, provided that:
 - (a) neither the Corporation nor the Trustee nor the DPSP CAP Committee shall have any right to authorize, approve, recommend or otherwise influence any Discrete Investment Decisions other than a right of the Corporation to determine the amount of the Annual Allocation and to designate the Plan Participants to whom such amounts shall be allocated and the right of the Trustee to delegate the authority to implement Discrete Investment Decisions to a person specified by the Trustee;
 - (b) the restrictions on the Corporation, the Trustee and the DPSP CAP Committee referred to in subparagraph 27(a) concerning Discrete Investment Decisions shall not apply to any investment decisions involving the purchase or sale of, or other dealings in, Common Shares by the Plan or the purchase or sale of, or other dealings in, Class A Non-Voting Shares by the Plan which do not relate to Discrete Investment Decisions;
 - (c) the Annual Allocation, which is required by the Plan Participants to be allocated to the CTC Share Fund, shall be used by the Trustee to purchase Class A Non-Voting Shares through the TSX as soon as reasonably

possible following receipt by the Trustee of such contributions with minimal disruption to the market price of Class A Non-Voting Shares and generally by investing an approximately equal percentage of such contributions on each business day which occurs during the 20 calendar days following receipt by the Trustee of such contributions;

- (d) the purchase or sale of Class A Non-Voting Shares which constitute Discrete Investment Decisions but do not involve the initial investment of Annual Allocation shall be made by the Trustee through the TSX as soon as reasonably possible following receipt by the Trustee of advice concerning individual elections made by Participants, Participants achieving a specified age or changes in the employment status of persons who become or cease to be employees which require the Plan to purchase or sell Class A Non-Voting Shares, with minimal disruption to the market price of Class A Non-Voting Shares;
 - (e) no purchases by the Trustee of Class A Non-Voting Shares pursuant to subparagraphs 27(c) or (d) may be made if such purchases would not be permitted in conjunction with a normal course issuer bid by the Corporation and the Corporation must advise the Trustee of any such restrictions.
28. Substantially all of the rights and responsibilities relating to the management and investment of the Trust Property have been delegated by the Trustee to the DPSP CAP Committee, as set out in the Trust Deed, which states, among other things, that the DPSP CAP Committee has the right, to the extent permitted at law, to direct the Trustee as to the manner in which the Trust Property of the Funds are to be managed and investment decisions are to be made or restricted pursuant to the Trust Deed, excluding any management of the Trust Property or investment decisions in relation to Discrete Investment Decisions.
29. As a result, since the Transfer Date, Discrete Investment Decisions have been executed automatically on a frequent basis by Sun Life, as the Insurer under the Group Annuity Policy, without any involvement of the DPSP CAP Committee Members in determining the amount, timing, price or manner of execution of such trades or the choice of the broker through which such trades are made other than in relation to a Discrete Investment Decision precipitated by a DPSP CAP Committee Member in his or her capacity as a Plan Participant.
30. The DPSP CAP Committee does not become aware of any Discrete Investment Decisions made under the Plan other than as a result of receiving reports thereon after the implementation of the Discrete Investment Decisions and in the ordinary course of fulfilling its responsibilities or as a result of Discrete Investment Decisions precipitated by a DPSP CAP Committee Member in his or her capacity as a Plan Participant.
31. The DPSP CAP Committee Members have certain rights related to the Common Shares and the Class A Non-Voting Shares which are similar to the rights they had as individual trustees under the Plan immediately prior to the Transfer Date, including the right to direct the Trustee as to the manner in which the Common Shares and Class A Non-Voting Shares are voted at any meeting of the shareholders of the Corporation (the **Voting Rights**).
32. The Voting Rights attributed to the Common Shares and Class A Non-Voting Shares which are voted by the Trustee, at the direction of the DPSP CAP Committee, are set out below:
- (a) the holders of Common Shares are entitled to vote at all meetings of holders of Common Shares and to vote on the election of 13 of the 16 directors (assuming the number of directors remains at 16) to be elected at any meeting of shareholders and on the appointment of auditors. Each Common Share carries one vote; and
 - (b) the holders of Class A Non-Voting Shares are entitled to vote on the election of three of the 16 directors (assuming the number of directors remains at 16) at any annual meeting of shareholders of the Corporation. Each Class A Non-Voting Share carries one vote. With the exception of the entitlement to vote for the election of three directors, or if provided under applicable law, the holders of Class A Non-Voting Shares are not entitled to vote at any meeting of shareholders of the Corporation. However, the articles of the Corporation provide that in the event an offer to purchase Common Shares is made to all or substantially all of the holders of Common Shares or is required by law or by the TSX to be made to all holders of Common Shares in Ontario (other than an offer to purchase both Class A Non-Voting Shares and Common Shares at the same price per share and on the same terms and conditions) and a majority of the Common Shares then issued and outstanding are tendered and taken up pursuant to such offer, the Class A Non-Voting Shares shall thereupon and thereafter be entitled to one vote per share at all meetings of shareholders and thereafter the Class A Non-Voting Shares shall be designated as Class A Shares.
33. Notwithstanding the transfer of the Trust Property to Sun Life, and Sun Life acting as the Insurer of the Trust Property and Sun Life Trust acting as the Trustee under the Plan, the DPSP CAP Committee Members continue to exercise control and direction over the Common Shares and Class A Non-Voting Shares now held by Sun Life under the Group Annuity Policy, including the Voting Rights, which necessitates the Exemption Sought as contemplated herein.

34. Sun Life has agreed with the Corporation that it will comply, and will cause each of its affiliates to comply, with all securities laws and other legal requirements related to the Plan, the Plan documents and any securities of the Corporation held by Sun Life or an affiliate of Sun Life, including without limitation making application for any exemptions, rulings or other authorizations which are necessary for the operation of the Plan or the holding by Sun Life or any of its affiliates of any such securities, in each case where such compliance or application is required by Sun Life or an affiliate of Sun Life.
35. On December 14, 2012, Sun Life and Sun Life Trust issued a news release stating, among other things, that each is an "eligible institutional investor" as defined in National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*, and each intends to file the alternative monthly reports contemplated by Part 4 of that Instrument. Accordingly, Sun Life and Sun Life Trust are not filers for purposes of this application.
36. The Corporation or the Trustee will maintain internal records for at least six years that are accurate and sufficiently detailed and comprehensive to evidence Discrete Investment Decisions and the acquisition, disposition and transfer of Class A Non-Voting Shares comprising the CTC Share Fund under the Group Annuity Policy. The Corporation will make such records available for inspection by the principal regulator on request.

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:

1. The DPSP CAP Committee Members are only exempt from the insider reporting requirements under the Legislation that would otherwise apply to such individuals relating to the acquisition and disposition of Class A Non-Voting Shares comprising the CTC Share Fund under the Group Annuity Policy (including any successor Group Annuity Policy) that:
 - (a) constitute Discrete Investment Decisions or distributions by the Corporation made in connection with the Corporation's DRIP;
 - (b) do not reflect the exercise of any independent investment judgment by the DPSP CAP Committee Members; and
 - (c) have no involvement by the DPSP CAP Committee Members in determining the amount, timing, price or manner of execution of such trades or the choice of the broker through which such trades are made, other than in relation to the Discrete Investment Decisions precipitated by a DPSP CAP Committee Member in his or her capacity as a Plan Participant.
2. If the DPSP CAP Committee Members are involved in any decision by the Trustee to buy, sell or transfer securities and that involvement does not meet the criteria for the exemption from the insider reporting requirements described in paragraph 1 above:
 - (a) the DPSP CAP Committee Members will each file an insider report on SEDI in respect of that decision and, in the "general remarks" field of the report, will indicate that the report is being filed pursuant to this decision document and will refer to a document filed on SEDAR (under the Corporation's profile) that provides adequate detail of the involvement. However, prior to filing such an insider report, the DPSP CAP Committee Members will each file the following insider reports on SEDI for the purposes of bringing their share balances on SEDI up to date:
 - (i) an insider report disclosing the total number of Class A Non-Voting Shares acquired since the DPSP CAP Committee Member's last insider report on SEDI, with an average unit price of the securities acquired and using transaction code 99 or another applicable successor code,
 - (ii) an insider report disclosing the total number of Class A Non-Voting Shares disposed of since the DPSP CAP Committee Member's last insider report on SEDI, with an average unit price of the securities disposed of and using transaction code 99 or another applicable successor code, and
 - (iii) the insider reports referred to in paragraphs 2(a)(i) and (ii) above will, in the "general remarks" field of the report, indicate that the report is being filed to bring the share balances up to date, indicate that the unit price reflects the average unit price of the securities acquired or disposed of, and refer to the above-mentioned document filed on SEDAR;

- (b) the DPSP CAP Committee Members will record their involvement in that decision in the minutes of a meeting of the DPSP CAP Committee; and
 - (c) the Corporation will disclose the involvement in the management information circular (a **Circular**) related to the next annual meeting of shareholders of the Corporation;
- 3. In the Circular for each annual meeting of shareholders of the Corporation after the date of this decision (other than the annual meeting of shareholders to be held on May 8, 2014), the Corporation will:
 - (a) include a statement that the DPSP CAP Committee Members have the right to direct the Trustee as to the manner in which the Common Shares and Class A Non-Voting Shares comprising the CTC Share Fund are voted at any meeting of the shareholders of the Corporation;
 - (b) identify the Plan documents that have been filed on SEDAR; and
 - (c) include a summary description of:
 - (i) the Plan and the CTC Share Fund;
 - (ii) the number of Common Shares and Class A Non-Voting Shares comprising the CTC Share Fund under the control and direction of the DPSP CAP Committee, and the respective percentages those numbers represent of the total number of issued and outstanding shares of such class (this information must be given as of a specified date not more than thirty days prior to the date that the Corporation first sends the Circular to any securityholder of the Corporation);
 - (iii) the role of the Insurer, the Trustee and the DPSP CAP Committee Members with the Plan, the CTC Share Fund and any acquisition of securities in connection with the Corporation's DRIP;
 - (iv) the Exemption Sought and the conditions to this decision, including the information about Plan trades which must annually be filed on SEDAR pursuant to the conditions to this decision and what insider reports must be filed on SEDI pursuant to paragraph 2 above,

(collectively, the information in paragraphs 3(a) through 3(c) above shall be referred to as the **Circular Disclosure**).

However, the Corporation may comply with this paragraph by incorporating by reference a stand-alone document containing the Circular Disclosure into the Circular, provided that:

- A. the stand-alone document is filed on SEDAR (under the Corporation's profile);
 - B. the Circular discloses that the stand-alone document is filed on SEDAR at www.sedar.com, the date it was filed and that, upon request, the Corporation will promptly provide a copy of the stand-alone document free of charge to a securityholder of the Corporation;
 - C. if there is any change in a material fact disclosed in the stand-alone document (including any change in the membership of the DPSP CAP Committee, but not including any change in the share data referred to in paragraph D below), the Corporation will file an updated stand-alone document when it files its next Circular and the updated stand-alone document will be incorporated by reference in the Circular;
 - D. the stand-alone document contains language directing the reader to the most recent Circular for the number of Common Shares and Class A Non-Voting Shares comprising the CTC Share Fund under the control and direction of the DPSP CAP Committee, and the respective percentages those numbers represent of the total number of issued and outstanding shares of such class; and
 - E. the Circular will directly include the information set out in paragraphs 3(a) and 3(c)(ii) above.
- 4. In the event the Corporation does not file a Circular in any calendar year, the Circular Disclosure will instead be required to be included or incorporated by reference in the Corporation's annual information form or annual management's discussion and analysis filed during that year.
 - 5. The DPSP CAP Committee Members will make an annual filing on SEDAR (under the Corporation's profile) no later than March 31 of each year (the **Annual Filing**). The Annual Filing will include:

- (a) the total number of Class A Non-Voting Shares acquired under the Group Annuity Policy in the preceding calendar year period that have not been reported on SEDI, with an average unit price of the securities acquired;
 - (b) the total number of Class A Non-Voting Shares disposed of under the Group Annuity Policy in the preceding calendar year period that have not previously been reported on SEDI, with an average unit price of the securities disposed of;
 - (c) the information required by Form 55-102F2 *Insider Report* in narrative or chart form with the trading information limited to that set out in paragraphs 5(a) and (b) above; and
 - (d) a certificate signed by the DPSP CAP Committee Members certifying that the information in the Annual Filing (including any attached chart or spreadsheet) is accurate.
6. Forthwith after the Exemption Sought is granted,
- (a) the Corporation will file a stand-alone document on SEDAR (under the Corporation's profile) containing the Circular Disclosure; and
 - (b) the DPSP CAP Committee Members will each amend his or her last insider report filed on SEDI in respect of Class A Non-Voting Shares comprising the CTC Share Fund to disclose, in the general remarks field, that the insider has obtained exemptive relief from having to report certain trades on SEDI and will refer to the document described in paragraph 6(a) above that has been filed on SEDAR.
7. For greater certainty, to the extent that the DPSP CAP Committee Members:
- (a) are otherwise reporting insiders of the Corporation, they will still be required to file insider reports in respect of securities of the Corporation or units of the CTC Share Fund that they directly or indirectly beneficially own, or have control or direction over (other than the securities that they have control or direction over solely in their capacity as DPSP CAP Committee Members and that meet the criteria for the exemption from the insider reporting requirements described in paragraph 1 above) and the Exemption Sought will not apply to such securities of the Corporation and units of the CTC Share Fund; or
 - (b) are not otherwise reporting insiders of the Corporation, they will not be required to file insider reports in respect of securities of the Corporation or units of the CTC Share Fund that they directly or indirectly beneficially own, or have control or direction over (other than the securities that they have control or direction over solely in their capacity as DPSP CAP Committee Members and that are subject to the condition in paragraph 2 above).
8. For greater certainty, the Exemption Sought does not represent an exemption from any provision in the Legislation prohibiting, or imposing liability for, improper insider trading.
9. In the event of a material change to the terms of the Plan which relates in a substantial manner to Discrete Investment Decisions or the role of DPSP CAP Committee Members with respect to Discrete Investment Decisions, this decision will expire 60 days from the date of such material change.

As to the Exemption Sought from the insider reporting requirements in the *Securities Act* (Ontario):

"James Turner"
Vice-Chair
Ontario Securities Commission

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

As to the Exemption Sought (other than from the insider reporting requirements in the *Securities Act* (Ontario)):

"Shannon O' Hearn"
Manager, Corporate Finance
Ontario Securities Commission

2.1.2 Manulife Asset Management Limited et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual fund for extension of lapse date of prospectus for 33 days – Lapse date extended to permit updating of the disclosure across the fund family – Extension of lapse date will not affect the currency or accuracy of the information contained in the prospectus – Securities Act (Ontario).

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 62(5).

May 7, 2014

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
MANULIFE ASSET MANAGEMENT LIMITED
(the Manager)

AND

IN THE MATTER OF
MANULIFE GLOBAL TACTICAL CREDIT FUND and MANULIFE U.S. TACTICAL CREDIT FUND
(each a Fund and, collectively, the Funds and, together with the Manager, 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**) for an exemption that the time limits pertaining to filing the renewal prospectus of the Funds be extended as if the lapse date of the simplified prospectus and annual information form dated June 28, 2013 of the Funds (collectively, the **Renewal Prospectus**) is August 1, 2014 (the **Requested Relief**).

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 all of the provinces and territories of Canada other than the Jurisdiction (collectively with the Jurisdiction, the Jurisdictions).

Interpretation

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

Representations

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

1. Each Fund is a reporting issuer (or the equivalent) as defined in the securities legislation of each of the Jurisdictions.
2. The Filers are not in default of securities legislation in any of the Jurisdictions.
3. Each Fund currently distributes its securities in the Jurisdictions pursuant to a simplified prospectus dated June 28, 2013 (the **Prospectus**).
4. Amended fund facts that incorporate the requirements of Form 81-101F3 that came into effect on January 13, 2013 were filed on behalf of the Funds on April 24, 2014 (the **Fund Facts**).
5. The lapse date of the Prospectus under the Legislation is June 28, 2014. Accordingly, under the Legislation, the distribution of securities of the Funds would have to cease on June 28, 2014 unless (i) the Funds file a pro-forma simplified prospectus at least 30 days prior to June 28, 2014; (ii) the final simplified prospectus is filed no later than 10 days after June 28, 2014; and (iii) a receipt for the final simplified prospectus is obtained within 20 days of June 28, 2014.
6. The Manager is registered under the *Securities Act* (Ontario) as an investment fund manager and in other categories.
7. The Manager is the manager of the Funds and approximately 100 mutual funds (the **Affiliated Funds**) that currently distribute their securities to the public under a simplified prospectus and annual information form (filed on SEDAR under Project No. 2075524), which has August 1, 2014 as its lapse date under the Legislation.
8. The Affiliated Funds share many common operational and administrative features with the Funds and combining them in the same prospectus booklet will allow investors to more easily compare the features of the Affiliated Funds and the Funds.
9. It would be impractical to alter and modify all the dedicated systems, procedures and resources required to prepare the renewal prospectus, annual information form and fund facts for the approximately 100 Affiliated Funds, and unreasonable to incur the costs and expenses associated therewith (certain of which would be borne by investors in the Affiliated Funds), so that the renewal prospectus for the approximately 100 Affiliated funds can be filed earlier with the renewal prospectus for the two Funds.
10. The Manager may make minor changes to the features of the Affiliated Funds as part of the process of renewing the Affiliated Funds' prospectus in July 2014. The ability to file the Renewal Prospectus with those of the Affiliated Funds will ensure that the Manager can make the operational and administrative features of the Funds and the Affiliated Funds consistent with each other.
11. There have been no material changes in the affairs of the Funds since the date of the Prospectus. Accordingly, the Prospectus represents current information regarding the Funds. In addition, the Fund Facts filed on April 24, 2014 provides even more current information to investors regarding the Funds.
12. After June 13, 2014, new investors will receive delivery of the Fund Facts. The Prospectus will still be available upon request.
13. The Requested Relief will not affect the accuracy of the information in the Prospectus or the Fund Facts and therefore will not be prejudicial to the public interest.

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.

"Vera Nunes"

Manager, Investment Funds
Ontario Securities Commission

2.1.3 Solium Capital Inc. and Michael G. Broadfoot

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – reporting insider party to automatic securities disposition plan – relief granted from section 3.3 of NI 55-104 and subsection 107(2) of the Securities Act (Ontario), provided that reporting insider file reports with respect to dispositions under the plan during the year by March 31 of the next calendar year.

Applicable Legislative Provisions

Securities Act (Ontario), s. 107(2).

National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 3.3.

Citation: Re Solium Capital Inc., 2014 ABASC 184

May 7, 2014

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

AND

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

AND

IN THE MATTER OF
SOLIUM CAPITAL INC. (Solium) AND MICHAEL G. BROADFOOT (Broadfoot)
(collectively, the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filers for a decision (the **Exemption Sought**) under the securities legislation (the **Legislation**) of the Jurisdictions exempting Broadfoot from the requirement in Section 3.3 of National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (**NI 55-104**) and Subsection 107(2) of the *Securities Act* (Ontario) (the **Ontario Act**) to file an insider report within five days following the disposition of securities under his automatic securities disposition plan.

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

- (a) the Alberta Securities Commission is the principal regulator for this application;
- (b) the Filers have provided notice that Subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island; and
- (c) this 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*, MI 11-102 or NI 55-104 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

Solium

1. Solium is a corporation existing under the laws of the Province of Alberta and is a reporting issuer under the securities legislation of Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island. Solium is not in default of securities legislation in any jurisdiction.
2. The head office of Solium is located in Calgary, Alberta.
3. The authorized share capital of Solium consists of an unlimited number of common shares (**Common Shares**) and an unlimited number of preferred shares, issuable in series. As at March 31, 2014, Solium had 47,198,753 Common Shares and no preferred shares issued and outstanding.
4. The Common Shares are listed and posted for trading on the Toronto Stock Exchange under the symbol "SUM".

Broadfoot

5. Broadfoot is the Chief Executive Officer and a Managing Director of Solium and is a reporting insider. Broadfoot is not in default of securities legislation in any jurisdiction.
6. As at March 31, 2014, Broadfoot was the beneficial owner of 7,982,200 Common Shares (representing approximately 16.9% of the then outstanding Common Shares).
7. Broadfoot wishes to sell up to a total of 2,100,000 Common Shares pursuant to the ASDP (as defined below) to further diversify his portfolio.

The Automatic Securities Disposition Plan

8. MGI Securities Inc. (the **Administrator**), Solium and Broadfoot entered into an automatic securities disposition plan (the **ASDP**) dated effective March 21, 2014 to facilitate the automatic sale of up to 2,100,000 Common Shares beneficially owned by Broadfoot and which have been deposited into an account managed by the Administrator, managed in accordance with the trading parameters and other instructions set out in the ASDP.
9. Broadfoot can only make changes to the trading parameters and other instructions set out in the ASDP if all of the following conditions are met:
 - (a) Broadfoot has obtained the prior written consent of the Administrator and Solium;
 - (b) Broadfoot has provided notice to the public of the proposed change by describing it in a filing on the System for Electronic Disclosure by Insiders (**SEDI**) or in a news release;
 - (c) Broadfoot has represented to the Administrator that a blackout period is not currently in effect and that he is not aware of any material non-public information about Solium or the securities of Solium and has no knowledge of a material fact or material change with respect to Solium or any securities of Solium (including the Common Shares) that has not been generally disclosed; and
 - (d) such amendment or modification is made in good faith and not as part of a plan or scheme to evade the prohibitions of Section 147 of the *Securities Act* (Alberta) (the **Alberta Act**), Section 76 of the Ontario Act or comparable prohibitions in other securities legislation.
10. The Administrator is a securities broker which is at arm's length to Solium and Broadfoot.
11. The Administrator has been appointed as an independent broker to effect the sales of the Common Shares pursuant to the terms and conditions of the ASDP. The dispositions under the ASDP will be effected by the Administrator in accordance with the pre-determined instructions as to the number and dollar value of the Common Shares to be sold, and other relevant information.
12. Subject to the restrictions set forth in the ASDP, the Administrator shall execute the trades in such ? way as to attempt to minimize the negative price impact on the market and to attempt to maximize the prices obtained for the Common Shares sold.
13. Except to set trading parameters in the manner described in the representations in this decision, Broadfoot does not have the authority to make investment decisions or influence or control any disposition effected by the Administrator pursuant to the ASDP and the Administrator and Broadfoot will not consult regarding any disposition.

14. Broadfoot will not disclose to the Administrator any information concerning Solium that might influence the execution of any disposition under the ASDP.
15. The ASDP included a waiting period of 30 days between the date of adoption of the ASDP and the date that the first disposition could be made under the ASDP.
16. The ASDP has been structured to comply with applicable securities legislation and guidance, including Paragraph 147(5)(c) of the Alberta Act, Paragraph 175(2)(b) of the General Regulation under the Ontario Act and Ontario Securities Commission Staff Notice 55-701 *Automatic Securities Disposition Plans and Automatic Securities Purchase Plans*.
17. At the time of execution of, and entering into the ASDP, Broadfoot represented that he was not in possession of material undisclosed information about Solium and that he was entering into the ASDP in good faith and not as part of a plan or scheme to evade the prohibitions of Section 147 of the Alberta Act, Section 76 of the Ontario Act or any other applicable securities laws.
18. The Common Shares are not subject to any liens, security interests or other impediments to transfer (except for limitations imposed by any applicable laws).
19. The ASDP will automatically terminate on the earliest to occur of:
 - (a) March 21, 2016;
 - (b) the date on which 2,100,000 Common Shares have been disposed of pursuant to the ASDP;
 - (c) the date Solium terminates the ASDP, which shall be the date three business days after Solium has done both of the following:
 - (i) given written notice to the Administrator of the termination of the ASDP; and
 - (ii) publicly disclosed the termination by news release;
 - (d) the date Broadfoot terminates the ASDP, which shall be the date three business days after Broadfoot has done all of the following:
 - (i) given written notice to the Administrator of the termination of the ASDP;
 - (ii) represented in writing to the Administrator that he is not aware of any material fact or material change with respect to Solium or any securities of Solium that has not been generally disclosed; and
 - (iii) publicly disclosed the termination by doing either of the following:
 - A. filing a report on SEDI disclosing the effective date of the termination of the ASDP; or
 - B. issuing a news release disclosing the termination of the ASDP;
 - (e) the date on which the Administrator receives notice of or otherwise becomes aware of any one of the following:
 - (i) Solium having entered into a definitive agreement pursuant to which either of the following applies:
 - A. Solium will be subject to a take-over bid, tender or exchange offer with respect to the Common Shares; or
 - B. Solium will be subject to an arrangement, merger, acquisition, reorganization, recapitalization or comparable transaction affecting the securities of Solium as a result of which the Common Shares are to be exchanged or converted into shares of another company;
 - (ii) the death or mental incapacity of Broadfoot; or
 - (iii) the commencement or impending commencement of any proceedings in respect of or triggered by Broadfoot's bankruptcy or insolvency; and

- (f) the date the Administrator terminates the ASDP after having received notice (an ASDP Restriction Notice) of any legal, contractual or regulatory restriction applicable to Broadfoot, including without limitation, any restriction related to a take-over bid, tender or exchange offer, an arrangement, merger or acquisition, reorganization or a stock offering requiring lock-up, that would prohibit dispositions pursuant to the ASDP.
- 20. Any ASDP Restriction Notice given by Broadfoot or Solium will be given in good faith and not as part of a plan or scheme to evade the prohibitions of Section 147 of the Alberta Act, Section 76 of the Ontario Act or comparable prohibitions in other securities legislation.
- 21. Broadfoot will not terminate the ASDP with knowledge of a material fact or material change that has not been generally disclosed.

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 Exemption Sought is granted, provided that Broadfoot shall file a report through SEDI, by March 31 of each calendar year, of all dispositions under the ASDP during the prior calendar year not previously disclosed in a SEDI filing, disclosing either:

- (a) each disposition on a transaction-by-transaction basis; or
- (b) all dispositions as a single transaction using the average unit price of the securities.

“Denise Weeres”
Manager, Legal – Corporate Finance

2.1.4 Alignvest Capital Management Inc.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from the mutual fund conflict of interest restrictions and reporting requirements in the Securities Act (Ontario) and the self-dealing prohibition in National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations to allow pooled funds to invest in securities of underlying funds under common management – relief subject to certain conditions.

Applicable Legislative Provisions

Securities Act (Ontario) R.S.O. 1990, c. S.5, as am., ss. 111(2)(b), 111(3), 113.

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(a), 15.1.

May 9, 2014

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
ALIGNVEST CAPITAL MANAGEMENT INC.
(the Filer)

AND

IN THE MATTER OF
THE TOP FUNDS (as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of each of the Filer, Alignvest Opportunities Fund Trust, Alignvest Income Fund Trust (collectively, the **Initial Top Funds**) or any other investment fund which is not a reporting issuer under the *Securities Act* (Ontario) (the **Legislation**) established, advised or managed by the Filer after the date hereof (the **Future Top Funds** and, together with the Initial Top Funds, the **Top Funds**), which invests its assets in any of Alignvest Opportunities Fund LP and Alignvest Income Fund LP (collectively, the **Initial Underlying Funds**) or any other investment fund which is not a reporting issuer under the Legislation established, advised or managed by the Filer after the date hereof (the **Future Underlying Funds** and, together with the Initial Underlying Funds, the **Underlying Funds**):

- (a) for an order pursuant to section 113 of the Legislation exempting the Filer and the Top Funds from the restriction contained in paragraphs 111(2)(b) and (c) and subsection 111(3) of the Legislation which prohibits:
 - (i) a mutual fund from knowingly making an investment in a person or company in which the mutual fund, alone or together with one or more mutual funds, is a substantial security holder;
 - (ii) a mutual fund from knowingly making an investment in an issuer in which:
 - (A) any officer or director of the mutual fund, its management company or distribution company or an associate of any of them, or

- (B) any person or company who is a substantial security holder of the mutual fund, its management company or its distribution company,
- has a significant interest; and
- (iii) a mutual fund, its management company or its distribution company from knowingly holding an investment described in paragraphs (i) and (ii) above
- (the “**Related Issuer Relief**”); and
- (b) for an order under the securities legislation (the “**Legislation**”) of the Jurisdictions (as defined below) pursuant to section 15.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“**NI 31-103**”) exempting the Filer from the restriction in paragraph 13.5(2)(a) of NI 31-103 prohibiting a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as adviser, to invest in the securities of any issuer in which a responsible person or an associate of a responsible person is a partner, officer or director, unless the fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase (the “**Consent Relief**”);
- (collectively, the “**Requested Relief**”).

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

1. the Ontario Securities Commission 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 Alberta and Nova Scotia.

Interpretation

Unless expressly defined herein, terms in this application have the respective meanings given to them in National Instrument 14-101 – *Definitions* and MI 11-102.

Representations

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

Filer

1. The Filer is a corporation incorporated under the laws of the Province of Ontario. The Filer has its head office in Toronto, Ontario. The Related Issuer Relief is only required in the provinces of Ontario and Alberta. The Consent Relief is required in Ontario and Nova Scotia.
2. The Filer is registered as an investment fund manager in Ontario and is, or will be, the manager of the Top Funds and the Underlying Funds. The Filer is also registered as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer in the Provinces of Ontario and Nova Scotia.
3. The Filer is, or will be, responsible for managing the assets of the Top Funds and the Underlying Funds (collectively, the **Funds**), has complete discretion to invest and reinvest the Funds’ assets, and is responsible for executing all portfolio transactions. Furthermore, the Filer assists, or will assist, in the marketing of the Funds and, subject to compliance with applicable securities laws may act as a distributor of securities of the Funds not otherwise sold through another registered dealer.
4. The Filer is a wholly-owned subsidiary of Alignvest Management Corporation (**AMC**).
5. Neither the Filer or AMC is a reporting issuer in any jurisdiction of Canada and is not in default of securities legislation of any jurisdiction of Canada.

The Top Funds

6. The Top Funds are, or will be, formed as trusts under the laws of Ontario by a trust agreement.

7. Each of the Top Funds is, or will be, sold pursuant to prospectus exemptions in accordance with National Instrument 45-106 – *Prospectus and Registration Exemptions* (NI 45-106).
8. Pursuant to separate trust agreements each dated as of January 1, 2014 (the **Trust Agreements**), Caledon Trust Company acts as the trustee of each of the Initial Top Funds (the **Trustee**). Pursuant to each of the Trust Agreements, the Filer has been appointed as the manager of each of the Initial Top Funds and has authority to manage the business and affairs of each of the Initial Top Funds and to bind each of the Initial Top Funds.
9. The investment objective of the Alignvest Opportunities Fund Trust is to seek to generate attractive long-term growth in net asset value with low volatility and low correlation to capital markets by gaining exposure to the returns of the Alignvest Opportunities Fund LP.
10. The investment objective of the Alignvest Income Fund Trust is to seek to generate attractive long-term growth in net asset value with low volatility and low correlation to capital markets by gaining exposure to the returns of the Alignvest Income Fund LP.
11. The Trust Agreement of each of the Initial Top Funds describes the investment objectives and investment restrictions applicable to the Initial Top Funds and also describes the fees, compensation and expenses payable by the Initial Top Funds, the calculation of net asset value, distributions, the powers and duties of the investment fund manager and all other matters material to each of the Initial Top Funds, including the fact that in pursuing its investment objectives, the Initial Top Funds may invest in one or more Underlying Funds as an investment strategy.
12. The Top Funds are, or will be, mutual funds for the purposes of the Legislation but no Top Fund is, or will not be, a reporting issuer in any jurisdiction of Canada.
13. The Initial Top Funds are not in default of securities legislation of any jurisdiction of Canada.

The Underlying Funds

14. Each of the Initial Underlying Funds are limited partnerships formed under the *Limited Partnerships Act* (Ontario).
15. The general partner of the Alignvest Opportunities Fund LP is Alignvest Opportunities Fund GP LP and the general partner of the Alignvest Income Fund LP is Alignvest Income Fund GP LP (collectively, the **General Partners**). Each of the General Partners is a limited partnership formed under the *Limited Partnerships Act* (Ontario) and is an affiliate of the Filer.
16. The General Partners, on behalf each of the Initial Underlying Funds have entered into a management and advisory agreement with the Filer, pursuant to which, the Filer has been delegated the obligations of each of the General Partners to direct the affairs of the applicable Initial Underlying Fund and provide day-to-day management services to the applicable Initial Underlying Fund, including management of the applicable Initial Underlying Fund's investment portfolio on a discretionary basis and distribution of the limited partnership units of the applicable Initial Underlying Fund, and such other services as may be required from time to time. The Filer may delegate certain of these duties from time to time.
17. Each of the Underlying Funds has, or will have, separate investment objectives, strategies and/or restrictions.
18. Each of the Underlying Funds will calculate its net asset value and offer redemptions at the same frequency as the applicable Top Fund.
19. The investment objective of the Alignvest Opportunities Fund LP is to seek to generate attractive long-term growth in net asset value with low volatility and low correlation to capital markets. The Alignvest Opportunities Fund LP seeks to achieve its investment objective primarily through investments in equity and equity-related securities both long and short.
20. The investment objective of the Alignvest Income Fund LP is to seek to generate attractive long-term growth in net asset value with low volatility and low correlation to capital markets. The Alignvest Income Fund LP seeks to achieve its investment objective primarily through investments in income-generating securities including common shares, preferred shares and credit instruments both long and short.
21. Securities of the Underlying Funds are, or will be, offered and issued pursuant to prospectus exemptions in accordance with NI 45-106.

22. Persons or companies who are officers or directors of the Manager or substantial security holders of the Top Funds or the Filer may acquire or hold a significant interest in one or more Underlying Funds from time to time.
23. The Underlying Funds are, or will be, mutual funds for the purposes of the Legislation but no Underlying Fund is, or will be, a reporting issuer in any jurisdiction of Canada.
24. The Initial Underlying Funds are not in default of securities legislation of any jurisdiction of Canada.

Fund-on-Fund Structure

25. The Top Funds allow investors in such investment funds to obtain exposure to the investment portfolios of the Underlying Funds and their respective investment strategies primarily through direct investments by the Top Funds in securities of the Underlying Funds (the **Fund-on-Fund Structure**). The Filer believes that the Fund-on-Fund Structure provides an efficient and cost-effective manner of pursuing portfolio diversification on behalf of the Top Funds rather than through the direct purchase of securities.
26. Purchasers of securities of a Top Fund may subscribe for securities of the Top Funds pursuant to a subscription agreement (the **Subscription Agreement**).
27. Prior to executing a Subscription Agreement, the purchaser will be provided with a copy of the Top Fund's offering memorandum or, if no offering memorandum is prepared in respect of the Top Fund, the purchaser will be provided with details about the Top Fund and disclosure respecting relationships and potential conflicts of interest between the Top Fund and the applicable Underlying Fund.
28. The investments held by the Initial Underlying Funds are considered to be liquid. To the extent illiquid securities are held by a Top Fund or an Underlying Fund, such illiquid securities will only comprise an immaterial portion of the portfolio of the applicable Top Fund or Underlying Fund. Where a Top Fund or Underlying Fund holds illiquid securities, the remainder of such Top Fund's or Underlying Fund's portfolio will be managed to provide sufficient liquidity to fund redemptions in the ordinary course.
29. For the purpose of implementing the Fund-on-Fund Structure, the Filer shall ensure that:
 - (a) securities of the Top Funds are distributed in Canada solely pursuant to exemptions from the prospectus requirements in accordance with NI 45-106;
 - (b) the investment by a Top Fund in an Underlying Fund is compatible with the fundamental investment objectives of the Top Fund;
 - (c) the arrangements between or in respect of each of the Top Funds and the applicable Underlying Funds are such as to avoid the duplication of management fees and incentive fees paid to the Filer and its affiliates;
 - (d) no sales fees or redemption fees are payable by the Top Fund in relation to its purchases, dispositions or redemptions of securities of the Underlying Funds;
 - (e) the Filer will not vote the securities of the applicable Underlying Fund held by the Top Funds at any meeting of holders of such securities except that the Top Fund may, if the Filer so chooses, arrange for all of the securities it holds of an Underlying Fund to be voted by the beneficial holders of securities of a Top Fund to the extent the matter being voted on would have required approval of such beneficial holders had it occurred at the Top Fund level;
 - (f) the offering memorandum, where available, or other disclosure document, of each of the Top Funds will be provided to all investors of the applicable Top Funds and will disclose:
 - (i) that the Top Fund may purchase securities of an Underlying Fund;
 - (ii) that the Filer, or an affiliate of the Filer, is the investment fund Filer and portfolio Filer of both the Top Funds and the Underlying Funds;
 - (iii) the approximate or maximum percentage of net assets of the Top Fund that the Top Fund intends to invest in securities of the Underlying Funds; and
 - (iv) the process or criteria used to select the Underlying Funds;

- (g) prior to the time of investment, security holders of a Top Fund will be provided with disclosure with respect to each person, if any, that has a significant interest in the Underlying Fund through investments made in securities of such Underlying Fund. Investors in a Top Fund will also be advised of the potential conflicts of interest which may arise from such relationships. The foregoing disclosure will be contained in any offering memorandum prepared in connection with a distribution of securities of the Top Fund or, if no offering memorandum is prepared, in the subscription agreement for securities of the Top Fund.
 - (h) each of the Top Funds will prepare annual audited financial statements and interim unaudited financial statements in accordance with National Instrument 81-106 – *Investment Fund Continuous Disclosure* (NI 81-106) and will otherwise comply with the requirements of NI 81-106 applicable to them. Each of the Underlying Funds which is subject to NI 81-106 will prepare annual audited financial statements and interim unaudited financial statements. The holdings of securities of an Underlying Fund will be disclosed in the financial statements of the Top Fund; and
 - (i) the investors in each of the Top Funds can obtain a copy of each Underlying Fund's offering documents (if available) and its financial statements.
30. The Filer is entitled to receive monthly management fees, payable in arrears with respect to the Initial Top Funds and the General Partners are entitled to receive a general partner allocation in respect of each of the Initial Underlying Funds.
31. The amounts invested from time to time in an Underlying Fund by a Top Fund may exceed 20% of the outstanding voting securities of the Underlying Fund. As a result, each Top Fund could either alone or together with other Top Funds, become a substantial security holder of an Underlying Fund. The Top Funds are, or will be, related mutual funds by virtue of common management by the Filer.
32. In the absence of the Requested Relief, each of the Top Funds would be precluded from investing in an Underlying Fund since an officer and/or director of the Filer (considered a responsible person within the meaning of the applicable provisions of NI 31-103) will also be an officer and/or director of the Filer of the Underlying Fund.
33. Any investment made by a Top Fund in an Underlying Fund will be aligned with the investment objectives, investment strategy, risk profile and other principal terms of the Top Fund.
34. A Top Fund's investments in the Underlying Funds represent the business judgment of a responsible person uninfluenced by considerations other than the best interests of the investment funds concerned.

Decision

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

- (a) securities of a Top Funds are distributed in Canada solely pursuant to exemptions from the prospectus requirements in NI 45-106;
- (b) the investment by a Top Fund in an Underlying Fund is compatible with the fundamental objectives of a Top Fund;
- (c) no Top Fund will purchase or hold securities of an Underlying Fund unless, at the time of the purchase of securities of the Underlying Fund, the Underlying Fund holds no more than 10% of the market value of its net assets in securities of other mutual funds other than a mutual fund that:
 - (i) links its performance to the performance to one other mutual fund, i.e. a clone fund,
 - (ii) purchases or holds securities of a "money market fund" (as defined by NI 81-102), or
 - (iii) purchases or holds securities that are "index participation units" (as defined by NI 81-102) issued by a mutual fund;
- (d) no management fees or incentive fees are payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Fund for the same service;
- (e) no sales fee or redemption fees are payable by a Top Fund in relation to its purchases or redemptions of securities of an Underlying Fund;

- (f) the Manager will not vote the securities of the Underlying Fund held by the Top Funds at any meeting of holders of such securities, except that a Top Fund may arrange for the securities it holds of an Underlying Fund to be voted by the beneficial holders of securities of the Top Fund;
- (g) the offering memorandum, if available, or similar document of a Top Fund will disclose:
 - (i) that a Top Fund may purchase securities of the Underlying Funds;
 - (ii) that the Underlying Funds are managed and/or advised by the Manager or an affiliate of the Manager;
 - (iii) that substantially all of the net assets (or the percentage of net assets) of the Top Funds will be invested in securities of the Underlying Funds; and
 - (iv) the process or criteria used to select the Underlying Fund;
- (h) Investors in each Top Fund will be informed that they are entitled to receive from the Filer, on request and free of charge, a copy of the offering memorandum or other disclosure documents, or the annual or semi-annual financial statements relating to all Underlying Funds in which the Top Fund may invest its assets; and
- (i) prior to the time of investment, securityholders of a Top Fund will be provided with disclosure with respect to each person, if any, that has a significant interest in the Underlying Fund through investments made in securities of such Underlying Fund. Investors in a Top Fund will also be advised of the potential conflicts of interest which may arise from such relationships. The foregoing disclosure will be contained in any offering memorandum prepared in connection with a distribution of securities of the Top Fund or, if no offering memorandum is prepared, in the subscription agreement for securities of the Top Fund.

The Consent Requirement Relief

“Raymond Chan”
Manager, Investment Funds
Ontario Securities Commission

The Related Issuer Relief

“Vern Krishna”
Commissioner
Ontario Securities Commission

“Judith N. Robertson”
Commissioner
Ontario Securities Commission

2.1.5 Counsel Portfolio Services Inc. and Brigata Diversified Portfolio

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual fund for extension of lapse date of prospectus for 132 days. Filer will incorporate offering of the Fund under the same offering documents as related family of funds when they are renewed- Extension of lapse date will not affect the currency or accuracy of the information contained in the prospectus – Securities Act (Ontario).

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am.

May 7, 2014

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
COUNSEL PORTFOLIO SERVICES INC.
(the Filer)

AND

BRIGATA DIVERSIFIED PORTFOLIO
(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 extension of the time limits pertaining to filing the renewal prospectus of the Fund in all Provinces of Canada, other than Quebec, as if the lapse date of the simplified prospectus and annual information form of the Fund dated June 21, 2013 was November 1, 2014 (the **Requested Relief**).

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 British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador (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 an open-ended mutual fund established under the laws of the Province of Ontario.
2. Units of the Fund are currently offered for distribution in each of the provinces of Canada under a simplified prospectus and annual information form dated June 21, 2013, each as amended (the **Current Prospectus**).
3. Amended fund facts that incorporate the requirements of Form 81-101F3 that came into effect on January 13, 2013 were filed on March 31, 2014 (the **Fund Facts**).
4. Pursuant to Legislation, the lapse date for the Current Prospectus is June 21, 2014 (the **Current Lapse Date**). Accordingly, under the Legislation, the distribution of units of the Fund would have to cease on the Current Lapse Date unless (i) the Fund files a pro-forma prospectus for the Fund at least 30 days prior to the Current Lapse Date; (ii) the final simplified prospectus is filed no later than 10 days after the Current Lapse Date, and (iii) a receipt for the final simplified prospectus is obtained within 20 days of the Current Lapse Date.
5. The Filer is the trustee and manager of the Fund.
6. The Filer is also the trustee, manager and portfolio manager of 37 other mutual funds (the **Counsel Funds**) which are offered for distribution under a separate simplified prospectus and annual information form dated November 1, 2013 in each of the provinces of Canada, other than Quebec (the **Jurisdictions**).
7. The Filer would like to incorporate the offering of the Fund in the Jurisdictions under the same offering documents as the Counsel Funds once they are renewed in or about October or November 2014. Offering the Fund under the same offering documents as the Counsel Funds would facilitate the distribution of the Fund in the Jurisdictions under the same simplified prospectus and it would also assist in disseminating information with respect to the Fund and the Counsel Funds in such matters such as switching between the Fund and the Counsel Funds.
8. If the Requested Relief is granted, it is the Filer's intention to file a standalone simplified prospectus, fund facts document and annual information form for the Fund in the province of Quebec only because the Counsel Funds are not currently offered for distribution in Quebec with the view to renewing the distribution of the Fund in Quebec for a further year based on the Current Lapse Date.
9. Given the disclosure obligations of the Fund, should any material changes be proposed, the Current Prospectus will be amended accordingly.
10. There have been no material changes in the affairs of the Fund since the date of the Current Prospectus. Accordingly, the Current Prospectus represents current information of the Fund. In addition, the Fund Facts filed on March 31, 2014 provides even more current information to investors regarding the Fund.
11. After June 13, 2014, new investors will receive delivery of the Fund Facts dated March 31, 2014. The Current Prospectus will still be available upon request.
12. The Requested Relief will not affect the accuracy of the information contained in the Current Prospectus or the Fund Facts and therefore will not be prejudicial to the public interest.
13. None of the Fund, Counsel Funds, or the Filer is in default of securities legislation in any jurisdiction of Canada.

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.

"Vera Nunes"
Manager, Investment Funds
Ontario Securities Commission

2.1.6 Connor, Clark & Lunn Private Capital Ltd.

Headnote

Multilateral Instrument 11-102 – Passport System – Relief from requirement that registrant appoint its CEO as UDP to allow filer to appoint its President as UDP – CEO oversees only certain activities within the firm – President has ultimate authority for compliance related activity throughout the firm – President has equal decision making authority in the management of the firm as the CEO – President reports directly and only to the firm’s Board of Directors – Other than the firm’s Board of Directors, there is no one with effective authority over the President – section 11.2 of NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 74(1).

Multilateral Instrument 11-102 Passport System, s. 4.7(1).

National Instrument 31-103, Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 11.2.

May 1, 2014

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA AND ONTARIO
(the Jurisdictions)**

AND

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

AND

**IN THE MATTER OF
CONNOR, CLARK & LUNN PRIVATE CAPITAL LTD.
(the Filer)**

DECISION

Background

- 1 The securities regulatory authority or regulator in each of the Jurisdictions (each, a Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirement contained in section 11.2 of National Instrument *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) to permit the Filer to designate its president (the President), instead of its chief executive officer (CEO), as the ultimate designated person (UDP) of the Filer (the Exemption Sought).

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

- (a) the British Columbia Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Yukon and all of the provinces of Canada, other than the Jurisdictions (the Non-Principal Passport Jurisdictions); 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

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

Representations

- 3 This decision is based on the following facts represented by the Filer:
1. The Filer is registered as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer in each of the Jurisdictions and Non-Principal Passport Jurisdictions. The Filer is also registered as an investment fund manager in British Columbia, Ontario, Quebec, Newfoundland and Labrador.
 2. The Filer is a corporation incorporated under the laws of British Columbia, with its head office located in Vancouver, British Columbia.
 3. The Filer is not in default of securities legislation in any of the Jurisdictions and Non-Principal Passport Jurisdictions.
 4. The current UDP of the Filer is the former CEO of the Filer. Historically, the Board of Directors of the Filer gave the person with the title CEO ultimate responsibility and oversight of the following three key functions of the business of the Filer (the Key Business Functions):
 - (i) Client Relationship Management and Sales;
 - (ii) Financial Investment Decision-making; and
 - (iii) Business Management and Operations.
 5. The Board of Directors of the Filer is transitioning the responsibility and oversight of the Key Business Functions from the former CEO to a three-person management team in order to position the Filer to handle its business and to address succession planning. Under the three-person management team, a separate individual executive officer of the Filer will undertake responsibility and oversight for each Key Business Function, as follows:
 - (i) the CEO, to supervise and oversee the Client Relationship Management and Sales function;
 - (ii) the Chief Investment Officer (CIO), to supervise and oversee the Financial Investment Decision-making function; and
 - (iii) the President, to supervise and oversee the Business Management and Operations function.
 6. The former CEO will remain as Chairman of the Filer, with a diminishing day-to-day commitment going forward. When the Board of Directors of the Filer appointed the new CEO, it did not extend his duties to oversight of all of the Key Business Functions. The Board limited his duties to oversight of the Client Relationship Management and Sales function.
 7. The CEO, CIO and the President have different titles that respect the seniority of their positions. They operate as a management team of equals and each is directly responsible only to the Board of Directors. Each individual has distinct authority, responsibility and reporting obligations for the Key Business Function under his control.
 8. The President is also the Chief Compliance Officer of the Filer.
 9. Business Management and Operations is the function area responsible for oversight of the Filer and its employees' compliance with securities legislation and other regulation. As head of this function area, the President has ultimate authority over compliance related matters for the entire firm. The President supervises, monitors and resolves all compliance related issues within the Filer. If there is a disagreement between the President and either of the other two executives on the Filer's senior management team about a compliance related matter, the President has the authority to make the final decision.
 10. The compliance team of the Filer's parent company, Connor, Clark & Lunn Financial Group Ltd., (the CCLFG Compliance Team) is sometimes involved in compliance related matters involving the Filer or the Filer's employees. Usually, the CCLFG Compliance Team defers final compliance related decisions to the President. If there is a significant disagreement over a compliance related matter between the President and the CCLFG Compliance Team, the President escalates the issue to the Filer's Board of Directors for resolution.

11. Under section 11.2 of NI 31-103, a registered firm is required to designate an individual to be the UDP of the firm and the individual must be the CEO of the registered firm or, if the firm does not have a CEO, an individual acting in a capacity similar to a CEO.
12. Under section 5.1 of NI 31-103, the UDP is responsible for (i) supervising the activities of the firm that are directed towards ensuring compliance with securities legislation by the firm and each individual acting on the firm's behalf; and (ii) promoting compliance by the firm, and individuals acting on its behalf, with securities legislation.
13. The Filer's management structure means that none of the three executives on the senior management team have authority over the firm as a whole. Absent receipt of the Exemption Sought, the person with the title of CEO of the Filer must be designated as UDP of the Filer, pursuant to section 11.2 of NI 31-103.
14. The Filer's CEO does not have authority over the firm as a whole or all of the individuals acting on its behalf.
15. The President has authority for compliance related activity throughout the firm, in his capacity as head of the Business Management and Operations function and as CCO.
16. For these reasons, of the three people on the Filer's management team, the President, is more appropriately placed to fulfill the obligations of UDP than the CEO.

Decision

- 4 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 Exemption Sought is granted provided that:

- (a) The President and CEO continue to have equal decision making authority in the management of the Filer;
- (b) The President continues to report directly and only to the Filer's Board of Directors;
- (c) Other than the Board of Directors, there is no one with effective authority over the President;
- (d) The President continues to have ultimate authority for all compliance related matters for the Filer and all of its employees; and
- (e) The UDP provides reports to the Filer's Board of Directors as necessary or advisable in view of his or her responsibilities, including notice of any concerns the UDP has raised with the senior management team that could not be effectively resolved.

"Sandra Jakab"
Director, Capital Markets Regulation
British Columbia Securities Commission

2.1.7 Gaz Métro inc.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Filer applied for a variation of a decision so that it can continue to file financial statements in accordance with Canadian GAAP in Part V of the CICA Handbook for periods beginning on October 1, 2014 and ending on September 30, 2015 – Relief previously granted to the Filer for financial years commencing October 1, 2012 and ending September 30, 2014 – The Canadian Accounting Standards Board decided that entities with activities subject to rate regulation will only be required to adopt International Reporting Standards (IFRS) for annual periods beginning on or after January 1, 2015 – The Filer is seeking relief from the requirements in Part 3 of NI 52-107 Acceptable Accounting Principles and Auditing Standards to defer the mandatory IFRS changeover date to January 1, 2015 – Relief granted, subject to conditions.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards.

May 5, 2014

**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
GAZ MÉTRO 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 to review the decision issued on February 6, 2013 under the securities legislation of the Jurisdictions (the **Legislation**) that exempted the Filer from the requirements, in section 3.2 of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* (**Regulation 52-107**), to establish its financial statements in accordance with Canadian generally accepted accounting principles (**Canadian GAAP**) as set out in Part V of the Chartered Professional Accountants Canada Handbook – Accounting (the **Handbook**) entitled *Pre-changeover accounting standards*, for the years commencing on October 1, 2012 and October 1, 2013 and ending respectively on September 30, 2013 and September 30, 2014 (the **Deferral Decision**).

The Filer requests that the Decision Maker review the Deferral Decision in order to allow the Filer to defer the mandatory International Financial Reporting Standards (**IFRS**) changeover date stipulated in Regulation 52-107 to January 1, 2015 and to use this additional one-year deferral for the financial year commencing on October 1, 2014 and ending on September 30, 2015 (the **Modification Sought**).

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 subsection 4.7(1) of *Regulation 11-102 respecting Passport System* (**Regulation 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories and Nunavut (the **Passport Jurisdictions**); and

- (c) this 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 *Regulation 14-101 respecting Definitions*, *Regulation 11-102*, *Regulation 51-102 respecting Continuous Disclosure Obligations* or *Regulation 52-107* have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

1. The Filer is a corporation existing under the *Business Corporations Act* (Québec), R.S.Q., c. S-31.1. The head office of the Filer is in Montréal, Québec.
2. The Filer is a reporting issuer or equivalent in the Jurisdictions and each of the Passport Jurisdictions and is not in default of securities legislation in any jurisdiction.
3. The Filer has “activities subject to rate regulation” as defined in the Accounting Guideline *AcG-19 Disclosures by entities subject to rate regulation (AcG-19)* – Part V of the Handbook.
4. On October 1, 2010, the Canadian Accounting Standards Board (**AcSB**) issued modifications to Part 1 of the Handbook, *International Financial Reporting Standards*, allowing a deferral of one year of the mandatory IFRS changeover date for entities with qualifying rate-regulated activities. These modifications allowed those entities, as defined in *AcG-19 – Part V of the Handbook*, to defer the adoption of IFRS to the years commencing on or after January 1, 2012.
5. As a “qualifying entity” for the purposes of section 5.4 of *Regulation 52-107*, the Filer was permitted by that provision to prepare its financial statements for its financial year commencing October 1, 2011 and ending September 30, 2012 in accordance with Canadian GAAP as set out in *Part V of the Handbook*.
6. On July 11, 2011, the Filer obtained a decision from the Decision Maker under the Legislation of each Jurisdiction that exempted the Filer from the requirements under section 3.2 of *Regulation-52-107* to provide its financial statements in accordance with Canadian GAAP that apply to publicly accountable enterprises and authorized the Filer to provide its financial statements in accordance with generally accepted accounting principles in the United States of America for its financial years commencing on or after January 1, 2012 but before January 1, 2015.
7. In March 2012, the AcSB decided to defer the mandatory IFRS changeover date for an additional year for entities with qualifying rate-regulated activities, such that those entities would only be required to adopt IFRS for the years commencing on or after January 1, 2013.
8. In October 2012, the AcSB decided to defer the mandatory IFRS changeover date for another year for entities with qualifying rate-regulated activities. Thus, the entities subject to rate regulation as defined in *AcG-19 – Part V of the Handbook* are only required to adopt IFRS for the years commencing on or after January 1, 2014.
9. In March 2013, the AcSB decided to defer the mandatory IFRS changeover date for an additional year for entities with qualifying rate-regulated activities, allowing such entities to adopt IFRS for years commencing on or after January 1, 2015.
10. The AcSB decisions issued in March 2012, October 2012 and March 2013 to extend the deferral of the mandatory IFRS changeover date for additional three years for entities with qualifying rate-regulated activities are not currently reflected in *Regulation 52-107* and other regulations regarding continuous disclosure requirements. The Filer wants to take advantage of this third deferral and therefore requests that it be permitted to establish its financial statements in accordance with Canadian GAAP as set out in *Part V of the Handbook*, for the year commencing on October 1, 2014 and ending on September 30, 2015.

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 Modification Sought is granted under the following conditions:

1. The Filer remains an “entity subject to rate regulation” as defined in AcG-19 – Part V of the Handbook.
2. As a “qualifying entity” within the meaning of section 5.4 of Regulation 52-107 , the Filer can apply Part 3 of Regulation 52-107 to all financial statements, financial information, operating statements and *pro forma* financial statements as if the expression “January 1, 2011” in subsection 3.1(2) of Regulation 52-107 were read as “January 1, 2015”.
3. If the Filer relies on the above paragraph in respect of a period, Part 4 of the Regulation applies as if the expression “January 1, 2011” in subsection 4.1(2) were read as “January 1, 2015”.

“Gilles Leclerc”
Superintendent Securities Markets
Autorité des marchés financiers

2.1.8 Valener Inc.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Filer applied for a variation of a decision so that it can continue to file financial statements in accordance with Canadian GAAP in Part V of the CICA Handbook for periods beginning on October 1, 2014 and ending on September 30, 2015 – Relief previously granted to the Filer for financial years commencing October 1, 2012 and ending September 30, 2014 – The Canadian Accounting Standards Board decided that entities with activities subject to rate regulation will only be required to adopt International Reporting Standards (IFRS) for annual periods beginning on or after January 1, 2015 – The Filer is seeking relief from the requirements in Part 3 of NI 52-107 Acceptable Accounting Principles and Auditing Standards to defer the mandatory IFRS changeover date to January 1, 2015 – Relief granted, subject to conditions.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards.

May 5, 2014

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
VALENER 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 to review the decision issued on February 6, 2013 under the securities legislation of the Jurisdictions (the **Legislation**) that exempted the Filer from the requirement, in section 3.2 of *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* (**Regulation 52-107**), to establish its financial statements in accordance with Canadian generally accepted accounting principles (**Canadian GAAP**) provided that such financial statements be established in accordance with Part V of the Chartered Professional Accountants Canada Handbook – Accounting (the **Handbook**) entitled *Pre-changeover accounting standards*, for the years commencing on October 1, 2012 and October 1, 2013 and ending respectively on September 30, 2013 and September 30, 2014 (the **Deferral Decision**).

The Filer requests that the Decision Maker review the Deferral Decision in order to allow the Filer to defer the mandatory International Financial Reporting Standards (**IFRS**) changeover date stipulated in Regulation 52-107 to January 1, 2015 and to use this additional one-year deferral for the financial year commencing on October 1, 2014 and ending on September 30, 2015 (the **Modification Sought**).

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 subsection 4.7(1) of *Regulation 11-102 respecting Passport System* (**Regulation 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories and Nunavut (the **Passport Jurisdictions**); and

- (c) this 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 *Regulation 14-101 respecting Definitions*, *Regulation 11-102*, *Regulation 51-102 respecting Continuous Disclosure Obligations* or *Regulation 52-107* have the same meaning if used in this decision, unless otherwise defined herein.

Representations

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

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act*, R.S.C. (1985), c. C-44. The head office of the Filer is in Montréal, Québec.
2. The Filer is a reporting issuer or equivalent in the Jurisdictions and each of the Passport Jurisdictions and is not in default of securities legislation in any jurisdiction.
3. The Filer has “activities subject to rate regulation” as defined in the Accounting Guideline *AcG-19 Disclosures by entities subject to rate regulation (AcG-19)* – Part V of the Handbook.
4. On October 1, 2010, the Canadian Accounting Standards Board (**AcSB**) issued modifications to Part 1 of the Handbook, *International Financial Reporting Standards*, allowing a deferral of one year of the mandatory IFRS changeover date, for entities with qualifying rate-regulated activities. These modifications allowed those entities, as defined in *AcG-19 – Part V of the Handbook*, to defer the adoption of IFRS to the years commencing on or after January 1, 2012.
5. As a “qualifying entity” for the purposes of section 5.4 of *Regulation 52-107*, the Filer was permitted by that provision to prepare its financial statements for its financial year commencing October 1, 2011 and ending September 30, 2012 in accordance with Canadian GAAP as set out in *Part V of the Handbook*.
6. On July 11, 2011, the Filer obtained a decision from the Decision Maker under the Legislation of each Jurisdiction that exempted the Filer from the requirements under section 3.2 of *Regulation-52-107* to provide its financial statements in accordance with Canadian GAAP that apply to publicly accountable enterprises and authorized the Filer to provide its financial statements (including the financial statements of Gaz Métro Limited Partnership that are attached to the financial statements of the Filer) in accordance with generally accepted accounting principles in the United States of America for its financials years commencing on or before January 1, 2012 but before January 1, 2015.
7. In March 2012, the AcSB decided to defer the mandatory IFRS changeover date for an additional year for entities with qualifying rate-regulated activities, such that those entities would only be required to adopt IFRS for the years commencing on or after January 1, 2013.
8. In October 2012, the AcSB decided to defer the mandatory IFRS changeover date for another year for entities with qualifying rate-regulated activities. Thus, the entities subject to rate regulation as defined in *AcG-19 – Part V of the Handbook* are required to adopt IFRS for the years commencing on or after January 1, 2014.
9. In March 2013, the AcSB decided to defer the mandatory IFRS changeover date for an additional year for entities with qualifying rate-regulated activities, allowing such entities to adopt IFRS for years commencing on or after January 1, 2015.
10. The AcSB decisions issued in March 2012, October 2012 and March 2013 to extend the deferral of the mandatory IFRS changeover date for additional three years for entities with qualifying rate-regulated activities are not currently reflected in *Regulation 52-107* and the other regulations regarding continuous disclosure requirements. The Filer wants to take advantage of this third deferral and therefore requests that it be permitted to establish its financial statements in accordance with Canadian GAAP as set out in *Part V of the Handbook*, for the year commencing on October 1, 2014 and ending on September 30, 2015.

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 Modification Sought is granted under the following conditions:

1. The Filer remains an “entity subject to rate regulation” as defined in AcG-19 – Part V of the Handbook.
2. As a “qualifying entity” within the meaning of section 5.4 of NI 52-107, the Filer can apply Part 3 of Regulation 52-107 to all financial statements, financial information, operating statements and *pro forma* financial statements as if the expression “January 1, 2011” in subsection 3.1(2) of Regulation 52-107 were read as “January 1, 2015”.
3. If the Filer relies on the above paragraph in respect of a period, Part 4 of the Regulation applies as if the expression “January 1, 2011” in subsection 4.1(2) were read as “January 1, 2015”.

“Gilles Leclerc”
Superintendent Securities Markets
Autorité des marchés financiers

2.3 Rulings

2.3.1 CI Private Counsel LP and CI Managed Funds

Headnote

Relief from the prospectus requirement in the Act to permit the distribution of prospectus-qualified mutual funds to managed accounts held by non-accredited investors, without a prospectus delivery obligation – NI 45-106 contains a carve-out for managed accounts in Ontario which prohibits a portfolio manager from making exempt distributions of investment fund securities to its managed account clients in Ontario unless the managed account client qualifies as accredited investor or invests \$150,000.

Applicable Legislative Provisions

Securities Act (Ontario), ss. 53, 74(1).

Rules Cited

National Instrument 45-106 Prospectus and Registration Exemptions.
National Instrument 31-103 Registration Requirements and Exemptions.

April 25, 2014

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

AND

IN THE MATTER OF
CI PRIVATE COUNSEL LP
(THE FILER OR CIPC)

AND

IN THE MATTER OF
CI MANAGED FUNDS (AS DEFINED BELOW)

RULING

Background

The Ontario Securities Commission (the **Commission**) has received an application (the **Application**) from the Filer on its own behalf, and on behalf of the CI Managed Funds (as defined below), for a Ruling pursuant to subsection 74(1) of the Act, (the **Ruling**) that distributions of securities of the CI Managed Funds to the managed accounts of Non-Accredited Investor Managed Accounts (as defined below) for which the Filer provides discretionary investment management services, will not be subject to the prospectus requirement under section 53 of the Act (the **Ontario Prospectus Requirement**) (collectively, the **Prospectus Relief**).

Interpretation

Terms defined in the Act and in National Instrument 14-101 *Definitions* have the same meaning in this Ruling unless otherwise defined.

Representations

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

1. The Filer is a limited partnership organized under the laws of the Province of Manitoba.

2. The Filer is registered as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer under the Act and holds equivalent registrations under the securities legislation of each other province and territory of Canada.
3. Subject to the activities described in Paragraphs 12 and 13 below which the Filer has engaged in since 2010, neither the Filer, nor any of the CI Managed Funds are in default of the securities legislation in Ontario.
4. The general partner of the Filer is a wholly-owned subsidiary of CI Investments Inc. (**CII**). CII is registered as an investment fund manager and a portfolio manager under the Act and holds equivalent registrations under the securities legislation of each other province and territory of Canada.
5. CII and affiliates are the investment fund managers of one or more mutual funds and may, in the future, become investment fund managers of additional mutual funds (these existing and future mutual funds are collectively, the **CI Managed Funds**).
6. The CI Managed Funds are 'mutual funds', as defined in section 1 of the Act, qualified by simplified prospectus pursuant to the requirements of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) and are subject to National Instrument 81-102 *Mutual Funds* (**NI 81-102**).
7. United Funds are a subset fund family of the CI Managed Funds distributed by CIPC and are included in all references to "CI Managed Funds" in this Decision.
8. The Filer offers discretionary portfolio management services to individuals, corporations and other entities (each, a **Client**) seeking wealth management or related services (**Managed Services**) through a "managed account" as defined in section 1.1 of National Instrument 31-103 *Registration Requirements and Exemptions* (**NI 31-103**).
9. The Filer enters into a written agreement (a **Managed Account Agreement**) with each Client in respect of the managed account of that Client. The Managed Services are provided to Clients of the Filer by employees or agents of the Filer who meet the proficiency requirements of an advising representative or an associate advising representative under NI 31-103.
10. The Managed Services provided by the Filer to its Clients include the following:
 - (a) Each Client authorizes the Filer to supervise, manage and direct purchases and sales of securities in the Client's account on a continuing basis;
 - (b) The Filer's qualified employees perform investment research, securities selection and management functions with respect to all securities, investments, cash equivalents or other assets in the Client's account;
 - (c) The Client's account holds securities as selected by the Filer; and
 - (d) The Filer retains overall responsibility for the Managed Services provided to its Clients and has designated a senior officer to oversee and supervise the Managed Services.
11. The Filer offers discretionary portfolio management services to high net worth clients who are accredited investors and whose portfolios are invested mostly, but not entirely, in United Funds (**Accredited Investor Managed Accounts**). The Filer's minimum aggregate balance for the managed accounts of a Client is usually \$1,000,000. The minimum balance requirement may be waived by the Filer in rare or limited circumstances.
12. The Filer also has a small number of clients which it inherited following the amalgamation of United Financial Corporation (**UFC**) and CII, on January 1, 2010. Prior to the amalgamation with CII, UFC was registered as a limited market dealer in Ontario and acted as both the investment fund manager and adviser to the United Funds. After the amalgamation, in order to take advantage of economies of scale and reduce duplicative services, CII took on the role of investment fund manager and adviser of the United Funds, while UFC's discretionary account management division and its clients (**Legacy Clients**) were transferred to the Filer. Some of the Legacy Clients are not accredited investors but wish for the Filer to continue managing their accounts.
13. In addition, from time to time, the Filer may be asked to accept certain Clients for managed accounts who are not accredited investors, due to their relationship with Clients who are accredited investors (together with the non-accredited investor Legacy Clients, **Non-Accredited Investor Managed Accounts**). Accredited Investor Managed Accounts together with Non-Accredited Investor Managed Accounts are **Managed Accounts**.

14. Non-Accredited Investor Managed Accounts fall into one of the following categories:
 - (a) an individual who is or has been married to the holder of an Accredited Investor Managed Account, or is living or has lived with the holder of an Accredited Investor Managed Account in a conjugal relationship outside of marriage;
 - (b) a parent, grandparent, child or sibling of either the holder of an Accredited Investor Managed Account or the individual referred to in clause (a) above;
 - (c) a personal holding company controlled by an individual referred to in clause (a) or (b) above;
 - (d) a trust, other than a commercial trust, of which an individual referred to in clause (a) or (b) above is a beneficiary;
 - (e) a private foundation controlled by an individual referred to in clause (a) or (b) above; or
 - (f) a close business associate, employee or professional adviser to a holder of an Accredited Investor Managed Account.
15. The Non-Accredited Investor Managed Accounts currently only invest in United Funds, but the Filer may wish to invest the accounts in CI Managed Funds in the future.
16. While the Accredited Investor Managed Accounts each qualify as accredited investors under Ontario securities law, the holders of the Non-Accredited Investor Managed Accounts do not themselves qualify as accredited investors under Ontario securities law, nor do their investments meet the minimum investment threshold set out in Section 2.10 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106). The Filer typically provides Managed Services to Non-Accredited Investor Managed Accounts as a courtesy to its Accredited Investor Managed Accounts.
17. Investments in individual securities may not be ideal for the Non-Accredited Investor Managed Accounts since they may not receive the same asset diversification benefits and may incur disproportionately higher brokerage commissions relative to the Accredited Investor Managed Accounts due to minimum commission charges.
18. To give its Clients the benefit of asset diversification, access to investment products with high minimum investment thresholds and economies of scale on minimum brokerage commission charges in contrast to individual trades in each Managed Account, the Filer may decide to invest a portion of the assets of its Clients in securities of the United Funds.
19. The Filer may, in the future, wish to invest its Non-Accredited Investor Managed Accounts in securities of CI Managed Funds.
20. The Filer is seeking relief in Ontario from the Ontario Prospectus Requirement because it wishes to invest some or all of the assets of its Non-Accredited Investor Managed Accounts in securities of CI Managed Funds, without having to provide each Non-Accredited Investor Managed Account with a prospectus for the applicable CI Managed Fund. When it decides to make such an investment currently, however, there is no exemption from the Ontario Prospectus Requirement to permit Non-Accredited Investor Managed Accounts of the Filer in Ontario to purchase securities of the CI Managed Funds without a prospectus.
21. NI 45-106 does not currently recognize a portfolio manager acting on behalf of a managed account in Ontario as an 'accredited investor' if that account is acquiring a security of an investment fund. Accordingly, in the absence of the Ruling, the Filer would be required to deliver the simplified prospectus of a CI Managed Fund to a Non-Accredited Investor Managed Account, unless the Non-Accredited Investor Managed Account invests a minimum of \$150,000 in the CI Managed Fund or otherwise becomes an 'accredited investor'.
22. In delivering Managed Services to Non-Accredited Investor Managed Accounts, the Filer considers the provision of a prospectus for CI Managed Funds to Non-Accredited Investor Managed Accounts to be unnecessary for the following reasons:
 - (a) **Duty to Clients:** The Filer views its obligation to act in the best interests of its Clients to exist whether or not the Client receives a prospectus for a purchase of a security made in a Managed Account. The Filer considers the purpose of delivering a prospectus to a Client to be the provision of detailed disclosure and fee information on the funds held in the Client's account to inform the Client's right of rescission if the information in the prospectus is found to be untrue or misleading. This right of rescission is not of practical use to the Client in the context of Managed Services provided by the Filer under its discretionary authority. Clients also currently receive detailed disclosure of management fees associated with the purchase of the United Funds in the Filer's Managed Account Agreement, and the same will be true

for CI Managed Funds. The purchase of a security in a Managed Account, which must be consistent with an investment policy, is fundamentally different than a sale of a security made by other types of dealers. The Filer receives no commission or monetary incentive in selecting one security over another; and the different classes of CI Managed Funds and management fee options sold by dealers, and described in the prospectus, are not applicable to the class of CI Managed Funds units that the Filer purchases for its Managed Accounts.

- (b) **Level Playing Field:** The difference between the Filer's portfolio management business model and that of most other portfolio managers is that other portfolio managers manage and distribute their own funds to their client accounts whereas the Filer's fund management has been delegated to its parent company and investment fund manager, CII, for business and practical reasons. CII's scale, expertise, systems infrastructure, as well as its registration as an investment fund manager ensures the Filer's Clients benefit from efficiencies that lower investment management costs while providing significant breadth of investment mandates. Requiring the Filer to deliver a prospectus to its Non-Accredited Investor Managed Accounts in Ontario while not having to deliver a prospectus to its Accredited Investor Managed Account, results in complex operational challenges and an added monetary burden on the Filer that other portfolio managers, who act as investment fund manager and portfolio manager, do not have since they can rely on the exemption that Section 8.6 of NI 31-103 provides.
- (c) **Inconsistent Client Experience:** The Filer considers that the delivery of a prospectus to some and not all Clients will result in inconsistency that will cause confusion among Clients. For example, in a family group, an Accredited Investor Managed Account that is invested in United Funds would not receive a prospectus, whereas a son or daughter that is a Non-Accredited Investor Managed Account would receive a prospectus. The Filer's view is that the inconsistency in client experience may result in the appearance of different levels of service and confusion. When a Client has given the Filer discretionary authority of their account, there is an expectation that all investment decisions will be made by the Filer and they will not receive a prospectus for such investments, similar to the expectation that they will not receive trade confirmations.
- 23. Managed Services provided by the Filer in respect of a Managed Account are covered by a base management fee (the "**Management Fee**") calculated as a fixed percentage of the assets under management in the Managed Account. The Management Fee includes investment research, portfolio selection and management with respect to all securities or other assets in the Managed Account. The Management Fee does not cover brokerage commissions and other transaction charges in respect of each transaction which occurs in a Managed Account, nor does it cover interest charges on funds borrowed or charges for standard administrative services provided in connection with the operation of the Managed Account, such as account transfers, withdrawals, safekeeping charges, service charges, wire transfer requests and recordkeeping. The Management Fee is detailed in each Client's Managed Account Agreement.
- 24. Where the Filer invests on behalf of a Client in securities of a CI Managed Fund that otherwise would pay a management fee to CII, the Client's Managed Account will purchase securities of a class without such management fees. None of the CI Managed Funds will charge a management fee directly to Clients for their holdings in Managed Accounts. Accordingly, there will be no duplication of fees between a Managed Account and the CI Managed Funds.
- 25. There will be no commission payable by a Client to any person on the sale or redemption of securities of a CI Managed Fund in the Client's Managed Account. The Filer may, from time to time, pay a portion of its Management Fee to registered dealers and advisers that refer Clients, including Non-Accredited Investor Managed Accounts, to the Filer for Managed Services. Any such referral fees are or will be disclosed to the Client at the time or before the referral to the Filer is made. Referral fees are not paid out of the assets of the CI Managed Funds.

Decision

The Commission being satisfied that the relevant test contained in Section 147 of the Act has been met, the Commission rules that relief from the Ontario Prospectus Requirement is granted provided that:

- a) this Ruling only applies to the distribution of securities of the CI Managed Funds to Non-Accredited Investor Managed Accounts;
- b) a Non-Accredited Investor Managed Account will be held by an individual who is, and in the case of clauses (iii) to (vi), remains:
 - (i) an individual who is or has been married to the holder of an Accredited Investor Managed Account, or is living or has lived with the holder of an Accredited Investor Managed Account in a conjugal relationship outside of marriage;
 - (ii) a parent, grandparent, child or sibling of either the holder of an Accredited Investor Managed Account or the individual referred to in clause (i) above;

- (iii) a personal holding company controlled by an individual referred to in clause (i) or (ii) above;
 - (iv) a trust, other than a commercial trust, of which an individual referred to in clause (i) or (ii) above is a beneficiary;
 - (v) a private foundation controlled by an individual referred to in clause (i) or (ii) above; or
 - (vi) a close business associate, employee or professional adviser to a holder of an Accredited Investor Managed Account;
- c) this Ruling will terminate upon the coming into force of any legislation or rule of the Commission exempting a trade in a security of a mutual fund to a fully managed account from the Ontario Prospectus Requirement; and
- d) the Filer and each of its affiliates that acts as the investment fund manager of the CI Managed Funds do not receive any compensation in respect of a sale or redemption of securities of the CI Managed Funds.

"Vern Krishna"
Commissioner
Ontario Securities Commission

"Judith N. Robertson"
Commissioner
Ontario Securities Commission

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 of Permanent Order	Date of Lapse/Revoke
AFG Flameguard Ltd.	13 May 14	26 May 14		
B&A Fertilizers Limited	7 May 14	20 May 14		
Bactech Environmental Corporation	7 May 14	20 May 14		
Bioexx Specialty Proteins Ltd.	8 May 14	20 May 14		
BNP Resources Inc.	9 May 14	21 May 14		
Brazilian Resources, Inc.	9 May 14	21 May 14		
Capital DGMC Inc.	13 May 14	26 May 14		
Caspian Energy Inc.	13 May 14	26 May 14		
CJL Capital Inc.	9 May 14	21 May 14		
Exploration Aurtois Inc.	7 May 14	20 May 14		
Gastem Inc.	7 May 14	20 May 14		
Genoil Inc.	9 May 14	21 May 14		
Geopetro Resources Company	7 May 14	20 May 14		
Go Capital I, Inc.	7 May 14	20 May 14		
Kirkland Precious Metals Corp.	13 May 14	26 May 14		
Mediterranean Resources Ltd.	8 May 14	20 May 14		
Northcore Technologies Inc.	9 May 14	21 May 14		
Platmin Limited	9 May 14	21 May 14		
Poplar Creek Resources Inc.	9 May 14	21 May 14		
Rodinia Oil Corp.	9 May 14	21 May 14		
Silver Shield Resources Corp.	8 May 14	20 May 14		
Threegold Resources Inc.	7 May 14	20 May 14		
Transeuro Energy Corp.	13 May 14	26 May 14		

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
Matica Graphite Inc.	12 May 14	21 May 14			
Pacific Vector Holdings Inc.	8 May 14	20 May 14			
Sonomax Technologies Inc.	9 May 14	21 May 14			

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
Carpathian Gold Inc.	4 April 14	16 April 14	16 April 14		
Colossus Minerals Inc.	29 April 14	12 May 14	12 May 14		
Family Memorial Inc.	2 May 14	14 May 14			
Goldtrain Resources Inc.	2 May 14	14 May 14			
Greenstar Agricultural Corporation	5 May 14	16 May 14			
Matica Graphite Inc.	12 May 14	23 May 14			
Mediterranean Resources Ltd.	08 April 14	21 April 14	21 April 14	8 May 14	8 May 14
Pacific Vector Holdings Inc.	8 May 14	20 May 14			
Red Tiger Mining Inc.	2 May 14	14 May 14			
Sendero Mining Corp.	5 May 14	16 May 14			
Sonomax Technologies Inc.	9 May 14	21 May 14			

Chapter 6

Request for Comments

6.1.1 Proposed Amendments to NI 23-101 Trading Rules

CSA NOTICE AND REQUEST FOR COMMENT PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-101 *TRADING RULES*

May 15, 2014

Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for comment proposed amendments to National Instrument 23-101 *Trading Rules* (NI 23-101) and the related Companion Policy 23-101CP (23-101CP), together with a proposed data fee review methodology (the Proposed Amendments).

The text of the Proposed Amendments is outlined in Annexes A, B and C of this notice and is also available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.fcnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca
www.msc.gov.mb.ca

We have worked closely with staff of the Investment Industry Regulatory Organization of Canada (IIROC) in developing the Proposed Amendments, and we thank them for their participation and for sharing their knowledge and expertise. IIROC will be publishing amendments to the Universal Market Integrity Rules (UMIR) to reflect and support the Proposed Amendments.

Background

The key part of the Proposed Amendments deals with the order protection rules (OPR), also commonly referred to as the trade-through¹ requirements (OPR amendments). OPR necessitates that all better-priced orders be executed before inferior-priced orders regardless of the marketplace on which the order is displayed.

Substance and purpose

The purpose of the Proposed Amendments is to address certain costs and inefficiencies resulting from or associated with the current OPR framework through amendments in the following main areas:

- The application of OPR;
- Best execution policies and disclosure; and
- Trading fees.

Summary of the Proposed Amendments

Under the OPR amendments, orders would be protected where displayed on a marketplace that has met certain criteria. This would have the effect of leaving displayed orders on some marketplaces unprotected by OPR. In this notice, we are also proposing or considering caps or limits on certain trading fees and data fees, as well as outlining and seeking feedback about action being proposed regarding the payment of rebates by marketplaces to their members or subscribers under the maker-taker pricing model.

¹ A "trade-through" occurs when an order is executed at a price that is inferior to either a best-priced displayed bid or best-priced displayed offer

More specifically, the amendments being proposed to NI 23-101:

- Amend the definition of “protected bid” and “protected offer” to include orders that are displayed on marketplaces that meet or exceed a market share threshold, or on recognized exchanges that did not meet the threshold but that are orders in the securities listed by and traded on the recognized exchange;
- Introduce section 4.4 of NI 23-101 which would mandate specific dealer disclosure relating to best execution policies;
- Amend section 6.5 of NI 23-101 to reflect the proposed changes to the definitions of “protected bid” and “protected offer” and provide clarity around the extent of the prohibition on locking or crossing the market; and
- Introduce section 6.6.1 to NI 23-101 which would introduce a cap on trading fees.

Further, Annex A highlights other aspects of our proposal that do not necessitate changes to NI 23-101 in order to implement. These are intended to deal with certain costs and / or inefficiencies either directly or indirectly related to the OPR framework, or to address other issues and concerns outlined in this notice. They include:

- A plan to proceed with a pilot study to examine the impact of disallowing the practice of the payment of rebates by marketplaces;
- A proposal to implement a transparent methodology to assess the relative value of real-time market data when reviewing and approving market data fees charged to professional subscribers based on this methodology;
- A proposal to require marketplaces to submit their market data fees charged to professional subscribers for re-approval on an annual basis, and to justify these fees in the context of the results of applying the above-noted methodology; and
- Consideration of further action to regulate non-professional market data fees.

Local Matters

Certain jurisdictions are publishing other information required by local securities legislation. In Ontario, this information is contained in Annex D of this Notice.

Annexes

- A. Background and description of the Proposed Amendments;
- B. Proposed amendments to National Instrument 23-101 *Trading Rules*;
- C. National Instrument 23-101 *Trading Rules* and Companion Policy 23-101CP, blacklined to show the proposed changes to the current NI 23-101 and 23-101CP; and
- D. Local matters.

Authority of the Proposed Amendments

In those jurisdictions in which the Proposed Amendments 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 to NI 23-101 are being made under the following provisions of the *Securities Act* (Ontario) (Act):

- Paragraph 143(1)7 authorizes the Commission to make rules prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by registrants.
- Paragraph 143(1)11 authorizes the Commission to make rules regulating the listing or trading of publicly traded securities or the trading of derivatives.
- Paragraph 143(1)12 authorizes the Commission to make rules regulating recognized exchanges, recognized self-regulatory organizations, recognized quotation and trade reporting systems, alternative trading systems,

recognized clearing agencies and designated trade repositories, including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice.

- Paragraph 143(1)13 authorizes the Commission to make rules regulating trading or advising in securities to prevent trading or advising that it is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

Deadline for Comments

Please submit your comments to the Proposed Amendments, in writing, on or before September 19, 2014. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Where to Send Your Comments

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority (Saskatchewan)
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA jurisdictions.

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

M^{re} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax : 514-864-6381
consultation-en-cours@lautorite.qc.ca

Comments Received will be Publicly Available

Please note that we cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In this context, you should be aware that some information which is personal to you, such as your e-mail and address, may appear on certain CSA websites. It is important that you state on whose behalf you are making the submission.

All comments will be posted on the Ontario Securities Commission website at www.osc.gov.on.ca and on the Autorité des marchés financiers website at www.lautorite.qc.ca.

Questions

Please refer your questions to any of the following:

Tracey Stern
Manager, Market Regulation
Ontario Securities Commission
416-593-8167

Alina Bazavan
Senior Analyst, Market Regulation
Ontario Securities Commission
416-593-8082

Serge Boisvert
Senior Policy Advisor
Direction des bourses et des OAR
Autorité des marchés financiers
514-395-0337 ext. 4358

Michael Brady
Senior Legal Counsel
British Columbia Securities Commission
604-899-6561

Lynn Tsutsumi
Director, Market Regulation
Alberta Securities Commission
403-297-4281

Kent Bailey
Trading Specialist, Market Regulation
Ontario Securities Commission
416-595-8908

Paul Redman
Principal Economist, Strategy & Operations
Ontario Securities Commission
416-593-2396

Roland Geiling
Derivatives Product Analyst
Direction des bourses et des OAR
Autorité des marchés financiers
514-395-0337 ext. 4323

Meg Tassie
Senior Advisor
British Columbia Securities Commission
604-899-6819

ANNEX A

BACKGROUND AND DESCRIPTION OF THE PROPOSED AMENDMENTS

1. BACKGROUND

A. Principles underlying development of existing regulatory framework

In 2001, the Canadian Securities Administrators (CSA) established a framework to permit competition among traditional exchanges and other marketplaces, while ensuring that trading would be fair and transparent. This was effected through the creation and implementation of National Instrument 21-101 *Marketplace Operation* (NI 21-101) and NI 23-101 (together, the Marketplace Rules). The regulatory objectives of the Marketplace Rules at that time were to facilitate greater availability of investor choice, improve price discovery, decrease execution costs, and improve market integrity.²

Underlying those regulatory objectives were certain characteristics viewed as being essential to an efficient market. These were outlined both in the 1997 TSE *Report of the Special Committee on Market Fragmentation: Responding to the Challenge*, and subsequently in a 2006 report titled *Ideal Attributes of a Marketplace*.³ They can be summarized as follows:

<i>Liquidity</i>	Liquidity can be defined as the market's capacity to absorb trades from customers' buy and sell orders at, or near, the last sale price of a particular stock. The greater the number of orders and shares available at a particular price, the more liquid the market will be. Some of the characteristics of liquidity are market depth, market breadth, and resiliency. ⁴
<i>Immediacy</i>	Immediacy refers to how fast an order can be filled and is closely linked to market liquidity, because as liquidity increases, the time to complete a trade should decrease.
<i>Transparency</i>	Transparency refers to the degree to which there is real-time dissemination of information about orders and trades to the public. ⁵
<i>Price Discovery</i>	Price discovery refers to the process through which the execution price for a trade is established. The discovery of a security's fair market value is derived from two sources: the supply of and demand for the security, which indicate a participant's willingness to transact at a given price, and information about transactions which have actually occurred. If prices are not transparent to participants, or there is unequal or incomplete information, participants will not be able to make informed decisions. In addition, if participants are not given access to markets where a security trades, they may be discouraged from trading in that security and a less efficient price discovery process may occur.
<i>Fairness</i>	Fairness refers to the perception and the reality that all participants are subject to the same rules and conditions and that no individual or group has an unfair advantage or disadvantage. The "fairness" of a market may relate to fair access to a specific marketplace or the market as a whole, fair access to trading information, or the fair treatment of orders.
<i>Market Integrity</i>	The integrity of the market relates to the level of confidence in the marketplace as a whole or in a particular marketplace. This confidence level is closely associated with both investors' perception of fairness in the market, and also the effectiveness of the regulatory environment.
<i>Transaction costs</i>	Transaction costs represent the cost of implementing an investor's investment strategy and are important to investors as they directly reduce the net return on investment. They are a major factor in determining on which marketplace investors or brokers will choose to execute trades.

² See *Notice of National Instruments, Companion Policies and Forms – The Regulation of Marketplaces and Trading*, published on August 17, 2001 at (2001) 24 OSCB (Supp).

³ Eric Kirzner, *Ideal Attributes of a Marketplace*, June 22, 2006, Task Force to Modernize Securities Legislation in Canada, *Canada Steps Up*, Volume 4 – *Maintaining a Competitive Capital Market in Canada*.

⁴ Market depth refers to the number of orders at different prices that line the order book. Market breadth is the number of shares that are wanted or offered at a particular price level and the ability to absorb an incoming large order. Resiliency is the ability for a market to attract offsetting orders relatively quickly when order imbalances occur.

⁵ In Canada, pre-trade transparency of information regarding orders is required when a marketplace displays orders of exchange-traded securities, and should contain all relevant information including details as to volume, symbol, price and time of the order. Post-trade transparency by a marketplace is always required. Order and trade information must be provided to an information processor or an information vendor if an information processor does not exist. Currently in Canada, TSX Inc. is the information processor for exchange-traded securities other than options.

These can be broken down into a number of categories, including brokerage commissions and / or dealer mark-ups, transaction fees and market impact costs. Low transaction costs are a characteristic of an effective and efficient market.

Consideration of the above-noted characteristics has continued throughout the ongoing development of the Marketplace Rules and other market structure initiatives, including the subsequent revisions to best execution and the implementation of OPR and the regulatory framework for dark liquidity.⁶ Despite some inherent tensions among these characteristics, we have attempted to balance them, where possible.

In our view, any regulatory change necessitates consideration of the above-noted characteristics of an efficient and effective market in the context of our collective mandates to protect investors, and to foster fair and efficient capital markets. In addition, competition and innovation must also be considered given their important role in facilitating the fairness and efficiency of our markets.

B. History and principles underlying OPR

Canada has had a form of trade-through regime in place for trading in exchange-traded securities for some time, although the scope of application and underlying principles has evolved. Obligations to respect best price existed in the requirements of the Bourse de Montréal and Toronto Stock Exchange when they traded securities listed on both exchanges,⁷ and subsequently were embedded in the initial iteration of best execution obligations reflected in NI 23-101⁸ and included in former UMIR Rule 5.2 *Best Price*.

The “realignment” of the Canadian stock exchanges in 1999 resulted in an environment where exchange-traded securities were traded solely on the listing venue, eliminating the need for cross-market trade-through requirements. In anticipation of a return to a multiple marketplace environment, Market Regulation Services Inc. (now IIROC) and the CSA published a series of papers and proposals in connection with a broader review of evolving market developments (primarily, the development of a multiple marketplace environment) and the regulatory framework applicable at the time – this included the development and formalization of the trade-through requirements that were ultimately reflected in OPR.⁹

In the absence of a form of trade-through regime but with competing marketplaces trading the same securities,¹⁰ there were concerns that investors, including retail investors, would perceive an un-level playing field if their orders were not being executed despite showing the best price. This could lead to a loss of confidence in the fairness and integrity of the market, the subsequent withdrawal of investors and / or liquidity from the market, and a decrease in the efficiency of the price discovery process and the markets in general. Critics of OPR however, expressed concerns about the potential for increased costs, and that it would lead to a lack of innovation and competition in Canada.

OPR was finalized in November 2009 and implemented in February 2011.¹¹ It changed the obligation from solely a dealer obligation to being a marketplace obligation. However, it also gave marketplace participants (primarily dealers) the option to assume the obligations under the rule.

The CSA notice of amendments described OPR as a requirement that would “ensure that all immediately accessible, visible, better-priced limit orders are executed before inferior-priced limit orders and are not traded through”. It was confirmed to be an obligation owed to the market as a whole: it could not be waived. The CSA noted that OPR was intended to instill confidence on the part of all types of investors so that they would contribute to price discovery by posting visible limit orders.

⁶ For example, these characteristics were referred to by the CSA in the background paper entitled “Regulation of Alternative Trading Systems in Canada” published on July 2, 1999 at (1999) 22 OSCB (ATS Supp) and in Joint CSA/IIROC Consultation Paper 23-404 *Dark Pools, Dark Orders, and other Developments in Market Structure in Canada* published at (2009) 32 OSCB 7771.

⁷ The “realignment” of Canadian exchanges in 1999 ultimately led to the TSX becoming the market for senior equities, the TSX Venture Exchange becoming the market for venture securities, and the Bourse de Montréal becoming the market for listed derivatives.

⁸ A form of best-price obligations were included in the best execution obligations when the Marketplace Rules were first implemented. These obligations were modified, and the best-price obligations removed, when amendments to NI 23-101 were implemented in September 2008.

⁹ The CSA began its review of order protection or trade-through in 2005 with the issuance of Discussion Paper 23-403 *Market Structure Developments and Trade-Through Obligations published on July 22, 2005* at (2005) 28 OSCB 6333, in which the CSA, jointly with the former Market Regulation Services Inc., reviewed developments in market structure and regulation in the US and Europe in the context of best execution and order protection. This led to proposals to formalize OPR that were first published for comment on April 20, 2007 in the notice titled *Joint Canadian Securities Administrators / Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to Marketplaces* published at (2007) 30 OSCB (Supp-3). An amended proposal was published on October 17, 2008, under the title *Notice of Proposed Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules*, published at (2008) 31 OSCB 10033.

¹⁰ At the end of 2007 there were three visible marketplaces trading TSX-listed securities (TSX, Pure and Omega).

¹¹ *Canadian Securities Administrators Notice of Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules* published on November 13 2009 at (2009) 32 OSCB 9403.

In finalizing OPR, the CSA recognized the need to maintain a balance between promoting efficient trading services through marketplace competition, while ensuring fairness and integrity through the efficient pricing and trading of exchange-traded securities across multiple marketplaces.

C. Relevant requirements and guidance

Under the current OPR, a trade-through occurs when an order is executed at a price that is either lower than a displayed bid or higher than a displayed offer (displayed bids and offers are considered “protected orders” under the current rule).

Trade-throughs themselves are not expressly prohibited as OPR is drafted as a policies and procedures requirement. The obligations fall first upon the marketplaces which are required to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs.¹² However, marketplace participants can, and in many cases do, assume responsibility for the obligations through the use of the directed-action order (DAO). The rule also provides for exceptions for certain types of trade-throughs.¹³

Where a marketplace participant chooses to assume the OPR obligations through the use of a DAO, the marketplace participant must first establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs, with the same exceptions noted above.

Regardless of whether a marketplace or marketplace participant assumes the obligation for compliance with OPR, the requirements apply to the full depth-of-book, as was the case in the pre-existing best price obligations. The majority of commenters to the 2005 Discussion Paper and the subsequent formal OPR proposals agreed with the full depth-of-book application.¹⁴ In maintaining the same full depth-of-book standard, the CSA confirmed its view that the policy objectives of investor confidence in the fairness and integrity of the market are more effectively accomplished through full depth protection. It is important for investors, including retail investors, to know that any order they enter on a marketplace will be executed before an inferior-priced order, and a shift to a different standard of protection in Canada (such as a top-of-book obligation) may be perceived as adopting a lower level of investor protection.

II. OPR REVIEW

Since 2007, the Canadian market has evolved into a competitive environment for equity marketplaces, with multiple visible marketplaces trading TSX-, TSXV-, or CSE-listed equity securities.¹⁵ This competition has fragmented order flow across various trading facilities, while at the same time bringing choice – marketplaces have introduced different fee models, faster or innovative technology, and new order types.

This evolution has provided the CSA with an opportunity to assess the outcomes of OPR in the multiple marketplace environment in which it was intended to operate. This assessment includes both the benefits we sought to achieve as well as any costs and unintended consequences. Market participants have raised concerns that the costs of complying with OPR outweigh its benefits. We have noted that these concerns increase with the introduction of each new visible marketplace whose displayed orders are protected by the rule. As a result of our assessment and the concerns of participants, a primary focus of our review was to weigh the benefits of OPR, such as:

- efficiency gains from the virtual consolidation of access to fragmented marketplaces;
- an increased investor perception of a level playing field resulting from their visible better-priced quotes trading ahead of other inferior-priced orders; and
- the effect it has had in fostering the emergence of competition (and the results of that competition);

against the costs of OPR, including the inefficiencies that might arise if:

¹² The obligations were placed first and foremost on marketplaces because of the potential advantages of doing so. For example, this would reduce the need for linkages from dealers to each marketplace (and therefore less costs for dealers), better facilitate of monitoring and enforcement, and provide better outcomes in terms of consistency of approach.

¹³ Exceptions include trade throughs resulting from systems issues at another marketplace, situations such as flickering quotes, or if a marketplace participant has decided to take on trade-through responsibilities for the order through the use of the DAO marker.

¹⁴ An Implementation Committee was also struck in connection with the amendments proposed in October 2008. Part of the Committee's work included considering whether OPR should be applied at top-of-book, full depth-of-book or at some other level (e.g., to five price levels). Views of the committee members were split. Although the committee agreed that full depth was more complete and philosophically consistent with the policy objectives of the CSA, there was no consensus on whether the incremental protection offered by full depth was sufficient to justify the incremental costs. Questions were posed by the CSA to the committee to investigate this further and, ultimately, OPR was implemented with full depth-of-book protection.

¹⁵ In addition, there are currently four dark marketplaces (including IntraSpread, a facility of Alpha Exchange) trading these same securities.

- market participants have become captive consumers of marketplace services in order to comply with OPR;
- captive consumers are generating revenues for marketplaces, supporting an otherwise unsustainable level of competition; and
- the existence of any such unsustainable competition results in excessive complexities, costs and inefficiencies for equities trading.

In carrying out our review, we interviewed approximately 35 market participants located in British Columbia, Alberta, Ontario and Quebec, representing a variety of sell-side, buy-side, marketplace and vendor interests. The purpose of the interviews was to better understand the effects of OPR, both in terms of benefits and costs. OSC staff also consulted with its Market Structure Advisory Committee, comprised of representatives from similar types of firms. Some data analysis was also performed through IIROC to better understand how OPR operates in a multiple marketplace environment. We also had the benefit of considering comments received on a pre-filing by Aequitas Innovations Inc. The proposals in this pre-filing challenged certain fundamental principles underlying the current regulatory framework (including those underlying OPR), and many commenters took the opportunity to present their specific views on the benefits and costs of OPR. The results of our review are reflected below.

A. Review of benefits of OPR

1. Impact of OPR on confidence in the fairness and integrity of the market

As indicated earlier, the primary objective of OPR is to promote confidence in the fairness and integrity of the market in order to support both liquidity and the efficiency of the price discovery process. Generally, the parties interviewed agreed that OPR assists with these objectives as it provides comfort and certainty in trading outcomes - best-priced displayed orders should generally be executed before inferior-priced orders.¹⁶ Where an investor's primary objective is achieving best price for marketable orders, it was also expressed that OPR provides a mechanism to ensure that the interests of the client are satisfied by their dealer in the order execution process.

However, a common view expressed was that many investors, and retail investors in particular, are likely not aware of OPR and its implications for their orders and, as such, its effect on investor confidence might be difficult to measure. It was also suggested that the ability to measure the effect of OPR on confidence, liquidity and price discovery might be further complicated by the fact that some form of trade-through protection had already existed in the Canadian regulatory framework. The true impact of OPR might not be evident unless the rule was to be loosened or repealed. More generally, it was also noted that the impact on investor perceptions due to the competing effects of macroeconomic conditions, various high-profile technology glitches seen in the operation of foreign markets and high frequency trading, could also challenge any attempt to isolate the impact of OPR on confidence in the fairness and integrity of the markets.

Questions were also raised regarding the benefit of protecting displayed limit orders on markets other than the dominant market for trading (generally, the listing market). It was also questioned whether OPR is having its intended effect if orders on the other marketplaces belong to parties, such as professional traders, whose confidence in the fairness and integrity of the markets would be least likely to be negatively affected in a material way in the absence of the rule. In considering this question further, we examined trade data from each visible marketplace and grouped participants based on certain identifying factors that may proxy for retail, institutional and professional traders. This was done with the objective of examining active/passive ratios¹⁷ for each group, and assessing whose limit orders are receiving the benefit of protection on each visible trading venue.¹⁸ What is generally suggested by the analysis is that the vast majority of the retail and institutional client order flow is entered for display on the listing markets (e.g., on TSX or TSXV), and that a much smaller percentage of retail or institutional order flow is displayed on other marketplaces. Much of the remaining order flow displayed on other marketplaces appears to belong to professional traders. This is further supported by anecdotal evidence provided by dealers during our interviews, regarding the placement of their passive retail and institutional client orders. Some of the results of our analysis are included at Appendix A-1.

2. Other identified benefits of OPR

Based on our observations of the evolution of the multiple marketplace environment, and feedback received during our interviews, OPR has also resulted in increased trading efficiency through the technological investment made by marketplaces,

¹⁶ Except in the types of scenarios where trade-throughs are permitted to occur as outlined in section 6.2 and paragraph 6.4(1)(a) of the current NI 23-101.

¹⁷ Active/passive ratio refers to the comparative calculation of orders which are liquidity providing (passive orders) and liquidity removing (active orders).

¹⁸ Trader IDs were grouped together based on their use of any of: (1) the intentional cross marker (to proxy for institutional client orders); (2) SDL orders on Alpha IntraSpread (stated to be limited to orders of clients that meet the definition of 'Retail Customer' under IIROC's member rules); (3) post-only orders (most likely to be used by professional traders executing a market making strategy dependent on the placement of passive orders); (4) and the SME marker (generally intended to capture professional trading in arbitrage accounts, formal market making accounts, informal market making / high-frequency trading accounts, and dealer facilitation accounts).

dealers and service providers (vendors) to manage orders across multiple venues. It has also been suggested that OPR, in concert with existing pre-trade transparency requirements, has mitigated the impact of liquidity fragmentation through the virtual consolidation of the central limit order books from each visible market by various market participants and vendors. Finally, we heard generally positive statements from participants regarding the effect that OPR and the preceding UMIR 'best-price' obligations had on fostering competition at a time when nearly all trading was conducted on the listing markets (i.e., pre-2008). Although many indicated that competition has put downward pressure on certain fees, this was often overshadowed by concerns with how overall costs have increased as a result of OPR and / or the evolution to a multiple marketplace environment.

B. Review of costs and unintended consequences of OPR

As outlined earlier, OPR requires that all best-priced displayed orders be executed first, regardless of where the orders are displayed (subject to the exceptions noted above). For participants that choose to assume the OPR obligations and control their own order flow through the use of DAOs, the practical result has been the need to acquire (whether directly or indirectly) both market data from, and access to all visible marketplaces. Marketplace participants have suggested that this has led to a situation where they are captive to certain marketplace services, with significant cost implications. It has also been suggested that OPR causes or contributes to certain market inefficiencies, whether in connection to the captive consumer issue or for other reasons. We discuss each of these in more detail below.

1. Cost implications of the "captive consumer issue"

Participants have expressed concerns to us regarding the increased cost burden and market inefficiencies associated with the captive consumer issue for some time. These concerns have become more pronounced in recent years both as existing marketplaces continue to develop service offerings and introduce fees on new or existing services, and as new marketplaces begin operations.

Based on our interviews and consultations, the direct and indirect costs most commonly connected to OPR and the captive consumer issue can be grouped into the following four categories: marketplace fees, technology costs and risks, trading inefficiencies, and 'other' operational implications (e.g., marketplace liability, and compliance burdens).

(i) Marketplace fees

During our interviews, a number of marketplace fees were identified as being impacted by the captive consumer issue, specifically trading fees, market data fees and membership or subscriber fees. The materiality of each of these fees in relation to overall cost impact varied between the dealers interviewed. Some viewed trading and data as being the most relevant and indicated that less choice existed in paying these fees, while others specified that membership and subscriber fees were also a significant cost. We note that some of the concerns with respect to marketplace fees are not directly resulting from the implementation of OPR. These are discussed in later sections of this notice.

Regarding trading fees, participants raised specific concerns about the implications of OPR on their costs to execute marketable order flow, given that OPR necessitates that participants trade with the best-priced displayed orders, regardless of the level of fees charged by marketplaces displaying those orders.

The primary concerns raised with data fees were similar to those identified in CSA Staff Consultation Paper 21-401 *Real Time Market Data Fees*¹⁹ (Data Fees Paper). These specifically were that: data fees are generally high; data costs in aggregate have increased significantly as additional visible marketplaces begin charging for data; data fees may not be subject to sufficient competitive forces to bring discipline to the level of fees being charged; and where necessary to comply with regulatory obligations (most notably OPR and best execution obligations), participants are captive to market data fees.

Some dealers expressed concerns about membership or subscriber fees. The extent of the concern depended on whether the dealer's business model necessitated that it directly access every marketplace. In some examples noted by dealers, their monthly invoices for membership or subscriber fees were significant multiples of the total amount invoiced for trades executed on the marketplace during the month. However, other dealers have addressed these cost concerns by choosing an alternative and entering into jitney arrangements.²⁰

One final category of marketplace fees identified were those related to connectivity (i.e. physical connections to the marketplace that are provided by the marketplace). These were an identified concern for dealers that access trading on marketplaces through their own managed connections, rather than through a vendor.

¹⁹ Published on November 8, 2012 at (2012) 35 OSCB 10099.

²⁰ The exercise of some degree of choice by dealers with respect to access to trading can also be seen in the recently published results of IIROC's survey on best execution. See the discussion on Marketplace Access in section 3.1 of IIROC Notice 14-0082 *Best Execution Survey Results* published on March 28, 2014 at http://www.iiroc.ca/Documents/2014/61ec2e27-7e15-4a42-9adc-5c7895d16c81_en.pdf.

In the context of the captive consumer issue, we note that concerns regarding marketplace fees were identified as being an issue primarily for dealers and vendors, as parties who are typically impacted directly by these fees. The institutional investors interviewed indicated there was a general lack of transparency around the impact of trading fees and data fees on their explicit trading costs, as such fees are typically covered by flat rate commissions commonly charged to institutional clients for their trades. As a result, they were generally not in a position to comment on the implications of OPR on these costs. Some noted, however, that certain dealers had begun to charge directly for data fees previously recovered through commissions.

(ii) *Technology costs and risks*

Technology costs were also identified by many dealers as a significant cost associated with the captive consumer issue. The primary costs identified were those relating to the technology infrastructure and staff resources needed to manage the increasing volume of data and complexity that have accompanied the evolution of the multiple marketplace environment. Part of the technology costs included not only internal infrastructure but also any infrastructure needed to facilitate connectivity to a marketplace, which result in connectivity costs that are separate from any connectivity fees charged by a marketplace. It was also acknowledged that many of these technology-related costs might persist in the absence of OPR. They are in many cases a by-product of multiple marketplaces trading the same securities, and the emergence of new trading methodologies. However, some dealer and vendor representatives expressed frustration over their inability to better manage the scope and timing of their technology spend given the implications of OPR for their technology resource allocation. This was the case when discussing both the impact of significant system changes initiated by existing marketplaces, as well as the cost and time needed to prepare for the launch of each new visible marketplace. These costs are incurred regardless of whether the marketplace has demonstrated value for clients. It was noted that these costs included not only the hard and soft development and maintenance costs, but also the opportunity costs of having to defer or abandon other technology projects and improvements.

The risks imposed by the scope, timing or frequency of system changes at visible marketplaces were also identified as a concern by both dealer and vendor representatives. It was noted that such marketplace system changes can introduce risks to their systems, and sufficient testing time is needed to ensure the continued proper operation of systems and algorithms. It was not clear from our discussions whether this issue stemmed from a concern with the actual amount of lead-time currently being afforded by marketplaces, or if it related more to the need to accommodate the scheduling of marketplace changes regardless of any competing internal technology resource demands and pressures.

Again, as was the case for marketplace fees, in the context of OPR these costs were only raised as a concern by dealer and vendor representatives. The institutional investors interviewed were generally reliant on the system infrastructure provided to them by a dealer or vendor.

(iii) *Trading inefficiencies*

OPR has also been identified to us as creating or compounding certain trading inefficiencies that could have a variety of implications for both dealers and their clients. The scope of the impact included execution quality, implicit and explicit trading costs, and the administrative costs associated with back-office trade processing. Such inefficiencies can arise because OPR compliance requires an order to trade against the best prices displayed across all marketplaces. This can result in execution quality being negatively impacted, especially in instances where the size of the order necessitates trading with displayed orders at multiple price levels.²¹ It was suggested that this can result in signalling and latency which advantages other participants, and can result in worse executions or lost fills for the client. It was also suggested that the costs associated with routing in such a manner are often not sufficiently outweighed by the benefits of capturing small volume orders displayed on each marketplace at a better, or even the best, price (e.g., 100 shares). As noted earlier, in such circumstances additional questions were raised as to whether the passive orders receiving the benefits of OPR belong to counterparties who are in greatest need of the protection afforded by the rule.

Many dealers also identified 'ticketing costs' that are often charged by the dealer's back-office service providers for each fill received from each marketplace submitted for clearing. Given the effect that OPR can have on the routing of an order across multiple marketplaces, participants indicated that ticketing costs have increased significantly as orders that previously might have been filled at once on one marketplace, are now being split into multiple fills (and incurring multiple tickets costs). We understand that some dealers have implemented or are in the process of implementing mechanisms to mitigate these costs through 'trade compression'.²²

²¹ Even in the absence of OPR, it was indicated that these costs will continue to exist to the extent a dealer has determined it necessary to trade their client orders in a similar way to achieve best execution.

²² Trade compression has been described as a cost minimization process where multiple trades in the same security are grouped / netted to the extent possible before being submitted for clearing purposes, resulting in fewer 'tickets' and 'ticketing charges' by the back-office service vendors.

(iv) *Other operational implications*

Dealers have expressed concerns regarding the lack of negotiating power with marketplaces to which they feel captive as a result of OPR. The most notable of these concerns relates to the liability provisions contained in marketplace membership or subscriber agreements that, as a result of OPR, many dealers feel compelled to sign in order to access trading on a marketplace as a member or subscriber. They believe this results in an unreasonable transfer of risk from the marketplace to the dealer where the marketplace disclaims or severely limits liability for member or subscriber losses caused by the marketplace.

Dealers also identified increased compliance cost issues associated with each new visible market displaying orders that must be accessed to comply with OPR.

2. Potential impact on broader market efficiency

In addition to an increased cost burden, OPR is also viewed by some as creating or contributing to broader market inefficiencies. It can be argued that OPR acts as a support for marketplaces, in that it allows visible marketplaces to collect fees from those who might not otherwise use their services in the absence of OPR.

Where OPR acts as a support for marketplaces, it can also support the launch or continued operation of visible marketplaces that might not otherwise be going-concerns. This can facilitate increased fragmentation which may impact market quality, complexity, and the costs to participants.

Market inefficiencies can also arise to the extent that OPR, and any support for marketplaces resulting from OPR, might stifle competition and innovation – a potential outcome noted in comments to the original OPR proposals. The last few years have shown innovation and competition between marketplaces to be largely occurring on the basis of fees, technology and speed, and via the launch of second trading facilities by existing marketplaces that also appear to be differentiated primarily based on trading fees.

C. Other Contributing Market Issues

We note that many of the issues relating to the costs and market inefficiencies identified above can also be related to factors and issues connected to the broader market structure evolution. This makes separating the effect of OPR from the effect of these other factors or issues more difficult. At a minimum, it is important to consider how each of these might relate to the costs and market inefficiencies, in order to identify what actions might best address the concerns raised.

1. Emergence of the multiple marketplace environment

As noted earlier, the competitive environment for equity marketplaces has evolved to include multiple marketplaces trading TSX, TSXV-, and / or CSE-listed equity securities. Even in the absence of OPR, the existence of multiple marketplaces can present many of the same complexities, costs and inefficiencies identified earlier, as order flow is increasingly fragmented across the various markets. OPR, and best execution obligations to a lesser extent, can influence the degree and means of access to each market thereby increasing the potential for added costs and inefficiencies in a multiple marketplace environment.

2. Payment of rebates under maker-taker and inverted maker-taker fee models

In 2005, TSX introduced a volume-based maker-taker fee model to incentivize the posting of liquidity to compete with marketplaces in the U.S trading interlisted securities. Under this fee model, the liquidity providing side (the maker) of the trade receives a rebate while the liquidity taking side of the trade (the taker) pays a fee. While initially introduced by TSX on securities interlisted on NASDAQ and AMEX, this model was extended in 2006 to trading in all TSX and TSXV listed equity securities. Since then, it has generally formed the basis for trading fee models used by the competing visible equities markets in Canada for their continuous trading sessions.

The payment of a rebate under the maker-taker fee model can be viewed as both an incentive intended to attract order flow to a particular marketplace, and also as a means of rewarding or compensating a liquidity provider for the risk associated with placing that order and contributing to the price discovery process. With an increased incentive to place passive orders, the maker-taker model has been credited by some for resulting in narrowed spreads, and better execution prices for marketable orders. However, competition to capture passive rebates by some participants may have reduced the ability for other market participants to receive fills on passive orders. As a result certain participants 'cross the spread' more often, resulting in both greater execution costs in the form of the spread paid²³, and increased trading fees.

²³ There may also be benefits received in the form of narrower spreads and increased liquidity (e.g., increased immediacy) that can have the effect of offsetting these costs to some extent. For example, if retail investor orders historically have tended to be active (and thus cross the spread), these continue to be active but cross a narrower spread resulting in a better execution price for the investor.

More recently in both Canada and the U.S., the concept of a payment from a 'liquidity taker' to a 'liquidity maker' has broadened as markets have evolved. An example of this evolution is illustrated by the increased use of the "inverted" maker-taker model – where the liquidity taker receives a rebate and the liquidity provider pays a fee. The result is a situation where a rebate is no longer being paid to reward for risk and / or price discovery contribution.

Staff are of the view that the payment of rebates under either traditional or inverted maker-taker models is impacting behaviour with respect to both trading and order routing strategies on the part of a variety of market participants. We are concerned that the payment of rebates is incentivizing behaviours in ways which may have a negative impact on our market. These concerns have been raised with us regarding the maker-taker model in connection with the OPR review, the comments received to the Aequitas pre-filing notice, and through our ongoing oversight of marketplaces and market structure. Further, certain issues have been identified in a number of market structure research papers and publications.

(i) *Fragmentation and Segmentation of Order Flow*

We have heard that the variation in trading fee levels and models is contributing to increased fragmentation of order flow beyond what might normally result from a multiple marketplace environment. As noted earlier, Canadian marketplaces have been competing increasingly on the basis of fees. This can be seen through an examination of the various fee changes implemented by venues, and the subsequent fee changes implemented by competitors in response. It can also be seen in connection with the launch of second marketplaces that are differentiated primarily based on fees.

Through our interviews and ongoing oversight activities, we have also heard the view that one of the primary motivations for a marketplace to operate multiple trading facilities with different fees and / or models is to segment order flow in order to cater to certain participants or categories of order flow. An example of this can be seen through the use of the inverted maker-taker model. Under an inverted maker-taker model, a compelling reason must exist for a liquidity provider to pay to post liquidity on a marketplace given that such a decision means forgoing the passive rebate paid by other marketplaces utilizing the traditional maker-taker model. It is our understanding that two primary reasons are as follows:

- to move the passive order to the top of the consolidated order book, based on the assumption that, given multiple marketplaces displaying orders at the best available price, a cost-sensitive dealer may choose to route a marketable order first to the venue which pays a rebate; and
- to increase the chances of trading with order flow most likely to be sensitive to active trading fees – specifically that of the retail dealer.

To mitigate the resulting increased trading costs, participants may seek less costly means of executing traditionally active flow, as is the case with retail orders. The use of dark pools is one way to address the higher costs associated with routing active orders²⁴, given the lower fees typically charged by dark pools, and more recently, inverted maker-taker models are being used for similar purposes.

(ii) *Conflicts of interest*

As noted above, the payment of rebates is being used to incentivize particular routing behaviours, both in inverted and traditional maker-taker models. As a result, the rebate payment raises the potential for conflicts of interest in routing decisions on the part of dealers managing client orders. Angel, Harris and Spatt reference this issue in a 2010 paper and a subsequent 2013 update.²⁵ They note that dealers may be incentivized to route their clients' limit orders to marketplaces paying the highest rebates, and their marketable orders (subject to the price requirements under OPR) to venues with the lowest active fees (or to venues with an inverted maker-taker model where they receive a rebate). Typically, these rebates are not passed on to the end client.²⁶ In a July 2013 research publication, Pragma Securities further noted that "a trade execution strategy that is optimal for the broker may not be optimal for the client."²⁷ Similar issues were raised in a December 2013 report by the International Organization of Securities Commissions (IOSCO) titled *Trading Fee Models and their Impact on Trading Behaviour*,²⁸ in which some regulators indicated concern with the impact on best execution for clients if routing decisions are being made by dealers based on the potential for the dealer to earn a rebate or discount (via low fees) on the trade.

²⁴ As an example, the use of Alpha IntraSpread is only available to retail order flow due to its restriction on the use of the "seek dark liquidity" (SDL) order type.

²⁵ *Equity Trading in the 21st Century*, Angel, Harris and Spatt, May 2010 and June 2013.

²⁶ We understand this is the case for Canadian marketplace participants as indicated in section 3.4 of IROC Notice 14-0082 *Best Execution Survey Results* published on March 28, 2014 at http://www.iroc.ca/Documents/2014/61ec2e27-7e15-4a42-9adc-5c7895d16c81_en.pdf.

²⁷ *A Conflict Inherent in the Maker-Taker Model: Equities vs. Futures*, Pragma Securities, July 2013, p. 1.

²⁸ Available at: www.iosco.org/library/pubdocs/pdf/IOSCPD430.pdf.

(iii) Transparency issues

Another concern raised by the maker-taker model is that high rebates may distort the transparency of quoted spreads. Many also believe that while the payment of rebates to liquidity providers may have narrowed spreads due to competition for the rebate, this narrowing is subsidized by the market participant who ultimately pays the fee on the transaction.

When rebates and fees are not passed on to the end client in all circumstances, and only certain market participants are able to gain the potential economic benefit which might come from the rebate payment, an unlevel environment for investors is created. It has been suggested that a potential solution would be to require all fees and rebates to be passed on to the end client, and that this would not only level the economic outcomes of trades for all participants, but would also eliminate any dealer conflicts of interest noted above with respect to routing. However, various industry participants representing different business segments have indicated to us that such a solution may be very difficult and costly to implement from a technology perspective.

Further, and relating specifically to the inverted maker-taker model, Angel, Harris and Spatt note that such models essentially allow the liquidity provider to quote ahead of another participant at what is effectively a sub-penny price²⁹ not permitted under existing rules.

(iv) Increased intermediation on highly liquid securities

Providing incentives to encourage the provision of liquidity can be seen as an objective which is likely to yield positive benefits for the market, but achieving that objective should not come at an unreasonable cost for other market participants. As the multiple marketplace environment expanded and the maker-taker model emerged as the primary fee model utilized to attract passive order flow, a greater number of short-term liquidity providers entered the market. The result has been an increase in liquidity provision, but predominantly in securities which are the most highly liquid. This was illustrated in IIROC's publication of the results of Phases I and II of their study on high frequency trading.³⁰ In this report it was noted that for user ID's identified as part of the study group, 77% of the volume, 88% of the value and 84% of the number of trades executed were in the most highly liquid TSX-listed securities.

Staff are concerned that while the payment of rebates has successfully increased the level of liquidity primarily in the most liquid securities, it may have led to a situation where there is unnecessary intermediation by short term liquidity providers in securities where such intermediation is least needed. This raises questions regarding the appropriateness of a fee model which necessitates a payment from a liquidity taker to a liquidity provider, where sufficient liquidity already exists.

(v) Marketplace competition

We note that competition for rebate-driven volume may reduce the incentive for marketplaces to make changes to their fee models that might address the identified issues (absent a requirement for their competitors to do the same). As an example, there might be a limit to which a marketplace might lower the rebates it pays under a maker-taker model, as a decrease below a certain level could result in significantly lower passive order flow being directed to that market, and a subsequent loss of trading volume, market share and revenue.³¹ Especially where competitive pressures are stronger (e.g., interlisted securities and liquid non-interlisted securities priced over \$1), there may be less incentive for marketplaces to deviate from a fee model that involves the payment of rebates for provided liquidity.

3. High frequency trading

The Canadian equity marketplace has experienced significant growth in high speed, low latency and technologically- driven trading activity, transforming market dynamics across the industry. The IIROC report on Phases I and II of its study of high frequency trading (HFT), points to a number of factors as having helped to lay the groundwork for HFT. They include the advent of decimalization, multiple marketplaces, increased competition among marketplaces, the globalization of trading and the advancement of trading technologies.³² In an update presented at the joint OSC / IIROC Market Structure Conference in November of 2013, IIROC identified HFT as representing 15% of volume, 24% of value and 35% of the number of trades executed between January 2012 and June 2013.³³ Further information regarding HFT characteristics, strategies and risks can be found in the July 2011 IOSCO Consultation Report *Regulatory Issues Raised by the Impact of Technological Changes on*

²⁹ *Equity Trading in the 21st Century*, June 2013, p. 28.

³⁰ Published at: http://www.iiroc.ca/Documents/2012/c03dbb44-9032-4c6b-946e-6f2bd6cf4e23_en.pdf.

³¹ We acknowledge that, effective November 1, 2013, the TSX and TSXV revised its fee model for securities priced under \$1 to introduce symmetrical fees (i.e., both the active and passive sides pay the same fee per share traded).

³² Published at: http://www.iiroc.ca/Documents/2012/c03dbb44-9032-4c6b-946e-6f2bd6cf4e23_en.pdf.

³³ Published at: http://www.iiroc.ca/Documents/2013/03603d99-c3ef-4fb6-8b94-a6b6aa857cf3_en.pdf.

*Market Integrity and Efficiency*³⁴ and in a March 2014 review published by Staff of the Division of Trading and Markets of the U.S. Securities and Exchange Commission.³⁵

While supporters of HFT point to increased liquidity and narrowed spreads as being positive outcomes, others have raised questions about the accessibility of the liquidity being provided and the extent to which spreads have actually narrowed.³⁶ Concerns have also been raised regarding how potential technology and speed advantages of HFT firms, together with competition amongst them for passive rebates, may have contributed to increased intermediation and the “crowding out at the quote” of other participants. This is said to be contributing to the increased cost burden for dealers, and in particular retail dealers, to the extent that they are more frequently takers of liquidity, and thus more frequently paying active trading fees.

IIROC is continuing with Phase III of its HFT study that may help to identify whether there are in fact specific market quality or market integrity issues with high frequency trading that need to be addressed through new or amended regulation.

In the meantime, we and IIROC have been focussed on introducing and amending requirements applicable to the “infrastructure of trading”. Specifically, the introduction of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (ETR) and the proposed amendments to the Marketplace Rules and other requirements found in UMIR, impose requirements on dealers and marketplaces to manage the risks associated with all electronic access to marketplaces, including HFT. These requirements include pre-trade controls, coordinated volume and price thresholds, single stock and market wide circuit breakers, and a host of operational requirements, including quality assurance requirements, applicable to marketplaces in introducing and launching systems. A report published by the OSC relating to work performed by a consultant retained to examine the regime concluded that currently no gaps exist in ETR.³⁷

4. Implementation of regulatory framework for dark liquidity (Dark Rules)

Commencing in October 2009, the CSA together with IIROC published a series of joint papers that resulted in the implementation of the Dark Rules, which outline the regulatory approach to dark liquidity.³⁸ These rules require a resting dark order to provide meaningful price improvement to another order which is small in size, define the “minimum price improvement” needed to be meaningful, and establish priority for visible orders over dark orders at the same price on the same marketplace.

What has been observed since the implementation of the Dark Rules is that certain dark trading facilities experienced a sharp decline in trading activity.³⁹ It has been suggested that the primary reason for this is that the price improvement requirements removed the economic incentive for the liquidity providers in these facilities to continue to provide passive liquidity. As a result, the dealers that were utilizing those dark facilities to help manage their active trading costs (while also providing their clients with price improvement opportunities) are having more of their active flow trading on visible markets with higher active trading fees. This contributes to their overall cost burden and provides incentives to find alternative means to mitigate their costs.

We note that the implementation of the Dark Rules did not introduce the issues that are contributing to high active-passive ratios for dealers, and high active trading costs. However, when they were introduced, they changed the economics of trading in the dark and the landscape within which dealers could find cost relief. That being said, we note that the intended outcome of the Dark Rules was to reassert the priority of the visible market and the importance of price discovery being achieved through the use of visible orders.

5. Potential issues with market data fees

The magnitude of market data fees incurred by a dealer is directly impacted by its business model, and the choices it has made with respect to the services it will provide to clients. This has become clear through our continued work on data fees since the publication of the Data Fees Paper and our ongoing discussions with market participants. For example, in some cases dealers (typically those with a specific client base to whom data is not provided) did not identify market data fees as an area of significant concern. For these firms however, the primary issues identified with respect to market data fees were related to the potential for OPR to support marketplaces through the captive consumer issue, and their view as to the potential disconnect

³⁴ Published at: www.iosco.org/library/pubdocs/pdf/IOSCOPD354.pdf.

³⁵ Published at: http://www.sec.gov/marketstructure/research/hft_lit_review_march_2014.pdf.

³⁶ See for example: *Evolution of Canadian Equity Markets*, RBC Capital Markets, February 2013.

³⁷ OSC Staff Notice 23-702 *Electronic Trading Risk Analysis Update*, published at: http://www.osc.gov.on.ca/documents/en/Securities-Category2/sn_20131212_23-702_electronic-trading-update.pdf.

³⁸ This consisted of three joint papers being: (1) Joint CSA / IIROC Consultation Paper 23-404 *Dark Pools, Dark Orders, and Other Developments in Market Structure in Canada* published in October 2009 at (2009) 32 OSCB 7877; (2) Joint CSA / IIROC Position Paper 23-405 *Dark Liquidity in the Canadian Market* published in November 2010 at (2010) 33 OSCB 10764; and (3) Joint CSA / IIROC Staff Notice 23-311 *Regulatory Approach to Dark Liquidity in the Canadian Market* published in July 2011 at (2011) 34 OSCB 8219.

³⁹ Most notably, Alpha IntraSpread which saw its market share of volume drop from 3.6% in the calendar month before the implementation of the Dark Rules (being September 2012) to 0.3% in the calendar month after (being November 2012).

between the value and cost of data for some of the smaller marketplaces. Further, we also heard frustration regarding larger marketplaces which may have seen sustained decreases in market share but have not correspondingly adjusted their data fees.

For other dealers, especially those that provide data to clients (whether institutional or retail), and those with a large retail investment advisor network, market data fees were a significant concern. Aside from any relationship that might exist between data fees and OPR (and to a lesser extent best execution), the concerns with respect to market data fees incurred by these dealers seemed to relate mostly to the following:

- the increasing cost to acquire data from all markets as a result of additional visible marketplaces charging for data;
- the potential that data fees are not subject to sufficient competitive forces as a result of both marketplace control over the production and pricing of their market data products, and the inability to substitute market data from one marketplace with that from another.

These issues were considered in the Data Fees Paper, but only in relation to fees paid by professional subscribers. As a result of our discussions with participants and further consideration of data fee issues more generally, we have placed some additional focus on the level of non-professional market data fees.

While non-professional data subscribers would not be subject to the captive consumer issue associated with OPR, they may be subject to a similar effect as a result of the second of the two issues identified in the bullets above. This group may use data primarily to obtain indicative pricing information and as such, acquiring data from all marketplaces may not be necessary. Although this potentially allows for competitive pricing to manage the fees charged to these groups, it appears that the industry continues to rely primarily (and in many cases solely) on the listing exchanges as their source of market data for indicative pricing purposes.⁴⁰ This observation is based both on our interviews with participants, as well as our understanding of other marketplaces' efforts in recent years to present their market data to the dealer community as a cheaper but effective substitute for indicative pricing purposes. As it relates to non-professional subscribers, a comparative review of the fees charged by Canadian listing exchanges and similar fees both in the US and internationally indicates that non-professional market data subscribers in Canada receive a significantly lower percentage discount to professional fees, relative to their US and international peers. More details on this analysis are provided later in this notice.

6. Best Execution in a multiple marketplace environment

The best execution requirements under Part 4 of NI 23-101 and UMIR 5.1 become more complex in a multiple marketplace environment. Although best execution is currently subject to compliance with OPR requirements, it is still a fundamental principle. Notwithstanding that compliance with OPR may require direct or indirect access to marketplaces and market data, best execution may ultimately raise similar captive consumer issues. However, in the context of best execution, these issues may result more from the particular business decisions made by dealers in determining whether executing on particular marketplaces would result in best execution for their clients.

Best execution in a multiple marketplace environment can also be impacted by conflicts of interest that may influence the handling and routing of client orders. These conflicts can arise from ownership in marketplaces, including ownership incentive programs, or as a result of the incentives created by fees and fee models, such as those mentioned earlier in this notice in the context of the maker-taker and inverted maker-taker fee models.

D. SUMMARY OF REVIEW

In completing our review of OPR, we are of the view that the objectives of the rule (the protection of better-priced displayed orders across multiple marketplaces to instill and ensure confidence, and to facilitate liquidity provision and efficient price discovery) continue to be important. As a result, we remain committed to our view that order protection is and should continue to be, a fundamental part of the Canadian market. However, our review of the costs and benefits of OPR, and our observations during the evolutionary years of the current competitive environment (spanning the former 'best-price regime' and the current OPR regime), indicate that OPR as implemented, has contributed to additional costs and inefficiencies that should be addressed.

More specifically, we think that the costs and inefficiencies associated with protecting 100% of displayed orders from trade-throughs⁴¹ may not be sufficiently justified by the benefits of full-scope protection. Furthermore, we are concerned that OPR does act as a support for marketplaces in that market participants are captive consumers of certain marketplace services. While it appears that some degree of choice does exist for some dealers to manage access to visible markets and the associated

⁴⁰ Part of this might also relate to a non-professional client's lack of awareness of markets other than the listing exchanges, and their desire to see their non-marketable limit orders displayed on the exchange.

⁴¹ Other than those trade-throughs for which exceptions are currently provided under OPR.

costs (e.g., membership and connectivity costs), the fact remains that OPR compliance necessitates that all marketplace participants must access trading on each visible market either directly or indirectly – ultimately some participant must be a member of a marketplace to facilitate connectivity for themselves and others. Consequently, we think that OPR does provide support for all visible marketplaces, from dealers and access vendors seeking access to trading. This translates into costs for marketplace participants (whether directly, or indirectly through the fees charged by an executing broker or vendor for facilitating access) that may not be reasonable. In addition, we agree that dealers controlling their own order flow must obtain data to make routing choices, which further bolsters the argument that OPR is acting as a support for marketplaces, and impacts dealer and vendor costs. We note however, that the debate regarding the extent of the data or number of data feeds necessary for these purposes will likely continue.

In addition where OPR is acting as a support for marketplaces, providing incentives for the launch of new trading venues or supporting the continued viability of a marketplace that would not otherwise exist, we think that the rule is promoting both the trading inefficiencies and broader market inefficiencies discussed in this notice.

Against this backdrop remain questions regarding whether full-scope application of OPR is necessary to produce the desired results of confidence in the fairness and integrity of the market and the efficiency of the price discovery process and the market in general. This is particularly the case when considering the likelihood that many of the passive displayed orders benefitting from OPR protection may be entered by participants whose confidence in the fairness and efficiency of the markets, and whose continued willingness to participate and contribute to price discovery, may be less impacted by any variation in the level of protection afforded. As previously noted, a further consideration is the benefit provided by OPR to those clients whose primary interest is obtaining the best price for their orders, in that OPR ensures continued alignment of client and dealer interests in such circumstances.

Consequently, as a result of our review of OPR we are of the view that we should take steps to help reduce the extent to which OPR acts as a support for marketplaces, and to mitigate the related cost issues. However, these measures must be balanced against both the original objectives of OPR, and considerations related to the effect on competition and innovation. Further, based on our assessment of matters relating to trading and data fees as well as related work on the Data Fees Paper, we think that other existing issues in these areas warrant further attention.

Finally, in considering any potential solution to these issues, it is important to recognize that best execution obligations in a multiple marketplace environment could produce similar captive consumer and regulatory support issues, if a dealer believes that access to certain venues is essential for ensuring compliance with rules. We are of the view that the best execution guidance, along with dealer reporting requirements should be examined to ensure clarity of expectations by both regulators and clients.

III. APPROACH TO ADDRESSING ISSUES ASSOCIATED WITH OPR

We are proposing an approach that will adjust the application of OPR, primarily by limiting order protection to marketplaces that meet a threshold, and more directly regulating trading and data fees (the Proposed Approach). Using this approach, we are maintaining OPR as a fundamental part of our regulatory regime while recognizing some of the inefficiencies and costs resulting from full OPR implementation and addressing the captive consumer and regulatory support issues. The Proposed Approach is also intended to provide dealers with flexibility to determine when and if to access trading on certain marketplaces to achieve best execution for clients. We are also setting out a proposal regarding trading fees, which will involve a cap on active trading fees in the near-term for some securities, and the outline of our intention to study the imposition of restrictions on the maker-taker fee model. Finally, we are proposing a response on data fees to address the primary areas of concern raised during our consultations with stakeholders through both the Data Fees Paper, and the interviews conducted during the OPR review. More details on the Proposed Approach are set out below.

The amendments proposed to NI 23-101 are necessary to implement the Proposed Approach. These amendments are described below and a blacklined version NI 23-101 and 23-101CP is included at Annex C to this notice.

A. Amendments to OPR

We are proposing that the scope of the application of OPR be reduced, so that it does not apply to displayed orders on all visible marketplaces. This approach allows for consistency with our objectives for OPR – primarily those relating to confidence and promoting price discovery – while acknowledging that a full-scope application of OPR to displayed orders on all markets might not be efficient or necessary to reasonably achieve those objectives.

The implementation of an approach that would reduce the scope of the application of the rule is intended to provide additional flexibility for dealers, as OPR will not apply to the displayed orders on all marketplaces. This should help dealers to better manage some of the implicit and explicit costs associated with accessing trading on all visible marketplaces, and also reduce the extent to which OPR acts as a support for marketplaces.

1. Description of OPR proposal

- Visible orders entered on a marketplace that meets or exceeds a market share threshold set by the CSA will be protected.
- Visible orders on exchanges that do not meet the OPR threshold will be protected for securities listed on that exchange.
- The initial market share threshold will be set at 5% market share of the adjusted share volume and value of trades.
- The market share threshold will be calculated based on continuous auction trades that involve passive displayed orders subject to the protection of OPR and will exclude trades such as crosses, or those involving dark orders, opening and closing calls, special terms, etc.

We are proposing to introduce a market share threshold at or above which the displayed orders on a marketplace will be protected. What this means is that marketplaces and dealers that choose to take on the OPR obligation will be required to have policies and procedures that are reasonably designed to prevent trade-throughs of displayed orders on a marketplace, or on its market or facility⁴², that has a market share at or above the threshold. This will be achieved by amendments to the definitions in NI 23-101. Specifically, we propose to make the following changes.

- We propose to amend the existing definitions of 'protected bid' and 'protected offer' to add the qualification that the order be entered on a marketplace that has met the market share threshold or on a listing exchange (both referred to as 'protected markets' for the purposes of this notice, and other marketplaces that have not met the threshold being referred to as 'unprotected markets'), subject to certain limitations for orders entered on listing exchanges as outlined below.
- We will confirm in section 1.1.7 of the 23-101CP that the definition of 'trade-through' applies to a trade executed on either a protected or unprotected market, where the trade occurs at an inferior price to the best priced protected order. It does not apply to a trade that occurs at an inferior price to an order displayed on an unprotected market.

(i) Calculation of the market share threshold

We are proposing a 5% adjusted⁴³ market share threshold to achieve a protection objective of at least 85-90% of the volume and value of adjusted trades (adjusted based on the exclusions outlined below). In our view, it is important to address the inefficiencies associated with the full implementation of OPR, but maintain a meaningful level of order protection.

We propose that the 5% adjusted market share calculation be based on a combined average share of the volume and value traded (each equally weighted). It will be calculated based on the share of trading over a one-year period, and will be applied at the market or facility level where the marketplace is comprised of more than one visible market or facility.⁴⁴

Volume traded was selected as a trade metric because, in our view, it is most related to our objectives to protect passive orders. We propose to equally weight volume traded with value traded, however, to offset some of the effects on share volume of a market that trades primarily low value securities. We had considered using the number of trades on a marketplace to determine the market share threshold, but were concerned that this measure could potentially overweight the results in favour of marketplaces which may have a high number of low-volume trades. It is our view that the total volume traded on each marketplace would account for the same data without the potential outcome skewing which could result from a measure of the number of individual trades.

We considered the use of order-based metrics, which may seem to be more consistent with our objective of order protection. However, we were concerned that these might be more susceptible to manipulation for the purposes of achieving a threshold.⁴⁵

⁴² The definition of "marketplace" in NI 21-101 and under the *Securities Act* (Ontario) includes reference to a market or facility.

⁴³ Equally weighted between the combined average share of the volume and value traded.

⁴⁴ For example, there are currently marketplaces comprised of distinct visible continuous auction order books to which the market share threshold should be applied separately.

⁴⁵ It may be easier for a marketplace to incent the placement of orders for the sole purposes of affecting the outcome of a threshold calculation, than it would be to incent actual trades.

With respect to the calculation of the market share threshold, we propose excluding all trades that did not involve a passive displayed order subject to the protection of OPR. Generally this would exclude trades involving non-displayed orders as well as 'calculated-price orders' and 'non-standard orders'.⁴⁶ More specifically, excluded from the calculation of market share would be:

- trades involving dark passive orders,
- the non-interfered portion of intentional crosses⁴⁷,
- trades from call markets or call facilities (including existing opening and closing call facilities),
- odd-lot trades,
- auto-executed trades in fulfillment of a market maker's minimum guarantee obligation or through participation rights/obligations, and
- trades involving special terms orders.

We note that we are not proposing to calculate the market share on a listed-market basis (that is, market share would be calculated on a total market basis rather than on a listed-market basis). We had considered this alternative approach; however, we found that it might have the effect of introducing additional complexity and confusion, particularly if it results in different marketplaces being protected for one set of traded securities but not another.⁴⁸ We recognize, however, that our proposed approach would have this effect given that an exchange could be protected only for its listed securities – although, the potential for this issue to arise is higher if we were to calculate the market share threshold on a listed-market basis.

As indicated, we are of the view that full OPR implementation has led to some costs and inefficiencies. We think that the application of a 5% market share threshold, with the objective of capturing at least 85-90% of the volume and value of adjusted trades, would alleviate some of these costs and inefficiencies while maintaining our policy objectives to have order protection to foster confidence in markets and price discovery. To assess the potential impact, we calculated the adjusted market share in the manner proposed and applied the market share threshold based on calendar 2013 data. The following reflects the results:

Market	Share of 2013 Adjusted Traded Volume	Share of 2013 Adjusted Traded Value	Average Share of 2013 Adjusted Traded Volume and Value
Alpha	15.06%	16.23%	15.65%
Chi-X	9.59%	14.48%	12.04%
CX2	3.05%	2.79%	2.92%
CSE	1.77%	1.56%	1.67%
Omega	1.82%	1.28%	1.55%
TMX Select	1.71%	1.93%	1.82%
TSXV	23.33%	0.81%	12.07%
TSX	43.67%	60.93%	52.30%

As seen from the above, four of the eight visible markets in operation as at the end of 2013 would have met the 5% threshold based on the average of the volume and value of adjusted trades (boxed portion of above chart). One additional marketplace that did not meet the threshold and is a recognized exchange (CSE) would have also been considered a protected market, but

⁴⁶ The terms 'calculated-price orders' and 'non-standard' orders are currently defined in NI 23-101.

⁴⁷ On some marketplaces, the execution of an intentional cross by a dealer can be broken up or "interfered" with by an existing order from the same dealer, which has already been entered on the marketplace at the same price as the intentional cross. Because the interfering order would have been subject to OPR protection, it would be included in the calculation of market share.

⁴⁸ For example, it could result in an ATS (or multiple ATSs) being considered a protected market for X-listeds, but not for Y-listeds. This could create additional complexities for ensuring trade-through prevention, as well as the prevention of locked and crossed markets. It could also create additional confusion for market participants if some securities traded on the ATS (the unprotected set) are subject to a higher incidence of trade throughs, and are being locked and crossed with by orders on other markets.

only for its listed securities. We also found that slightly over 90% of the volume and value of adjusted trades would have occurred on what would have been considered to be protected markets.⁴⁹

(ii) Treatment of Listing Exchanges

We are proposing that the displayed orders of a recognized exchange that does not meet the market share threshold would be protected, but only with respect to those securities listed and traded by the exchange. A newly established recognized exchange would automatically be a protected market upon commencement of trading, subject to the same limitations. Similar to how the market share threshold calculation will be applied, protected market status for any recognized exchange in these circumstances may be applied at a market or facility level – for example, where the recognized exchange is comprised of more than one visible market or facility.

This approach is intended to ensure that a listing market which would otherwise be unprotected is not unfairly disadvantaged by OPR with respect to its own listings, in circumstances where another protected market chooses to offer trading in those listings.⁵⁰ We also think that it is important to provide protection to those markets that are contributing to the capital raising process, but note that despite considering an exchange to be protected when below the market share threshold, OPR will not force participants to trade the securities listed by any such exchange. OPR will only be relevant for that exchange if a participant chooses to offer trading in the listed securities to its clients, and where there is another marketplace trading those same securities. We had considered limiting protection in these circumstances to the listed securities of the exchange that are not already cross-listed on another protected exchange. This was intended to ensure that an exchange would not use cross-listings to obtain benefit, or additional benefit, from protected market status. However, we were concerned with the potential burden this might impose on dealers and vendors as it may require new technology solutions to enable routers to distinguish between markets on a symbol-by-symbol basis. We intend to monitor for the possibility of an exchange seeking cross-listings solely for the purpose of seeking some benefit from protected market status, and will consider further steps to address this if necessary.

For the approach being proposed, there may also be additional considerations for routers in unique circumstances where a security is listed on two exchanges.⁵¹ We note, however, that such situations can exist under the current OPR framework and that this is not introducing any new complications or costs.

As a matter of implementation, where not all displayed orders on a recognized exchange are protected, we are considering whether it would be necessary and appropriate to require that it provide access to trading and market data pertaining to those listed securities in an ‘unbundled’ manner.⁵²

(iii) Process for setting the market share threshold and identifying the protected markets

It is proposed that the process for calculating the market share threshold and identifying those marketplaces, markets or facilities, whose displayed orders would be protected (i.e. those at or above the threshold, and certain listing exchanges) will be carried out on an annual basis. This will be done by the CSA, with input and assistance from IIROC. A list of protected markets (including any recognized exchanges whose listed securities only will be protected) would be made public on the websites of both the securities regulatory authorities and IIROC.

We also propose that marketplace participants and marketplaces be given approximately three months after publication of each annual list to make any adjustments to operational processes required to reflect changes in the status of protected and unprotected markets – after this, the published list will take effect.⁵³ We are proposing an effective period for protection of one year, subject to annual renewal, in order to minimize both the costs for dealers and vendors, as well as the confusion for investors that might arise if protected market identification was performed more frequently (e.g., monthly or quarterly).

We also intend for information regarding the threshold criteria and process, including the specifics regarding the time periods covered by the calculation and the effective date and duration of the published lists, to be publicly available.

⁴⁹ We acknowledge that the market share results may have differed had the market share threshold actually been applied to 2013. However, we note that the markets that would not have been protected based on the 2013 threshold year may have seen a reduction in routed active order flow, to the extent that certain participants are only routing to those markets for OPR compliance and might not continue to do so in all cases, if not otherwise required.

⁵⁰ Regardless of whether any other protected market also lists these securities, or only makes these available for trading.

⁵¹ For example, if a new ETF was to simultaneously list on two exchanges, it would likely necessitate that it be treated as being a listing of each exchange and routers must be able to accommodate the cross listing.

⁵² For example, by offering membership to trade only those symbols for which the orders displayed on the recognized exchange would be protected, or by offering market data feeds comprising order and trade information for those symbols. We note that in circumstances where an exchange only offers trading in its listed securities (including cross-listeds), imposing these additional requirements may not be necessary. These requirements may be more necessary for an exchange that also trades securities solely listed on another exchange (sometimes referred to by exchanges in Canada as ‘other traded securities’).

⁵³ As an example, if the threshold is calculated based on market share of trading over January 1 to December 31 of a year, the list could be published on January 15 to become effective on April 1.

(iv) Changes to threshold criteria or process

We note that in the proposed amendments to section 1.1.3 of the 23-101CP, we indicate that the market share threshold will be monitored and reviewed. As the market will continue to change over time, we will continuously examine these metrics relative to the objective of ensuring that at least 85-90% of the volume and value of trading involving passive displayed orders occurs on protected markets, and will make changes if and where appropriate. Any changes will be made with sufficient advance notice to industry.

(v) Initial implementation

We note that prior to the initial implementation of the OPR amendments, there may be additional visible marketplaces seeking to commence operations that would display orders protected by OPR as at the marketplace's launch, but which might then not be considered protected once the OPR amendments are implemented. Consideration may be given as to whether it might be appropriate to not apply OPR with respect to a visible marketplace that launches before initial implementation, depending on the particular circumstances.

- Question 1:** Please provide your views on the proposed market share threshold metrics, including the types of trades to be included in and excluded from the market share calculations, and the weighting based on volume and value traded. Please describe any alternative approach.
- Question 2:** Is a 5% percent market share threshold appropriate? If not, please indicate why.
- Question 3:** Will the market share threshold as proposed help to ensure an appropriate degree of continued protection for displayed orders? In that regard, will the target of capturing at least 85-90% of volume and value of adjusted trades contribute to that objective?
- Question 4:** Will the market share threshold as proposed affect competition amongst marketplaces, both in relation to the current environment or for potential new entrants? Please explain your view.
- Question 5:** Is it appropriate for a listing exchange that does not meet the market share threshold to be considered to be a protected market for the securities it lists? If not, why not?
- Question 6:** If the Proposed Amendments are approved, should an exchange be required to provide unbundled access to trading and market data for securities it lists and securities that it does not list? Please provide details.
- Question 7:** What are your views on the time frames under consideration for the market share calculation and identification of 'protected market' status?
- Question 8:** What allowances should be made for a new dealer that begins operations during the transitional notice period with respect to accessing a marketplace for OPR purposes that no longer meets the threshold?
- Question 9:** Are there any implementation issues associated with the 'protected market' approach?
- Question 10:** What should the transition period be for the initial implementation of the threshold approach, if and when the Proposed Amendments are adopted, and why?

2. Implications for "best bid price", "best ask price" and "better price" under UMIR

In our view, implementation of the OPR amendments would necessitate changes to UMIR in order to ensure clarity and consistency with the revised approach to OPR. Specifically, changes would need to be made to UMIR to redefine "best bid price", "best ask price" and "better price" so as to relate these to the best-priced *protected* bid and offer as displayed across *protected* markets. The best bid price, best ask price and a better price would thus be calculated based on the consolidated best-priced "protected orders"⁵⁴, and would not include displayed orders on unprotected markets. We think that price discovery should continue to be efficient, and expect that the consolidated best prices across protected markets should generally reflect the best prices across all visible markets (both protected and unprotected).

We acknowledge that re-defining best and better price under UMIR to reflect the best-priced protected bid and offer for OPR purposes, might not fully achieve the policy results intended under the specific UMIR provisions (e.g., best / better price

⁵⁴ As defined in NI 23-101.

requirements or exceptions under order exposure and dark trading rules). However, we think that this approach is appropriate to mitigate other complexities and inconsistencies that could arise if “best bid price”, “best ask price” and “better price” under UMIR differed from best price for OPR purposes. We, together with IIROC, intend to monitor the extent to which best prices on unprotected markets differ from best prices on protected markets to assess whether this approach requires modification.

We note that other amendments to UMIR may be necessary to facilitate the implementation of the OPR amendments. IIROC is publishing its proposed amendments for comment concurrently with the publication of this notice – please refer to IIROC Rule Notice 14-0124.

3. Locked and crossed markets

With the changes being proposed to OPR, the provisions relating to locked and cross markets also require amendment. We continue to be of the view that the provisions preventing intentional locks and crosses of orders are appropriate to foster investor confidence and market efficiency. However, imposing a market share threshold on the application of OPR without changing the locked and cross markets provisions would force participants to access marketplaces solely to prevent locked and crossed markets, despite not being required to for OPR purposes. This outcome would undermine the objectives that we are trying to achieve.

Consequently, we are proposing to limit the application of the locked and crossed provisions to protected orders. This would not preclude participants from entering orders on protected markets that would lock or cross orders displayed on an unprotected market. Although this would result in an increase in the instances of locked and crossed markets across all visible markets, we think that the outcome represents a reasonable balance between important policy objectives of the prohibition and the goal of addressing some of the costs and inefficiencies of OPR in its current form.

We note that a locked or crossed market created when a protected order locks or crosses an order displayed on an unprotected market should be minimal in duration, as the requirements would continue to restrict any further orders from being entered that would intentionally lock or cross with that protected order.

Question 11: Please provide your views on the proposed approach to locked and crossed markets. If you disagree, please describe an alternative approach.

4. Best execution obligations and disclosure

(i) Dealers achieving best execution

By imposing a market share threshold for the application of OPR, the Proposed Amendments provide marketplace participants with the ability to determine whether to access displayed orders on the marketplaces below the threshold. We expect that this determination will include considerations based on best execution obligations. We recognize that in a multiple marketplace environment, achieving best execution is more complex and challenging. Dealers must regularly and rigorously review their practices, market conditions and the needs of their clients in order to determine on which marketplaces they must access trading. There is no requirement under the best execution obligations in NI 23-101 or UMIR that would require all marketplace participants to access trading on all marketplaces – it is a decision to be made in the context of obtaining the most advantageous execution terms reasonably available in the circumstances. As such, we do not think it is appropriate to dictate best execution practices or provide a checklist. Each dealer has different business models and different clients, and it is our view that to achieve best execution, dealers need the flexibility to examine these models and their clients to determine their best approach. It may be that the various business lines or trading desks have slightly different policies and procedures, and we think that this outcome is appropriate as different clients may each have specific needs.

That being said, we are of the view that additional guidance is necessary to provide greater clarity with respect to how to determine best execution policies and procedures. We have therefore amended and added guidance in the 23-101CP to indicate that in making decisions as to whether to access trading on a particular marketplace, including an unprotected market, a dealer should consider how this decision will impact its ability to achieve best execution for its clients. This is intended to provide the dealer with additional flexibility to decide for itself what is best for its clients.

The proposed guidance also sets out our expectation that documented best execution policies and procedures include the rationale for decisions on accessing marketplaces, and that the rationale should be reviewed for continued reasonableness at least annually, and more frequently if needed because of changes to the trading environment and market structure. We have also identified a number of factors that should be considered as part of such decisions, including the frequency at which a better priced order is available on a marketplace, size and depth of quotes, traded volumes, the potential for market impact, and market share.

We have also clarified that what constitutes “best execution” will vary depending on the particular circumstances, and is subject to a “reasonable efforts” test. We have reiterated that best execution obligations do not apply on an order-by-order basis – it is a

policies and procedures obligation to achieve best execution based on the circumstances, market conditions and the needs of clients.

To meet the “reasonable efforts” test, a dealer should be able to demonstrate that it has designed and maintained, and has abided by, policies and procedures that (i) require it to follow the client’s instructions and the objectives set, and (ii) outline the process it has designed towards the objective of achieving best execution.

We note that because many marketplace participants are exempt from the requirements in NI 23-101 as they are subject to UMIR requirements, we expect that similar changes to the best execution guidance would also be made to UMIR policies and guidance.

Question 12: Is the guidance provided sufficient to provide clarity yet maintain flexibility for dealers? If not, what changes should be considered?

(ii) *Dealer disclosure to clients*

It is also important in the complex trading environment for clients to be able to better understand how their dealers are handling and routing their orders. They need this information to be able to make informed decisions regarding the use of a dealer’s services. To foster the provision of this information, we are proposing new disclosure requirements for dealers regarding their best execution policies. The required disclosure will focus on clarity of order handling and routing, and on potential conflicts of interest arising as a result of ownership or fee considerations that could impact its order handling and routing decisions. Proposed section 4.4 of NI 23-101 sets out these requirements. Proposed changes to the 23-101CP will also provide additional guidance regarding the expected level of disclosure.

Some of the more general disclosure being proposed applies to dealers with respect to all securities, while the more detailed disclosure regarding order handling and routing practices applies only with respect to exchange-traded securities, other than options. Because of the application of best execution and trading restrictions imposed on or being considered for dealers that are not investment dealers, the proposed disclosure requirements in effect apply to investment dealers. We are not contemplating any best execution disclosure requirements applicable to advisers at this time.

We note that best execution disclosure requirements for dealers had previously been proposed in 2007 and 2008,⁵⁵ but it was decided not to proceed at that time. We think that proposing some disclosure for dealers at this time is appropriate given how the OPR amendments might introduce added uncertainty for clients around the handling and routing of their orders in the context of unprotected markets.

Question 13: Please provide your views on the proposed dealer disclosure to clients.

Question 14: What should the transition period be for the proposed disclosure requirements, if and when the Proposed Amendments are adopted, and why?

5. Consolidated data

CSA Staff Notice 21-309 *Information Processor for Exchange-Traded Securities other than Options*⁵⁶ described the need for an information processor as being twofold:

“first, where there are multiple marketplaces trading the same exchange-traded security, an information processor will address information fragmentation and provide investors and market participants with at least one source of consolidated data. Second, an information processor will facilitate compliance by marketplace participants with relevant regulatory requirements in a multiple marketplace environment. It will ensure the availability of consolidated data that meets regulatory standards and which users, as well as regulators, could use to demonstrate or evaluate compliance with certain regulatory requirements like best execution, short selling and “best price” or trade-through obligations.” *[emphasis added]*

Staff continue to think that consolidated data from all equity marketplaces, including any unprotected markets, should continue to be made available by the IP for the purposes of the above-stated objectives. However, due to the proposed OPR amendments, the IP may be required to make changes to how it consolidates and distributes data to allow consumers to distinguish data from protected and unprotected markets, and to discern which best priced displayed orders are protected. We

⁵⁵ As proposed in *Joint Canadian Securities Administrators / Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to Marketplaces* published at (2007) 30 OSCB (Supp-3) and re-proposed in *Proposed Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules*, published at (2008) 31 OSCB 10033.

⁵⁶ Published on June 5, 2009 at (2009) 32 OSCB 4585.

will discuss this issue with the TSX IP and will determine what changes are necessary prior to the implementation of the OPR amendments.

Question 15: Are changes to the consolidated data products provided by the IP needed if the amendments to OPR are implemented? If so, what changes are needed and how should they be implemented?

B. Trading fees

In the context of the OPR review and more generally, participants have raised concerns regarding trading fees. Some of these concerns are tied to the implementation of OPR. In particular, participants raised concerns about the implications of OPR on their active trading costs given that OPR necessitates that participants trade against the best-priced displayed orders regardless of the fees charged by a marketplace showing those orders. Other concerns have been raised that are not related to OPR, pertaining to the predominant trading fee model being used by Canadian marketplaces – the maker-taker model. Specifically, as we have discussed, arguments have been made that the model distorts transparency of the quoted spread, introduces inappropriate incentives and excessive intermediation, and creates conflicts of interest that are more difficult to manage.

When OPR was initially proposed, we considered implementing a cap on trading fees. The primary rationale for the cap was to ensure that marketplaces did not substantially raise their fees to try to take advantage of the OPR regime.

During the comment process, commenters were divided on whether a cap should be implemented. Several expressed the view that an upper limit on fees should be set, but there was no consensus on what this limit should be. One commenter suggested that the CSA adopt procedures to prevent marketplaces from establishing fee models which take advantage of OPR by paying large credits for liquidity with the intention of charging high fees for orders routed pursuant to OPR. Others believed that a strict fee cap should not be set and that the issue would be addressed by market competition. A report from the OPR Implementation Committee concluded that it was advisable to include a trading fee limitation as part of the proposed rule. While divided on a specific cap, the Implementation Committee recommended that the CSA should consider adopting the model used in the United States, which defines a fee cap for stocks trading above \$1, and a percentage of the value of the trade for stocks trading below \$1. The CSA ultimately took the position of maintaining a principles-based approach and did not set a specific trading fee cap.

Since that time, we have observed competition among marketplaces based on both trading fee levels and models. We have also seen how the entrance of new competitors initially created downward pressure on trading fees. Despite this, there are incentives for marketplaces to charge high active trading fees, and competitive pressures that should otherwise mitigate this issue might not be as effective in an OPR environment.

In response to the concerns about the captive consumer issue and high fees, we are proposing that a cap be implemented on trading fees in the short term. We are also intending to move forward with the development of a pilot study to determine the implications of a prohibition of the payment of trading rebates.

1. Description of trading fee proposal

- Cap active trading fees for trading in equity securities and exchange-traded funds upon implementation of the OPR amendments, as follows:
 - \$0.0030 per share or unit traded for equities / units priced at or above \$1.00
 - \$0.0004 per share or unit traded for equities / units priced below \$1.00
- Conduct a pilot study on the prohibition of the payment of rebates by marketplaces for a sample of securities.

(i) Caps on active trading fees

In response to concerns raised about marketplaces taking advantage of captive consumers to charge high active fees, we are proposing to cap active trading fees for all continuous auction trading in equity securities and exchange-traded funds (ETFs) (together, the included securities). The cap proposed for trades in the included securities when priced at or above \$1.00 is 30 mills or \$0.0030 per share or unit traded – the same level as the current U.S. cap. For trades in the included securities when priced below \$1.00, the cap proposed is 4 mills or \$0.0004 per share or unit traded – the highest active trading fee currently charged by a Canadian marketplace with respect to trading in TSX and TSXV-listed securities. The caps would take effect upon implementation of the OPR amendments. The caps are reflected in the proposed addition of section 6.6.1 to NI 23-101.

We are proposing to set the active trading fee cap for securities priced at or above \$1.00 at the same level as that which is applied in the U.S. to all marketplaces for those securities. This proposed cap represents an established baseline that was

created in the U.S. in the context of similar order protection requirements. When comparing current marketplace active fee levels for continuous auction trading in included securities priced at or above \$1.00, we note that most marketplaces charge active trading fees that are slightly under this cap. However, we estimate that over the last three months of 2013, approximately 40% of the total volume traded in securities priced at or above \$1.00 would have been subject to active trading fees higher than the proposed cap.^{57,58} We recognize that this fee cap is considered by some in the U.S. to be high. We chose to use it as it was an established benchmark, and note that we are planning to take further action with respect to the payment of rebates (outlined below). We think it is more appropriate to focus on the design of the pilot being considered, and the measurement of its results, than on a different number for the caps that are primarily intended to be interim measures.

For the cap on active trading fees for included securities priced below \$1.00, we similarly considered applying the U.S. cap for similarly priced securities – being 0.3% of the value traded. However, we noted that when comparing current marketplace fee levels for included securities priced under \$1.00, they are in many cases already well below what would be charged if the U.S. cap was applied.⁵⁹ In addition, we estimate that over the last three months of 2013, only approximately 6% of the total volume traded in securities priced below \$1.00 would have occurred at fee levels above the U.S. cap.⁶⁰ Consequently, we questioned the rationale for implementing a similar cap at this time for trades in included securities priced under \$1.00. We also questioned the rationale for imposing a cap that is applied as a percentage of value traded given that current billing practices for the included securities are to charge at a per share or unit rate. We determined it would therefore be appropriate that if imposing a cap for included securities priced below \$1.00, it be set at the highest rate currently being charged for either of TSX or TSXV-listed securities⁶¹ – being 4 mills or \$0.0004 per share or unit traded.

We note that under a revised OPR regime, there may be some visible marketplaces that will not have captive consumers. Despite this, we are proposing to apply the active trading fee caps to all visible marketplaces because we think that the caps should be applied equally from a fairness perspective. This is also proposed to help ensure that fees charged and rebates provided by unprotected markets are not set at a level that may encourage inappropriate trading activities and thereby negatively affect market integrity. Again, we note that this is an interim measure until a more permanent approach regarding trading fees is adopted.

We are also not proposing to implement trading fee caps on non-continuous auction trading or on exchange-traded securities other than equities,⁶² such as rights, warrants, debentures and notes (excluded securities). We note that for non-continuous auction trading such as an opening or closing facility, the orders within these facilities are not typically protected by OPR. For trading in the excluded securities, we note that currently applicable fee models tend to differ from the standard per-share or per-unit fee commonly applied to the included securities and that the traded volumes in these tend to be much lower than for equities. We further note that in the context of our various consultations on OPR, we have not heard any concerns with the active fees charged for trading in these securities. While we are not proposing to implement caps for the excluded securities, we will continue to subject any fee changes proposed by marketplaces for these securities to a review and approval process, to ensure the reasonableness of any such changes (in those jurisdictions where review and/or approval is required).⁶³ We also will continue to monitor these fees to determine if trading fee caps might be necessary.

Question 16: Please provide your views on the proposed trading fee caps as an interim measure. Please describe any proposed alternative.

Question 17: What should the transition period be for the proposed trading fee caps, if and when the Proposed Amendments are adopted, and why?

⁵⁷ The 40% represents continuous auction trading in equity securities only, as no visible marketplace during that period charged fees for continuous auction trading in ETFs in excess of the proposed cap. It also reflects only those continuous auction trades that involve a passive displayed order that would have been subject to the current OPR. This is represented as a percentage of total volume traded across all marketplaces, which is inclusive of both continuous and non-continuous auction trading and other trades that would not otherwise involve a passive displayed order.

⁵⁸ We also note that impacted marketplaces may be able to adjust the rebates they provide to maintain its profit per trade.

⁵⁹ As an example, as compared to the U.S. cap of 0.3% of value traded, based on current fees charged for securities under \$1 on TSX and TSXV, the most that would be charged by these marketplaces when considered on a % of value traded basis would be .075% of value traded for securities priced between \$0.10 and \$0.99 and 0.25% for securities priced between \$0.01 and \$0.09. Certain other marketplaces, such as Omega ATS and CX2 Canada ATS, pay rebates to the active side of trades in securities priced under \$1.

⁶⁰ This was estimated in a similar way as the estimate made and for securities priced over \$1.00 – see footnote 57.

⁶¹ Trading in TSX and TSXV-listed securities represented over 99% of the volume and value traded in exchange-traded securities other than options during 2013.

⁶² We again note that the cap would also apply to ETFs.

⁶³ Subsection 3.2(2) of NI 21-101 requires amendments be filed to marketplace Forms 21-101F1 and 21-101F2 if amending or introducing marketplace fees. The guidance in subsection 7.1(5) of Companion Policy 21-101CP outlines how the fair access requirements in section 5.1 of NI 21-101 apply with respect to fees. In connection with these requirements, marketplace trading fees are subject to review and approval in Ontario, and also in BC and Alberta with respect to fees charged by the TSX Venture Exchange. In Quebec, these fees are subject to review.

(ii) Prohibition on payment of rebates by marketplaces

In the context of reviewing OPR and fees, we have examined other steps that could be used to manage trading fees and address the concerns raised with respect to the maker-taker pricing model. We are of the view that the payment of rebates by a marketplace, or any other entity, is changing behaviours of marketplace participants in ways which may be contributing to increased fragmentation and segmentation of order flow, distorting the rationale for investment or trading decisions, and creating unnecessary conflicts of interest for dealer routing decisions that may be difficult to manage.

Further, given the nature of liquidity provision and the concentration of passive order flow in securities which are already considered to be highly liquid, we question the appropriateness of a fee model which can cause a market participant with a marketable order to pay what results in a higher fee to a short-term intermediary, when such intermediation may not be necessary.

We intend to move forward with a pilot study that will examine the impact of disallowing the practice of payment of rebates by marketplaces. During the pilot study, marketplaces would be restricted from providing rebates on either of the active or passive sides of trades for the symbols included in the sample population (discussed below).

In our view, the need for a pilot study stems from the concern that a prohibition on the payment of rebates could present risks to liquidity, if those currently providing passive liquidity reduce their activity or leave the market. This is a risk particularly for securities that are interlisted in the U.S. However, we recognize that certain participants who most often receive rebates in the context of their trading strategies also participate in markets without the payment of rebates and will likely adjust their trading behaviour.⁶⁴

Prohibiting rebates could also have greater effect on trading costs for investors' marketable orders if spreads were to widen to compensate for the lack of rebate.⁶⁵ At the same time, however, a widening of spreads might also provide increased opportunity for investors to participate and be filled at the quote with passive limit orders, rather than having to 'cross the spread'.

It is our intention to work with academics to design the pilot study and the measurements of its results, and intend to issue a request for proposals at a later date. We are open to discussion on timing but our preliminary thoughts would be to commence the study approximately six months after the implementation of the OPR amendments. This will provide time for participants to adjust to the new OPR regime and make the required technical changes while also enabling marketplaces to adjust fees or fee models for trading in those securities that will be subject to the pilot.

To ensure that meaningful academic study can be conducted between a sample and control population, a sufficiently large sample size will be necessary, likely one-third to one-half of all exchange-traded securities. The objective will be to ensure that a representative sample of symbol types and categories is selected (e.g., price, liquidity profile, sector, index inclusion, etc.) for comparison against a control population. Consideration will also be given to the appropriate duration for the pilot, which could be upwards of six months to a year.

Question 18: Is action with respect to the payment of rebates necessary? Why or why not?

Question 19: What are your views on a pilot study for the prohibition of the payment of rebates? What issues might arise with the implementation of a pilot study and what steps could be taken to minimize these issues?

Question 20: Should all types or categories of securities be included in the pilot study (including interlisted securities)? Why or why not?

Question 21: When should the pilot study begin? Is it appropriate to wait a period of time after the implementation of any change to OPR or could the pilot start before or concurrent with the implementation of the OPR amendments (with a possible overlap between the implementation period for the OPR amendments and the pilot study period)? Why or why not?

Question 22: What is an appropriate duration for the pilot study and why?

⁶⁴ For example, we note that the earlier mentioned December 2013 IOSCO report titled *Trading Fee Models and their Impact on Trading Behaviour* indicated that generally the maker-taker or inverted maker-taker fee model was being applied for equities trading and not for derivatives trading. For derivatives markets, it appeared that the most common form of pricing model was a symmetrical pricing model. The report also identified Australia as a jurisdiction where there is currently no maker-taker or inverted maker-taker pricing for its equities marketplaces. The report also indicated that not all major European marketplaces offer a form of maker-taker or inverted maker-taker pricing.

⁶⁵ Whether as an adjustment to the loss of the rebate or because of a reduction in provided passive liquidity.

(iii) Possible credits for market makers

We also note that it may be reasonable to continue to allow rebates or credits only for market makers as a form of compensation in connection with their obligations to provide liquidity. In these circumstances, we are considering whether any such rebates or credits to a market maker should be limited to an amount which offsets trading fees charged in any given period (e.g., over each month) so that a market maker is never paid for trading, net of its trading fees (i.e., the rebates or credits could only ever be applied to reduce the market maker's trading fees to zero over the month, but any additional rebate or credit earned during that month could not be paid).

Question 23: If rebates were to be prohibited, would it be appropriate to continue to allow rebates to be paid to market makers and, if so, under what circumstances?

(iv) Payment for order flow by intermediaries

Like the payment of rebates by marketplaces, the payment for order flow by intermediaries can also distort behaviour and trading incentives. In our view, similar conflicts also arise for dealers when receiving payment for order flow directed to an intermediary.⁶⁶ We will continue to consider these issues going forward.

C. Market data fees**1. Description of market data fee proposal**

- Implement a transparent methodology to assess the relative value of real-time market data provided by each marketplace to its professional data subscribers, for the purposes of regulatory oversight of real-time professional data subscriber fees.
- Require marketplaces to submit their professional market data fees for review and re-approval on an annual basis, justifying their fees in the context of the results of applying the relative value assessment methodology.
- Consider further action towards the regulation of market data fees for non-professionals that could involve a cap or the implementation of a separate assessment methodology.

The issues relating to market data fees have been discussed for a number of years. The primary concerns raised by participants over time and more recently in our interviews, were identified in the Data Fees Paper. Specifically, concerns include that:

- market data fees are too high;
- data costs in aggregate have increased significantly as a result of additional visible marketplaces charging for data;
- market data fees are not subject to sufficient competitive forces to bring discipline to the level of fees being charged; and
- participants are captive to the fees charged for market data where necessary to comply with regulatory obligations (most notably OPR and best execution obligations).

In addition to this, there was discussion regarding the level of transparency around the regulatory review of market data fees.

A number of options for addressing these issues were identified in the Data Fees Paper, and attracted varying levels of support. As noted in CSA Staff Notice 21-312 – *Update on Consultation Paper 21-401 Real Time Market Data Fees (Data Fees Update)*⁶⁷, only the following two options examined in the Data Fees Paper garnered some level of support from commenters: (1) limiting real-time market data fees charged by existing or new marketplaces until they reach an established activity level;⁶⁸ and (2) publishing market data fee proposals and changes to fee models for comment.⁶⁹ It was also suggested in the Data Fees

⁶⁶ We note that section 7.5 of UMIR has the effect of prohibiting payment for order flow by an IIROC dealer that is a Participant under UMIR.

⁶⁷ Published at (2013) 36 OSCB 10601.

⁶⁸ This option was supported by marketplaces and market participants, although some of the smaller marketplaces were opposed to this approach.

⁶⁹ This option was supported by industry associations and one market participant.

Update that further exploration of possible options was needed given that neither option would address concerns about the current level of market data fees charged by marketplaces that would be above any 'activity level' established in accordance with the first option noted above. It was further indicated that the examination of market data fees would continue in the OPR review, due to the relationship between the two issues.

If the OPR amendments being proposed are implemented, we do not think it is necessary to directly limit or restrict the charging of market data fees by new or existing marketplaces that fall below an established activity level. In our view, the implementation of the OPR amendments will provide flexibility for dealers to choose whether to purchase data from marketplaces below the market share threshold, making such limitations or restrictions unnecessary.

At the same time, we acknowledge that the OPR amendments would not address the captive consumer issues as they relate to marketplaces above the market share threshold. Further, it is our view that the work done to date suggests there is cause from a fair and efficient capital markets perspective to impose more discipline on the costs of data.

We are therefore proposing an approach that seeks to ensure that market data fees charged to professional data subscribers remain fair and reasonable, through the implementation of a methodology for assessing relative value. The methodology will be made transparent, in order to facilitate greater transparency into the market data fee review process with respect to those fees subject to the methodology.

Further action is also being contemplated that would facilitate the provision of market data to non-professional users at a price that is more commensurate with the relative value of the data to these users.

(i) Use of methodology in oversight of professional market data fees

As part of the work done on the Data Fees Paper, OSC staff began developing a more rigorous methodology to assess professional market data fees, both for top-of-book (Level 1) and full depth-of-book (Level 2) data. It was intended that it be used to facilitate the review of changes to professional market data fees proposed by marketplaces in Ontario. It is this methodology that we are proposing be formally adopted to manage the issues associated with the professional market data fees identified in this notice.

We propose to require all equity marketplaces to:

- submit their professional market data fees to us on annual basis, and
- justify these fees in the context of the results of applying the relative value assessment methodology.

In Ontario, each recognized exchange and ATS is subject to a protocol that governs the review and approval of the information in Form 21-101F1 and F2, including fees.⁷⁰ It is being contemplated that in Ontario, these protocols would be amended to require the annual submission of professional market data fees for re-approval, and a notice would be published outlining the methodology for assessing the fees. Because of the differences in the approach of each CSA jurisdiction, we view this as the best way to implement this methodology. This approach would capture all equities exchanges and ATSs in Canada, other than the TSX Venture Exchange. BC and Alberta, as co-lead regulators for the TSX-V, will also consider the review methodology for data fees.

(ii) The methodology for the review of professional market data fees

Under the methodology, we propose that marketplaces be ranked based on their contribution to price discovery and trading activity. An estimated fee or fee range for each marketplace would be determined based on the relative ranking. This methodology would establish a consistent and transparent approach for the review of professional market data fees for all marketplaces when seeking approval or re-approval of those fees, and would be intended to address the broader issues associated with professional market data fees, whether they arise in the context of OPR or because of the potential that these fees are not subject to sufficient competitive forces. The complete methodology is outlined in Appendix A-2, with the key components summarized below. There are three steps to the calculation. Step 1 involves the calculation of pre- and post-trade metrics. Step 2 ranks the marketplaces and Step 3 assigns an estimated fee or fee range for market data fees.

⁷⁰ The standard review and approval protocol currently applicable to recognized exchanges in Ontario can be found at: http://www.osc.gov.on.ca/documents/en/Marketplaces/notices_20121004_exchange_protocol.pdf, and the similar version applicable to ATSs in Ontario can be found at: http://www.osc.gov.on.ca/documents/en/Marketplaces/notices_20121004_ats_protocol.pdf.

Step 1 – Calculation of pre- and post-trade metrics

The first step involves the calculation of pre-trade and post-trade metrics to feed into the ranking formulas. The underlying principle of each of the metrics is that pre-trade and post-trade contribution to price discovery and liquidity should be equally rewarded. The specifics of each of these pre- and post-trade metrics are included in Appendix A-2.

The proposed pre-trade metrics primarily reward marketplaces for contribution to price (and size) discovery at the market-wide NBBO (top-of-book), and do not reward for any price and size depth outside of that. To account for this, we considered including a pre-trade metric that measured the quoted value at the top five price levels as a measure of market depth outside of the best quote. However, we are not convinced that including depth-of-book measures would produce different results, particularly if such a measure were to give higher weightings to price levels at or near the NBBO. A further consideration was the added complexity involved with incorporating depth-of-book information into the calculations. An example of a depth measure we considered is included in Appendix A-2.

Step 2 – Rank marketplaces based on relative share of order and trade metrics

The next step proposed is to use a combination of the pre- and post-trade metrics to rank marketplaces based on their assessed relative contribution to price discovery and liquidity (reflected through their relative share for the various metrics). Three different approaches for the ranking process, using different metrics, are presented in Appendix A-2. We note that despite the differences in the combination of metrics or weightings, testing each of the three ranking methods produced very similar results.

Step 3 – Use the rankings to assign an estimated fee or fee range

Once the ranking process has been applied, the last step proposed is to assess the relationship between a marketplace's existing or proposed market data fees and its relative ranked share of order and trade activity. This would allocate an estimated fee or fee range to a marketplace, reflecting its relative share of a total reference amount for real-time market data in Canada (for each of Level 1 and Level 2 data).

To do that, we tested two approaches:

- *Domestic reference* – The first approach tested takes the market data fees charged by each marketplace and aggregates them into a single “pool” that is then re-distributed based on the three ranking methods outlined in Appendix A-2. This approach assumes that the aggregate amount of market data fees currently charged by marketplaces is reasonable.
- *International reference* – The second approach tested would rely on international comparisons to determine an average market data fee per \$100 million traded. This approach assumes that the value of the international peers' data is relatively comparable to that of the Canadian exchanges and that the value of this data is relative to the value of securities traded on the exchanges.

We note that the two reference methods tested may ultimately be determined to be inappropriate. In our view, one of the key components of this proposal is the identification and updating of an appropriate reference amount to be used for applying the distribution model – i.e., the determination of an appropriate estimate that reflects a fair and reasonable fee for real-time Level 1 and Level 2 market data from all marketplaces in Canada. While we are seeking comment on all aspects of the proposed data fee review methodology (**see Appendix A-2 for specific questions pertaining to the details of the proposed methodology**), we note the importance of receiving specific detailed comment on how an appropriate reference amount should be identified. We are considering retaining an industry expert to analyze and determine an appropriate reference amount.

Question 24: Will the implementation of a methodology for reviewing data fees adequately address the issues associated with data fees, or should other alternatives be considered? Please provide details regarding any alternative approach.

2. Further action under consideration for market data fees

In addition to the proposal to implement a formal methodology, we are also examining additional steps to manage potential issues identified in connection with non-professional trading fees. Although not directly related to OPR, we think that the level of non-professional fees in Canada should be considered in the context of our mandate to foster fair and efficient markets, and confidence in those markets, and so investors should have access to data at a reasonable cost. Further, we had indicated in the Data Fees Paper that we would examine issues relating to market data fees for non-professional users at a later date.⁷¹

⁷¹ As part of the work done reviewing market data fees for the Data Fees paper, we reviewed and analyzed the fees charged to non-professional users by marketplaces in Canada. However, since their needs and uses of market data are significantly different, we felt that we would be unable to adequately address concerns raised by both types of market data users (being professional and non-professional users) within one paper. It was determined that additional work on non-professional data fees would be deferred until a later date.

Since the Data Fee Paper was published, we have examined the non-professional fees charged by the listing exchanges relative to similar fees charged in the US and internationally. It appears that non-professional data subscribers in Canada are provided much less of a discount from professional fees in percentage terms relative to their US and international peers.

For example, when examining the discounts typically applied to non-professional market data fees by Canadian equity marketplaces, we found that non-professional market data fees are often charged at a rate of approximately 20% and 40% of the professional market data fees charged, for Level 1 and Level 2 data, respectively. In dollar terms, the fees charged by each marketplace currently charging non-professional data subscribers ranged from \$2 to \$6/user/month for Level 1 and from \$2 to \$36/user/month for Level 2.

While a discount is applied for non-professional data user fees domestically, international comparisons identify even greater discounts being made available. For example, to purchase real-time consolidated Level 1 data from the Security Information Processors (SIPs) in the U.S., a non-professional user would be charged a total of \$3/month for access to Level 1 quote and last sale information from all U.S. equity exchanges - \$1 for each of Network A (NYSE-listeds), Network B (NYSE MKT) and NASDAQ UTP (NASDAQ-listeds). These rates are approximately 2%-5% of the fees charged by the SIPs for access to the same data by professional users.

In Europe, examples of discounts for non-professional data users seen can often result in Level 1 and Level 2 fees that are 1% to 5% of the professional fees charged for the same data, but can be higher under tiered volume programs at the low-tier level. However, even in those circumstances where fees were higher under a tiered volume program, the results continue to show their non-professional data subscribers being given a greater discount to professional fees than typically provided in Canada. More of the results of our analysis are available at Appendix A-3.

To address this disparity, we are examining a cap that would restrict each marketplace to charging non-professional data subscribers at a rate set as a percentage of that marketplace's reviewed and/or approved professional data subscriber rate. Alternatively, we may implement a methodology similar to that being proposed above for professional data subscriber fees.

Question 25: Do you have concerns with respect to market data fees charged to non-professional data subscribers that securities regulatory authorities need to address? If so, how should the concerns be addressed?

3. Consideration of other options presented in the Data Fees Paper

The Data Fees Paper outlined a number of potential options for addressing issues associated with data fees which can be categorized under the headings below. We have provided some views on each of these in the context of the Proposed Amendments.

Cap data fees charged by a marketplace for 'core data' – In our view, the data fee proposal implements a modified form of this option as it will increase regulatory scrutiny over existing professional data subscriber fees for Level 1 and Level 2 data, which in practice broadly represent 'core data'.

Cap data fees charged by a marketplace until it reaches a de minimis threshold (with or without increasing caps) – As indicated earlier, we are not proposing to implement a threshold below which a marketplace would be restricted in its ability to charge for data. We think that the implementation of the OPR amendments would allow for added flexibility around accessing orders on and consuming data feeds from unprotected markets. This may produce results that are sufficiently similar to the implementation of a threshold for data fees.

Regulate or cap data fees for consolidated data when sold by or through an IP or vendor / Mandate a cost-recovery data utility – In our view, if implemented in full, the data fee proposal will likely achieve some of the benefits of these options. While we may consider the feasibility of requiring the creation of a data utility, this is a longer-term consideration given both the complexity in doing so and that it would require legislative change and new regulations in many jurisdictions. In the meantime, if the industry views a data utility as the best mechanism to deal with the management of data and its costs, we encourage the industry to work together and develop a proposal for discussion.

Publish amendments to data fees and models for comment – We are still considering this option. Publishing data fees and models for comment may or may not be appropriate depending on the circumstances, and we are concerned that the comments received will be focussed on commercial rather than regulatory issues. We note that where new trading fee models have been proposed, OSC staff have published them for comment, where appropriate. We may follow a similar approach for data fees, where appropriate.

IV. ALTERNATIVE APPROACHES CONSIDERED

In arriving at the Proposed Approach reflected in this notice, we had considered alternative approaches and options to address the issues discussed. The first approach would have only involved changes to OPR, with the options considered ranging from

limiting its scope (e.g., based on types or liquidity classes of securities, client vs. non-client orders, order sizes, or a threshold for protection) to a complete repeal of the OPR regime with full reliance on best execution obligations only. The effectiveness of any these options in addressing the captive consumer issue and regulatory support issues would be dependent on the means and extent of the limitations to the scope of OPR. Pursuing greater limitations to OPR would also, however, minimize the importance of OPR as a fundamental part of our regulatory regime. Pursuing an approach involving only changes to OPR would also not help to address the other issues identified in this notice relating to trading and data fees.

The second approach contemplated leaving OPR unchanged, and instead focusing on more direct regulation of access, trading and data costs. This approach would have been intended to address the cost burden resulting in part from OPR, but would not have addressed the underlying captive consumer and regulatory support issues. It would also have helped with some of the other issues associated with trading and data fees discussed in this notice. Some of the options considered included capping various types of marketplace fees, the elimination of trading fee rebates, establishing thresholds that marketplaces would have to achieve before certain fees could be charged, and other options specific to data fees that were outlined in the Data Fees Paper and discussed in the preceding section.

The third approach, being a combination of the two approaches described above, represents the Proposed Approach outlined in this notice. As noted earlier, the amendments being proposed to OPR are intended to maintain OPR as a fundamental part of our regulatory regime, while allowing dealers added flexibility to determine when and if to access trading on certain marketplaces to achieve best execution for clients. Through this, we are seeking to address some of the captive consumer and regulatory support issues. The Proposed Approach also includes proposals regarding trading fees that are intended to address issues associated with trading fees that can arise in the context of OPR, as well as other issues pertaining to the payment of rebates by marketplaces. The data fee proposal is intended to address the primary areas of concern raised during our consultations with stakeholders through both the Data Fees Paper, and the interviews conducted during the OPR review.

Question 26: **Is modifying OPR by introducing a threshold, and at the same time dealing with trading fees and data fees, an appropriate approach to address the issues raised? If not, please describe your alternative approach in detail.**

Question 27: **What is the expected impact of the Proposed Approach on you, your organization or your clients? If applicable to you, how would the Proposed Approach impact your costs?**

Question 28: **Is the Proposed Approach an effective way, relative to the other approaches described, to support a competitive market environment that encourages innovation by marketplaces? Please explain your view.**

A. Regulation of other marketplace fees or operational matters in the context of OPR

We have also considered certain other options specifically relating to certain marketplace fees and operational matters in the context of OPR. These relate to issues or concerns raised with us through the interviews conducted during the OPR review and in connection with our ongoing oversight of marketplaces and market structure.

(i) Membership and Connectivity Fees

The proposal outlined above includes measures involving the regulation of trading fees and market data fees. In the context of our review, we also considered whether it was necessary to directly regulate other fees charged by marketplaces for access to trading – particularly, fees charged by marketplaces for membership or connectivity. This could possibly be achieved through fee caps or similar limitations on amounts charged. Our consideration in this regard was based on concerns that, due to OPR or even a dealer's business model, marketplace participants are captive to paying high fees for membership and connectivity to marketplaces.

We are not proposing at this time to take any action with respect to these other fees. The proposed changes to OPR, and existing best execution obligations, do not necessitate that each dealer become a member or subscriber of each visible market, or directly connect to each market to access trading. The OPR amendments should provide dealers with added flexibility to determine when and if to access trading on unprotected visible marketplaces, which should help to manage these costs to some extent. We acknowledge that business model considerations of dealers will impact whether membership in and direct connectivity to a marketplace is necessary. However, we note that some have determined it is not necessary to become or continue to be members of or directly connect to all marketplaces and instead use marketplace routers or jitney arrangements. This indicates that at least for some, alternatives and choices are available. (These alternatives and choices have their own set of costs, some of which likely reflect a portion of the membership and connectivity costs borne by the router or jitney provider.)

Despite not proposing any further action on these other fees at this time, we note that these fees will continue to be subject to review and / or approval by the securities regulatory authorities.⁷²

Question 29: Considering the Proposed Approach, is it necessary to take additional steps to regulate membership and connectivity fees charged by marketplaces? If so, why, and if not, why not?

(ii) Scheduling of technology changes

In the course of our consultations with stakeholders, it was suggested that in order to manage risk, regulators should impose scheduling requirements on marketplaces in relation to the introduction of new markets and material systems changes. It was argued that changes are often scheduled in close proximity to each other, or are implemented without allowing participants sufficient testing time. This was also suggested as a means to allow dealers to better manage their technological resource planning.

We note that, in Ontario, OSC Staff Notice 21-706 – *Marketplaces' Initial Operations and Material System Changes*⁷³ sets out OSC staff's expectations that marketplaces delay launch of operations for at least three months from the date of the publication of a notice of approval, and that they delay the implementation of a material systems change to allow a reasonable amount of time for dealers and vendors to complete the necessary work and testing. We intend to codify these expectations in proposed amendments to NI 21-101 that have been published for comment under a separate notice.⁷⁴ We also note that the OPR amendments should help dealers better manage some of their technology planning and costs in connection with their access to new or existing unprotected markets. As a result, we are not proposing to take any further action at this time, and will continue to monitor whether the launch protocol and our oversight of marketplace changes can sufficiently manage any issues.

(iii) Marketplace Liability / Compensation

Concerns have been raised regarding the impact of OPR on the ability of dealers to negotiate with marketplaces regarding marketplace liability. Specifically, with a full OPR regime in place, we have heard that marketplaces use OPR obligations as leverage, requesting that dealers sign agreements that include liability provisions that dealers think are unreasonable. Others have indicated that the liability terms in marketplace agreements are inappropriate now that marketplaces are no longer mutualized and are for-profit entities.

We note that, in the U.S., most exchanges have rules that give them the discretion to compensate their members for losses arising from failures of their systems or due to their employees' negligent acts or omissions – we also note that in the U.S., there is industry debate about these provisions. However, currently in the U.S., the types of losses considered for such discretionary compensation are usually linked to market failures that result in orders being incorrectly executed or unexecuted orders that were entered on a marketplace's system. There is no regulation in the U.S. that requires these compensation provisions. We note that similar provisions are not included in the rules of Canadian exchanges or in ATS subscriber contracts.

As part of our review of this issue, we consulted with various dealer and marketplace representatives, separate from the interviews carried out as part of our OPR review, to see if industry members could arrive at a common position on compensation for marketplace participants. A common position by industry was not attained. We examined the regulatory issues and considered proposing provisions that would require marketplaces to establish, maintain and ensure compliance with policies and procedures that provide for reasonable compensation to their marketplace participants. Upon examining the appropriate role of the CSA and the different possible approaches, it was determined that, at this point, we would rely on the changes being made to OPR to address the concerns raised by dealers. It is the overlay of OPR that makes dealers "captive consumers" and therefore, we think that the OPR amendments that we are proposing will help mitigate this issue. We will monitor the impact of these changes and consider in future the need for additional regulation relating to marketplace liability generally. In the interim, we encourage industry members to work together to seek a common resolution to what some argue is a commercial, not regulatory, issue.

Question 30: Considering the Proposed Approach, is it necessary to take additional steps at this time to address issues relating to marketplace liability? If so, why, and if not, why not?

⁷² These fees are subject to review and approval in Ontario, and also in BC and Alberta with respect to the fees charged by the TSX Venture Exchange. In Quebec, these fees are subject to review.

⁷³ Published at (2012) 35 OSCB 8928.

⁷⁴ Published at (2014) 37 OSCB 4197.

Appendix A-1

Comparison of Active and Passive Volumes by Type of User ID, by Marketplace Covering the Period - June 1, 2013 to September 30, 2013

Objective

The objective of the analysis outlined in this appendix was to assess whose limit orders are receiving the benefit of protection on each visible trading venue. As indicated in this Annex A, questions were raised about whether orders that are being protected on marketplaces originate with market participants whose confidence in the fairness and integrity of the markets is in most need of support. It was questioned whether OPR is having its intended effect if such orders originate with parties whose confidence in the fairness and integrity of the markets would be least likely to be negatively affected in a material way in the absence of the rule.

Description of analysis

In performing this analysis, we examined the active-passive ratios for certain user categories that may proxy for retail, institutional and professional traders over various time periods, and across each visible marketplace. The data used for the analysis was the regulatory data received and stored by IIROC for its market surveillance activities, and therefore included non-public content such as TraderIDs (referred to as UserIDs).

Before grouping the data, an attempt was made to eliminate material portions of trade volume that would not otherwise have involved a passive displayed order subject to OPR (e.g., trade volume was removed for trades that were intentional crosses, or that resulted from opening and closing call auctions). The 'adjusted traded volume' was then grouped into the following four user categories:

- (1) 'CrossOrder' – Contains trade volume for UserIDs that exhibited use of the intentional cross marker⁷⁵ (but does not include the trade volume for any intentional crosses, as all intentional cross volume was removed in arriving at the 'adjusted traded volume' described above). Intended to proxy for institutional client order flow.
- (2) 'SDL' – Contains trade volume for UserIDs that exhibited use of the SDL⁷⁶ order type on Alpha IntraSpread. Intended to proxy for retail client order flow given Alpha's restriction on the use of SDL orders to orders of clients that meet the definition of 'Retail Customer' under IIROC Member Rules.
- (3) 'PostOnly' – Contains trade volume for UserIDs that exhibited use of a post-only⁷⁷ order feature. Intended to proxy for professional traders executing a market making strategy dependent on the placement of passive orders.
- (4) 'SME' – Contains trade volume for UserIDs that exhibited use of the short-marking exempt⁷⁸ (SME) marker. Intended to capture professional trading in arbitrage accounts, formal market making accounts, informal market making / highfrequency trading accounts, and dealer facilitation accounts.

Any of the remaining adjusted trade volume that could not be grouped into the above four categories was categorized as 'Other'. We expect the 'Other' category to represent a mix of institutional, retail and professional trader interests.

Limitations

Given certain limitations, any results of the analysis are not precise and are intended only to be indicative, and not conclusive. For example, the four categories identified above are only meant to be proxies for certain user types – overlap between the categories exists. The effect of this overlap means that where a UserID exhibited use of more than one of the above-noted markers / order features, the volume traded for that UserID is reflected in more than one category. Most notably, overlap between categories was seen between the PostOnly and SME categories (e.g., UserIDs that used a post-only order feature

⁷⁵ An intentional cross is defined in UMIR to refer to a trade resulting from the entry by a Participant or Access Person of both the order to purchase and the order to sell a security, but does not include a trade in which the Participant has entered one of the orders as a jitney order.

⁷⁶ A "Seek Dark Liquidity" or SDL order is an order exclusive to Alpha Exchange's IntraSpread, which is designed to trade with dark orders, and visible orders in the central limit order book if possible. The use of this order type is restricted to retail clients.

⁷⁷ A "post-only" order feature ensures that an order will not actively remove liquidity from a marketplace.

⁷⁸ The SME marker is a regulatory designation which is included on orders from accounts which are not required to mark short sales of securities as short. Further information regarding the use of the SME designation is available at:
http://www.iiroc.ca/Documents/2012/37862a81-d93b-4a21-9843-c5fc3ced83f2_en.pdf

often also exhibited use of the SME marker). We also note that, as a result of overlap, the sum of each of the four categories identified above, together with the 'Other' category, represents more than 100% of the volume traded.

Results

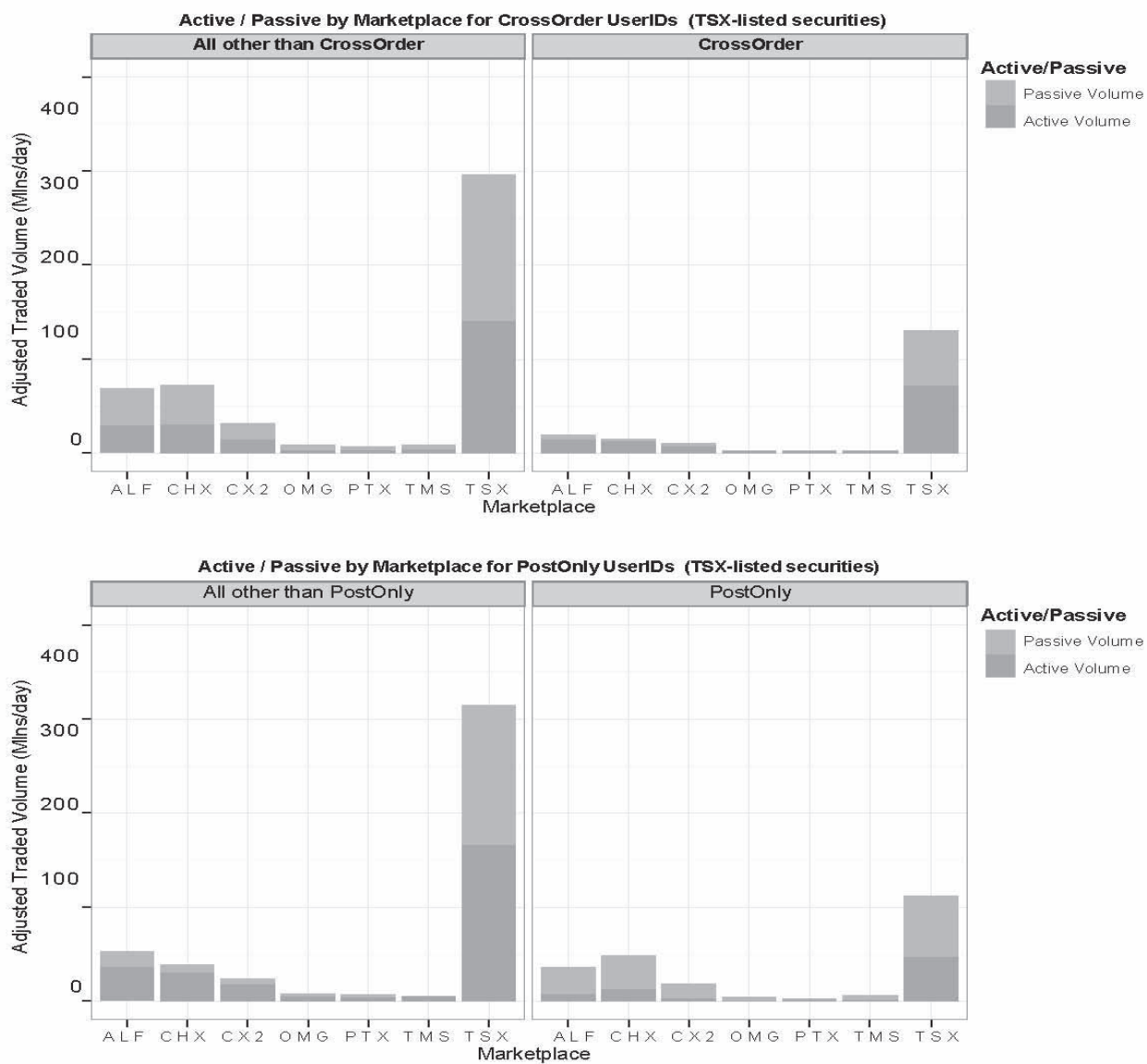
Results of the analysis performed over the most recent of the time periods examined, being the period from June 1, 2013 to September 30, 2013, are contained in the charts on the following pages of this appendix. What is suggested by the analysis, is that the vast majority of the passive displayed retail and institutional client order flow traded is entered for display on the listing markets (e.g., on TSX or TSXV), and that a much smaller percentage of the passive displayed retail or institutional order flow traded is entered for display on other marketplaces. Much of the remaining passive displayed order flow traded on other marketplaces appears to originate with professional traders whose interests may be more short-term. It also suggests that marketable active orders of retail and institutional clients are more dispersed across markets – this is indicative of the effect of OPR on active order flow.

We note that the results of this analysis are supported by anecdotal evidence provided by dealers during our interviews, regarding the placement of their passive retail and institutional client orders. It is also supported by similar analysis that we performed over the same time periods for user groupings created by IIROC for its ongoing research into high-frequency trading, but which are not reflected in the following summary charts.

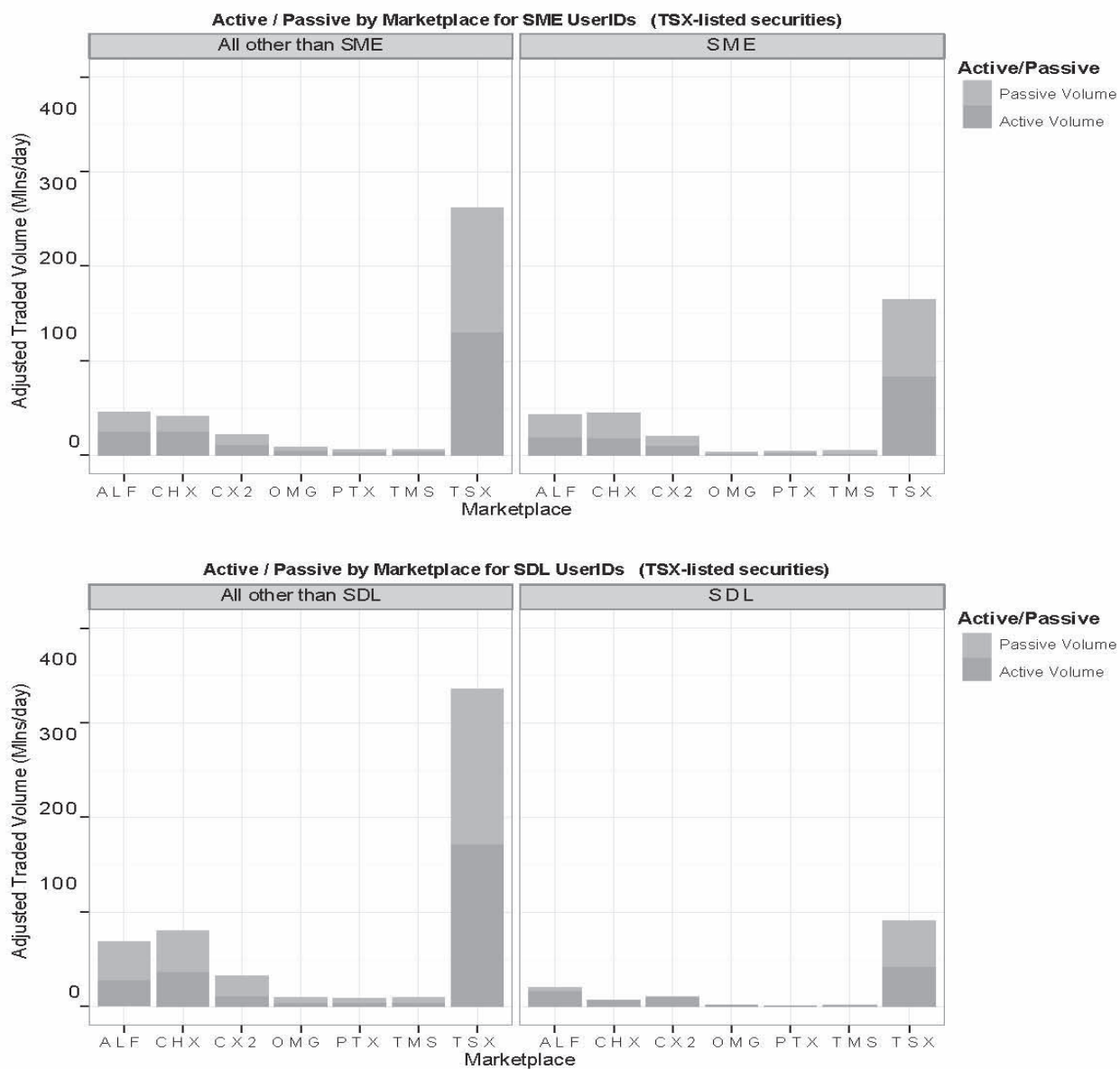
Legend for marketplace references in following charts:

ALF	Alpha Exchange
TSXV	TSX Venture Exchange
CHX	Chi-X Canada ATS
CX2	CX2 Canada ATS
OMG	Omega ATS
PTX	Pure Trading
TMS	TMX Select
TSX	TSX

1. Chart-set pertaining to trading in TSX-listed securities over the period of June 1, 2013 to September 30, 2013



1. Chart-set pertaining to trading in TSX-listed securities over the period of June 1, 2013 to September 30, 2013 (cont'd)



2. Additional information pertaining to data underlying the preceding charts (based on trades in TSX-listed securities)

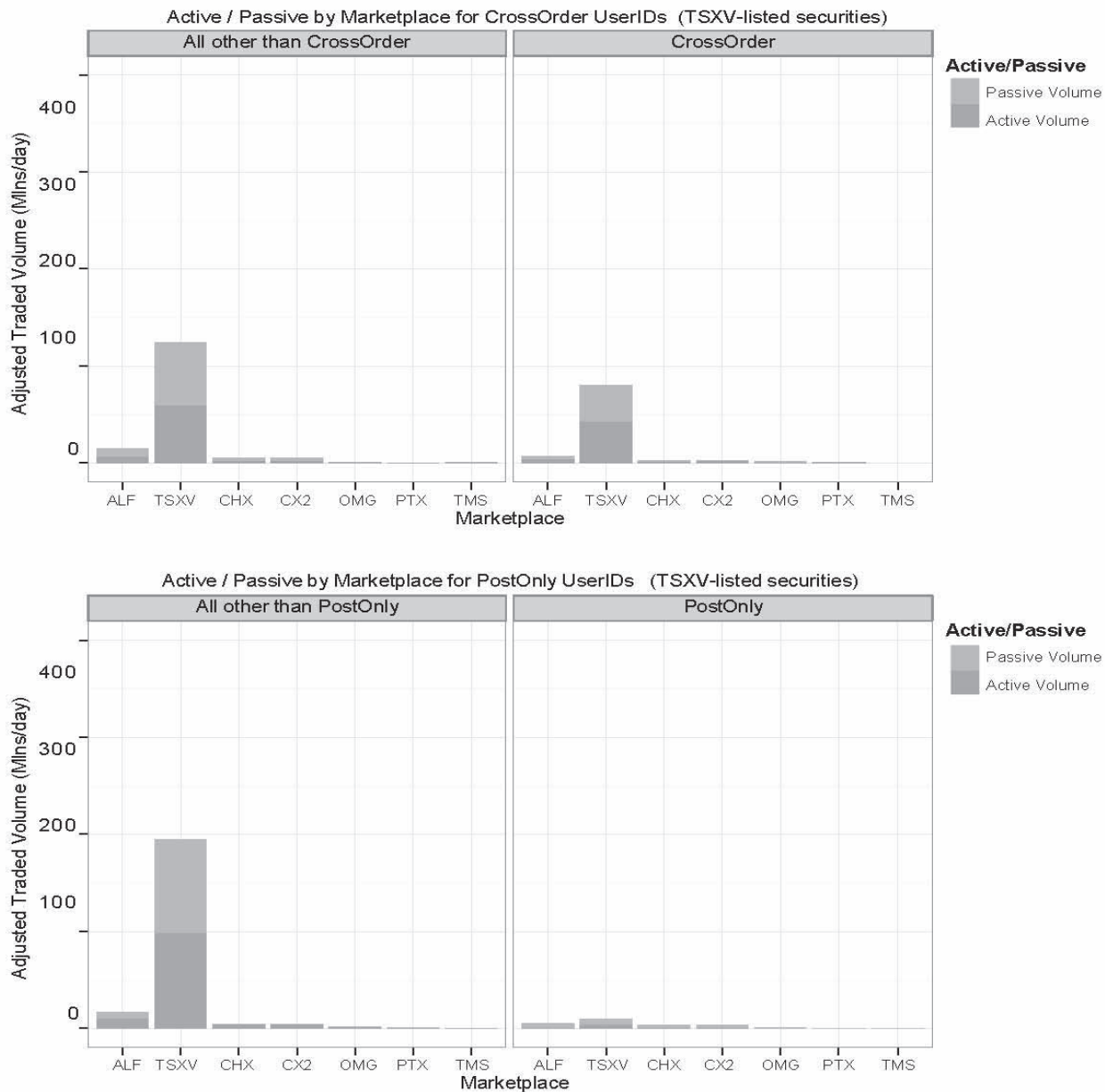
Active / passive ratio for each UserIDs reflected in charts (expressed as the % of adjusted traded volume that was active)

UserID Category	ALF	CHX	CX2	OMG	PTX	TMS	TSX	Across all marketplaces
CrossOrder	75%	87%	68%	86%	67%	75%	55%	62%
PostOnly	22%	27%	19%	20%	35%	18%	42%	33%
SME	44%	40%	48%	43%	47%	33%	51%	47%
SDL	81%	98%	96%	98%	97%	96%	46%	60%
Other	57%	68%	85%	48%	45%	86%	50%	54%

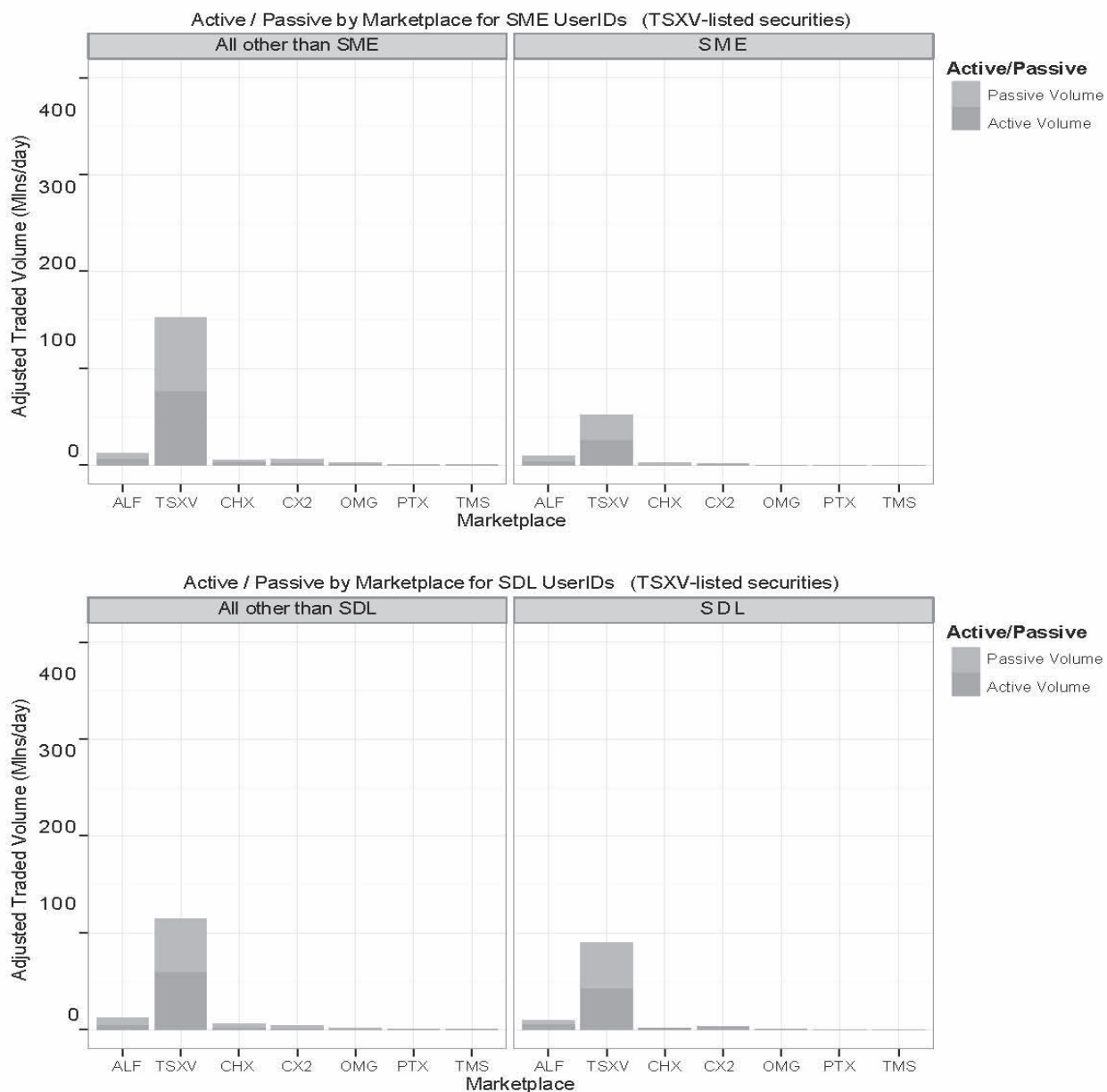
% of adjusted traded volume for UserIDs reflected in charts

UserID Category	ALF	CHX	CX2	OMG	PTX	TMS	TSX	Total for all marketplaces
CrossOrder	2.9%	2.2%	1.6%	0.4%	0.5%	0.4%	19.2%	27.1%
PostOnly	5.3%	7.2%	2.8%	0.6%	0.5%	0.9%	16.5%	33.7%
SME	6.3%	6.7%	3.0%	0.5%	0.6%	0.8%	24.3%	42.3%
SDL	3.0%	1.0%	1.5%	0.3%	0.2%	0.3%	13.4%	19.8%
Other	2.7%	2.8%	0.8%	0.6%	0.5%	0.3%	17.0%	24.7%
Totals	20.3%	19.8%	9.7%	2.4%	2.2%	2.7%	90.3%	147.5%

3. Chart-set pertaining to trading in TSXV-listed securities over the period of June 1, 2013 to September 30, 2013



3. Chart-set pertaining to trading in TSXV-listed securities over the period of June 1, 2013 to September 30, 2013 (cont'd)



4. Additional information pertaining to data underlying the preceding charts (based on trades in TSXV-listed securities)

Active / passive ratio for each UserIDs reflected in charts (expressed as the % of adjusted traded volume that was active)

UserID Category	ALF	TSXV	CHX	CX2	OMG	PTX	TMS	Across all marketplaces
CrossOrder	58%	53%	56%	83%	52%	47%	84%	54%
PostOnly	11%	43%	10%	4%	5%	20%	11%	23%
SME	44%	50%	35%	85%	84%	76%	58%	49%
SDL	58%	48%	96%	88%	96%	88%	88%	52%
Other	69%	51%	70%	74%	82%	60%	76%	53%

% of adjusted traded volume for UserIDs reflected in charts

UserID Category	ALF	TSXV	CHX	CX2	OMG	PTX	TMS	Total for all marketplaces
CrossOrder	3.0%	32.4%	1.2%	1.0%	0.7%	0.3%	0.1%	38.6%
PostOnly	2.1%	3.9%	1.4%	1.3%	0.5%	0.1%	0.2%	9.5%
SME	3.9%	21.0%	1.0%	0.7%	0.1%	0.1%	0.1%	26.8%
SDL	4.1%	36.2%	0.8%	1.3%	0.3%	0.0%	0.1%	43.0%
Other	1.5%	24.7%	0.7%	0.4%	0.2%	0.1%	0.1%	27.6%
Totals	14.7%	118.2%	5.2%	4.7%	1.8%	0.6%	0.5%	145.5%

Appendix A-2

Data Fee Review Methodology

In order to determine each marketplace's relative contribution to pre- and post-trade activities, we used certain pre- and post-trade metrics. A number of these metrics that will be described below are used by the Securities Information Processor (SIP) in the United States and others were proposed by marketplaces and marketplace participants as ways to capture the contribution of a marketplace to price discovery. The underlying principle of each of the metrics is that pre-trade and post-trade contributors to price discovery and liquidity should be equally rewarded. These metrics would then be used in three ranking models that would provide a basis for us to rank each marketplace's relative contribution to price discovery and liquidity. These ranking models are described below.

We used the following notations for the pre- and post-trade metrics and the ranking methods:

- i = a transparent marketplace
- m = total number of transparent marketplaces
- t = trades executed on a transparent marketplace
- n = total trades executed on a transparent marketplace
- T = total trades executed on all transparent marketplaces
- d = a trading day
- D = all trading days for the period
- j = stocks traded on a transparent marketplace
- J = total stocks traded on all transparent marketplaces

a. Pre-Trade Metrics

1. **Percent of Best Bid and Offer (BBO)**⁷⁹ – means the percent of the day for which a marketplace had a quote at the national best bid (BB) or best ask (BA) for security *j*. This metric is scaled to sum to one.

$$\%BBO_i = \frac{BBO_i}{\sum_{i=1}^m BBO_i}$$

$$BBO_i = \frac{1}{J} \sum_{j=1}^J \frac{\text{Seconds at } BB_j + \text{Seconds at } BA_j}{2 * (6.5 * 60 * 60)} * 100$$

This metric rewards marketplaces for being at the BBO for a longer period during the day. While this metric is not as easy to compute, it can be constructed from standard quote data. In order to ensure that the addition of each marketplace sums to one, the individual metrics for each marketplace are summed to come up with a market-wide daily percent at the BBO, and each individual marketplaces' percentage is then divided by this total to scale the metric to one.

One potential problem with this metric is that a marketplace, knowing that its performance will be assessed using this metric, may choose to incentivize its participants to 'quote stuff', that is to reward them for posting small lots slightly improving the current BBO for a millisecond or less. This behaviour, although rewarded, does not contribute to price discovery. This kind of activity could also be achieved by introducing 'pegged orders'. Such limit orders would not be entered at a fixed price, but rather be 'pegged' to the current BBO. If an order were pegged to the BBO, this would ensure that the marketplace remained at the BBO for a majority of the day by simply "following" the price innovators.

2. **Percent of Best Spread** - means the percent of the day that a marketplace spent at the narrowest spread for security *j*. This metric is scaled to sum to one.

$$\%Spread_i = \frac{Spread_i}{\sum_{i=1}^m Spread_i}$$

$$\%Spread_i = \frac{1}{J} \sum_{j=1}^J \frac{\text{Seconds at tightest spread}_j}{6.5 * 60 * 60} * 100$$

⁷⁹ The time at BBO could be calculated in fractions of a second, given the rapidity of quoting.

The construction of this metric also requires quote level data. This metric tends to reward marketplaces for providing liquidity at both the BB and BA, by establishing the narrowest spread on the market. In order to ensure that the addition of each marketplace sums to one, the individual metrics for each marketplace are summed to come up with a market-wide daily percent at the narrowest spread, and each individual marketplaces' percentage is then divided by this total to scale the metric to one.

Like metric 1, this metric could be manipulated using either quote-stuffing or pegged orders. The advantage of this metric is that it rewards only that marketplace that quotes at both the BB and BA. One potential flaw of this metric, especially in illiquid stocks, is that it could reward two marketplaces that both had the same sized spread at different bid and ask prices, though this situation is relatively unlikely (this would result in locked or crossed markets).

3. **\$Time(equal)** - means the percent of quoted time-dollar-volume for a marketplace, out of the total time-dollar-volume for the entire market for the period, when only the best bid and ask are considered.

$$\begin{aligned} \$Time(equal)_i &= \frac{Time_i}{\sum_{i=1}^m Time_i} Time_i \\ &= \frac{\sum_{j=1}^J Price_j * Volume_j * seconds\ at\ BB + Price_j * Volume_j * seconds\ at\ BA}{\sum_{j=1}^J \sum_{i=1}^m (Price_j * Volume_j * seconds\ at\ BB + Price_j * Volume_j * seconds\ at\ BA)} * 100 \end{aligned}$$

This metric tends to reward marketplaces not only for providing some liquidity at the best bid and ask, but for the depth of liquidity available at BBO. In order to construct this metric, both quoted prices and volumes are required. This metric has an advantage over Percent of BBO in that marketplaces encouraging quote stuffing will not be well rewarded for the meagre liquidity they provide at the BBO. One potential disadvantage of this metric is that it does not reward marketplaces for providing liquidity at any level apart from the BBO. With relatively wide quotes, it is possible that a marketplace wishing to manipulate this measure could provide incentive to create very shallow improvements to the BBO without providing any real capacity to trade at depth at that price level.

4. **\$Time(value)** is the same as \$Time(equal) as above, however each stock is weighted by the value traded in the period of consideration, as described in the weighting "w" below.

$$\begin{aligned} \$Time(value)_i &= \frac{Time(v)_i}{\sum_{i=1}^m Time(v)_i} Time(v)_i \\ &= \frac{\sum_{j=1}^J [Price_j * Volume_j * seconds\ at\ BB + Price_j * Volume_j * seconds\ at\ BA] * w_j}{\sum_{j=1}^J \sum_{i=1}^m (Price_j * Volume_j * seconds\ at\ BB + Price_j * Volume_j * seconds\ at\ BA) * w_j} * 100 \\ w_j &= \frac{\$Volume_{t,j}}{\sum_{i=1}^T \sum_{j=1}^J \$Volume_{t,j}} \end{aligned}$$

The use of the value weighting places more emphasis on those stocks that trade heavily and less emphasis on stocks that do not trade frequently. At the extreme, a stock that does not trade at all will not be allocated any weight under this metric.

5. **Additional pre-trade metric not currently reflected in ranking formulas that takes into consideration price and size depth**

5-level \$Time is the percent of quoted time dollar volume for each market, out of the total quoted time dollar volume for the entire market for the period, when all 5 levels of volume are considered, with the following weightings

Orderbook Level	Weighting (w)
1	16x
2	8x
3	4x
4	2x
5	1

$$\$leveltime_i = \frac{\sum_{l=1}^m w_l * \$time_{il}}{31} * 100$$

5-level \$time is the most data intensive of the considered metrics, requiring not only the price and volume available at the best bid and offer, but also up to 5 levels away from the BBO. This measure has the advantage of rewarding exchanges for providing liquidity at the BBO and also at levels away from it, weighting the BBO most highly. In the case of wide quotes, an exchange that provides very shallow improvement solely to become the "holder" of the NBBO would be rewarded for narrowing the quotes, but would also recognize the depth provided by other markets, unlike \$Time.

Question 31: Taking into consideration how these pre-trade metrics will be used within the various ranking models, are these reasonable proxies for assessing a marketplace's contribution to price and size discovery? Are there other metrics we should consider? Please provide details.

Question 32: Are the pre-trade metrics described appropriate for a marketplace that predominantly trades less liquid securities? Please indicate and describe what pre-trade metrics would be appropriate to use for such a marketplace.

b. Post-Trade Metrics

1. Percent of each marketplace's volume - means the volume traded on each marketplace divided by the total volume traded on all marketplaces in the period.

$$\%Volume_i = \frac{Volume_i}{\sum_{i=1}^m Volume_i} * 100$$

This metric rewards traded volume and tends to favour those marketplaces that trade in relatively low-priced shares, as it considers only the number of shares traded, not their value. In an extreme scenario, if a marketplace traded only low-priced stocks, this metric would inflate their overall share of the entire market.

2. Percent of each marketplace's number of trades - means the number of trades executed on each marketplace divided by the total number of trades on all marketplaces in the period.

$$\%Number_i = \frac{Number_i}{\sum_{i=1}^m Number_i} * 100$$

This metric rewards those marketplaces that have a larger number of trades. This metric could be manipulated by encouraging traders to break their orders up into smaller pieces. If this were done, neither the volume nor the dollar volume traded would change, but the number of trades would increase significantly.

3. Percent of each marketplace's dollar volume (value) – means the dollar volume traded on each marketplace divided by the total dollar volume traded on all marketplaces in the period. Dollar volume is the product of the price and volume of each trade.

$$\% \$Volume_i = \frac{\$Volume_i}{\sum_{i=1}^m \$Volume_i} * 100$$

$$\$Volume = Price * Volume$$

This metric takes the value of the transactions into account. This tends to avoid the biases that may be present in the volume metric. However, due to the requirement that crosses matched by a dealer be reported to a marketplace, it is possible that a marketplace being measured on this metric could provide incentives (such as trading rebates) to dealers to ensure that crosses are reported on their marketplace. In this way, the marketplace would have a much larger share of dollar volume without necessarily contributing to pre-trade price discovery.

4. Percent of square-root dollar volume for each trade - means the square-root of the \$Volume of each trade t executed on each marketplace divided by the sum of the square-root of the \$Volume traded on all marketplaces in the period.

$$\% \sqrt{SVolume}_i = \frac{\sqrt{SVolume}_{it}}{\sum_{t=1}^n \sum_{i=1}^m \sqrt{SVolume}_i} * 100$$

The square-root of dollar volume is individually constructed for each transaction. While this metric is not widely published, it is easily constructed from trade reports. It reduces the importance of larger trades in relation to smaller trades. This can help alleviate the problem of very large crosses inflating a marketplace's contribution to price discovery. This metric has the potential disadvantage that trades in low-priced stocks (on the order of \$1 to \$2) will not be reduced at all, and will consequently be disproportionately represented. If a marketplace were to trade very frequently at these very low dollar values, their contribution to price discovery would be inflated by this metric.

5. **Scope of trading on each marketplace** – means the average over the period of the number of symbols with greater than 1 traded on each marketplace on day d , divided by the number of symbols traded on all marketplaces for that day.

$$Scope_i = \frac{1}{D} \sum_{d=1}^T \frac{Number\ of\ symbols\ traded_{i,d}}{MAX[Number\ of\ symbols\ traded_{i,t}] \quad i = [1 - 5]}$$

Scope of trading provides a metric that measures the number of symbols a marketplace trades. This metric, when used in combination with other post-trade metrics, has the disadvantage of “double penalizing” marketplaces for not trading all securities. By construction, scope of trading will be very high for exchanges (such as the TSX) and will be lower for newer marketplaces that have yet to gain market share in less liquid stocks. While it does measure the “activity” of marketplaces, a marketplace that only trades in half of the total listed symbols is, by definition, penalized for not trading all of those symbols. Thus, if Scope is used by itself, it can be a valuable indicator of the activity levels of marketplaces, but if it is applied in conjunction with other metrics, it may disproportionately favour existing exchanges and large ATSs.

The downside of this metric is that if a marketplace wanted to achieve a scope as close as possible to one (i.e. all listed securities would be trading on this marketplace), marketplace participants could be rewarded (through credits or discounts at market open) for becoming the “first” participant of the day in any given security. In this way, marketplaces could ensure at least one trade in every security without providing any meaningful liquidity or price discovery.

Question 33: Taking into consideration how these post-trade metrics will be used within the various ranking models, are these reasonable proxies for marketplace liquidity? Are there other metrics we should consider? Please provide details.

Question 34: Are the post-trade metrics appropriate for a marketplace that predominantly trades less liquid securities? Please indicate and describe any additional post-trade metrics would be appropriate to use for such a marketplace.

c. Ranking Models

In order to rank each marketplace's contribution to price discovery we constructed three models from the pre- and post-trade metrics. While each of these models are constructed placing equal importance on the pre- and post-trade metrics, this was an arbitrary decision.

1. **SIP Value** – is based on the revenue distribution model used by the U.S. SIP.

$$\left[\frac{\% \sqrt{SVolume}_i + \% Number_i}{2} \right] * 0.5 + \$Time(value)_i * 0.5$$

This model incorporates the metrics used by the U.S. SIP to distribute revenue amongst participating marketplaces. The post-trade metrics used are equally weighted, and are composed of each marketplace's share of square-root dollar volume and number of trades. Both of these post-trade metrics together are assigned a weighting of 50% of the value of the model.

The pre-trade metric used is the value weighted percent of quoted dollar – time. This is also given a 50% weighting in the final model. The weighting of this model by the value traded in each security provides a greater emphasis on those stocks that are heavily traded, rewarding marketplaces more for providing liquidity where the majority is consumed.

2. **SIP Equal** – The SIP Equal model is very similar to the SIP Value Model, however instead of weighting the metrics by the value traded in each marketplace, each stock in the market is equally weighted. This index rewards marketplaces for providing price discovery across the full spectrum of traded stocks.

$$\left[\frac{\%SVolume_i + \%Number_i}{2} \right] * 0.5 + \$Time(equal)_i * 0.5$$

3. **Model 3** - differs significantly from the previous two. For the post-trade element, this model considers each marketplace's share of traded volume, share of trades and share of dollar-volume. These three elements are given equal weighting in this index. The pre-trade metrics considered are the percent of the day spent at the best spread and the percent of the day spent at the BBO. Each of these two pre-trade elements are equally weighted. The average of both the pre- and post-trade metrics is multiplied by the Scope of the marketplace, weighting the outcome for each marketplace by the number of symbols in which it actively trades. The resulting pre- and post-trade metrics are then equally weighted to come up with the final index.

$$\left[\frac{\%Volume_i + \%Number_i + \%SVolume_i}{3} \right] * Scope_i * 0.5 + \left[\frac{\%Spread_i + \%BBO_i}{2} \right] * Scope_i * 0.5$$

Question 35: Are the ranking models described appropriate for ranking a marketplaces' contribution to price discovery and liquidity? Are there other ranking methods we should consider? Please provide details.

Question 36: If you had to choose one of the three ranking methods described, which method would you chose and why?

d. Assigning an estimated fee or fee range

After calculating these ranking methods, we would use them to assess whether a marketplace's existing (or proposed) fee is related to its share of trading activity. We acknowledge the two approaches we propose may present several challenges, including the inability to directly observe the true "value" placed on these feeds by market participants, as well as the need to establish either internal or external comparisons.

We used the following two approaches to arrive at an estimated or fee range per marketplace.

- (1) Domestic reference - The first approach takes the data fees charged by each marketplace and aggregates them into a single "pool". The result is then considered to be the appropriate fee for the Canadian market, and this result is then re-distributed, based on the three ranking methods, giving us six estimated fees.

The difficulty with using this measure is that it does not provide an external evaluation of the Canadian securities data. If all fees for market data in Canada are overpriced, this method will not provide an unbiased measure of the true value of marketplaces' data fees. Rather, it will provide an indication as to whether any one market is charging relatively more or less than "average" for its data.

- (2) International reference - The second approach uses international comparisons to determine an average data fee per \$100 million traded. This approach assumes that the value of the international peers' data is relatively comparable to that of the Canadian exchanges', and that the value of this data is relative to the value of securities traded on the exchanges. The result is then redistributed based on the three ranking methods, giving us another six estimated fees. The choice of exchanges included in the comparison would impact the determination of the fair value for the Canadian data.

Question 37: Please provide your views on the reasonableness of the two approaches for establishing an appropriate reference amount for data fees to be used in applying the data fee review methodology?

Question 38: What other options should we consider for identifying an appropriate reference amount? Please provide details.

Question 39: How frequently should any selected reference amount for data fees be reviewed for their continued usefulness?

Appendix A-3

Comparison of Non-Professional Market Data Fees

Background

The Data Fee Paper defined real-time market data as consisting of pre- and post-trade data that is distributed immediately after an order has been entered, amended or cancelled or a trade has been executed. It is used by marketplace participants to make trading and order routing decisions. Pre-trade data provides details of orders entered on a marketplace and identifies the price and volume associated with each order. Post-trade data provides details of executed trades in a security.

Generally, marketplaces provide two types of real-time data feeds. Top-of-book, also known as Level 1 (L1) data consists of information on the last sale of a security, the best bid and offer, and the aggregate volume available for purchase and sale at those prices. Depth-of-book data, also known as Level 2 (L2) data consists of information on all visible orders in the marketplace (price and volume) and all trades.

Marketplaces charge different fees based on whether the L1 and/or L2 feed(s) will be used by a professional or non-professional user. These user fees are known as subscriber fees. Generally, professional users are individuals or organizations that use market data for business purposes (for example, dealers and their employees). Non-professional users are individuals that use market data for personal use.

In terms of the fees charged by for each feed and by type of user, L2 data is usually more expensive than L1 data and data for professional users is more expensive than for non-professional user for each feed type. In addition, in Canada, the fees charged for TSX-listed securities are generally higher than the ones charged for TSXV-listed securities for both L1 and L2 data.

Another way fees differ between marketplaces, in Canada and abroad, is in how these fees are charged. Generally, if a marketplace participant purchases both feeds (respectively L1 and L2) the fee charged for the most expensive feed includes the fee charged for the less expensive feed. However, there are some exceptions from this approach in Canada.⁸⁰

Taking the above into consideration, the following is a comparison of the non-professional fees to professional fees charged by equities marketplaces in Canada, and for some international comparables.

⁸⁰ TSX and TSXV charge the aggregated amount of L1 and L2 data if a user wants to purchase L2 data. Also, Omega charges a fee for its L1 data and has a fee holiday in place for its L2 data. Specifically, someone buying L2 data will pay the L1 fee.

A. Non-professional versus Professional Fees Comparison

1. Canada

Data Products by Listing Market	Non-Professional Fee	Professional Fee	Non-Professional Fee as a % of Professional Fee
TSX listeds			
TSX TL1	\$ 6.00	\$ 30.00	20.00%
TSX TL2 MarketBook	\$ 36.00	\$ 80.00	45.00%
Chi-X L1	\$ -	\$ 12.00	0.00%
Chi-X L2	\$ -	\$ 30.00	0.00%
CX2 L1	\$ -	\$ -	0.00%
CX2 L2	\$ -	\$ -	0.00%
Alpha L1	\$ 3.00	\$ 15.00	20.00%
Alpha L2 MarketBook	\$ 18.00	\$ 48.00	37.50%
Omega L1 (TSX, TSXV & CSE)	\$ 2.85	\$ 2.85	100.00%
Omega L2 (TSX, TSXV & CSE)	\$ 2.85	\$ 2.85	100.00%
Lynx L1 (TSX & TSXV)	\$ -	\$ -	0.00%
Lynx L2 (TSX & TSXV)	\$ -	\$ -	0.00%
CSE - L1 - all (incl. CSE)	\$ 2.40	\$ 12.00	20.00%
CSE - L2 - all (incl. CSE)	\$ 20.40	\$ 30.00	68.00%
TSXV listeds			
TSXV CL1	\$ 6.00	\$ 25.00	24.00%
TSX TL2 MarketBook	\$ 30.00	\$ 51.00	58.82%
Chi-X L1	\$ -	\$ 5.25	0.00%
Chi-X L2	\$ -	\$ 10.00	0.00%
CX2 L1	\$ -	\$ -	0.00%
CX2 L2	\$ -	\$ -	0.00%
Alpha L1	\$ 1.50	\$ 7.50	20.00%
Alpha L2 MarketBook	\$ 9.00	\$ 24.50	36.73%
CSE (CSE-listeds only) L1 & L2	\$ 2.00	\$ 10.00	20.00%

2. United States

US Tapes	Non-Professional Fee	Professional Fee	Non-Professional Fee as a % of Professional Fee
CTA - Tape A - L1 (high user tier)	\$ 1.00	\$ 20.00	5.0%
CTA - Tape A - L1 (low user tier)	\$ 1.00	\$ 50.00	2.0%
CTA - Tape B - L1	\$ 1.00	\$ 24.00	4.2%
UTP - Tape C - L1	\$ 1.00	\$ 23.00	4.3%
Total (including Tape A low tier)	\$ 3.00	\$ 97.00	3.1%
Total (including Tape A high tier)	\$ 3.00	\$ 67.00	4.5%

3. International

Data Products by Market	Non-Professional Fee	Professional Fee	Non-Professional Fee as a % of Professional Fee
BATS / Chi-X Europe - L1	£ -	£ 20.00	0.0%
BATS / Chi-X Europe - L2	£ -	£ 45.00	0.0%
LSE - Member - L1 (low non-pro tier)	£ 4.10	£ 28.70	14.3%
LSE - Member - L1 (high non-pro tier)	£ 0.20	£ 28.70	0.7%
LSE - Member - L2	£ 6.00	£ 105.00	5.7%
LSE - Non-Member - L1 (low non-pro tier)	£ 4.10	£ 40.00	10.3%
LSE - Non-Member - L1 (high non-pro tier)	£ 0.20	£ 40.00	0.5%
LSE - Non-Member - L2	£ 6.00	£ 157.50	3.8%
Borsa Italia - L1 (low non-pro tier)	€ 0.42	€ 12.60	3.3%
Borsa Italia - L1 (high non-pro tier)	€ 0.32	€ 12.60	2.5%
Borsa Italia - L2	€ 1.25	€ 42.00	3.0%
NASDAQ OMX Nordic - L1	€ 1.00	€ 29.00	3.4%
NASDAQ OMX Nordic - Totalview	€ 10.00	€ 74.00	13.5%
NYSE Euronext European - L1	\$ 1.00	\$ 61.00	1.6%
NYSE Euronext European - L2	\$ 1.00	\$ 86.00	1.2%
ASX Total - L2	\$ 25.00	\$ 55.00	45.5%
BM&F BOVESPA (BOVESPA feed) - L2	BRL 1.50	BRL 90.00	1.7%

ANNEX B – AMENDMENTS PROPOSED TO NI 23-101

AMENDMENTS TO NATIONAL INSTRUMENT 23-101 *TRADING RULES*

1. ***National Instrument 23-101 Trading Rules is amended by this Instrument.***
2. ***Section 1 is amended by***
 - (a) ***replacing “automated functionality” with “automated trading functionality” in the definition of automated functionality,***
 - (b) ***replacing the definition of directed-action order with:***

“directed-action order” means an order for the purchase or sale of an exchange-traded security, other than an option, that,

 - (a) when entered on or routed to a marketplace is to be immediately
 - (i) executed against a displayed order with any remainder to be booked or cancelled; or
 - (ii) placed in an order book;
 - (b) is marked as a directed-action order; and
 - (c) is entered on or routed to a marketplace to execute against a best-priced displayed order, or at the same time as one or more additional orders that are entered on or routed to one or more marketplaces, as necessary, to execute against any protected order with a better price than the entered or routed order referred to in paragraph (a);,
 - (c) ***deleting “and” after “quoted;” in the definition of non-standard order,***
 - (d) ***replacing paragraph (a) in the definition of protected bid with:***
 - (a) that is displayed on a marketplace that provides automated trading functionality and
 - (i) meets or exceeds the market share threshold as set for the purposes of this definition by the regulator, or in Quebec, the securities regulatory authority; or
 - (ii) does not meet or exceed the market share threshold referred to in subparagraph (i), if
 - (A) the marketplace is a recognized exchange, and
 - (B) the bid is for a security listed by and traded on that recognized exchange; and, ***and***
 - (e) ***replacing paragraph (a) in the definition of protected offer with:***
 - (a) that is displayed on a marketplace that provides automated trading functionality and
 - (i) meets or exceeds the market share threshold as set for the purposes of this definition by the regulator, or in Quebec, the securities regulatory authority; or
 - (ii) does not meet or exceed the market share threshold referred to in subparagraph (i), if
 - (A) the marketplace is a recognized exchange, and
 - (B) the offer is for a security listed by and traded on that recognized exchange; and.
 3. ***Part 4 is amended by adding the following section:***
 - 4.4 ***Disclosure by Dealers of Best Execution Policies***
 - (1) A dealer must provide in writing to its clients:

- (a) a description of the dealer's obligation under section 4.2;
- (b) a description of the factors the dealer considers for the purpose of complying with its obligation under section 4.2;
- (c) a description of the dealer's order handling and routing practices intended to comply with its obligation under section 4.2 for orders for exchange-traded securities, other than options, including:
 - (i) the identity of any marketplace and each type of intermediary to which the dealer might route the orders for handling or execution;
 - (ii) the circumstances in which the dealer might route the orders to a marketplace or intermediary identified or referred to in the disclosure made under subparagraph (i);
 - (iii) the nature of any ownership by the dealer or affiliated entity of the dealer in, or arrangement with, any marketplace or intermediary identified or referred to in the disclosure made under subparagraph (i);
 - (iv) if any of the orders may be routed to an intermediary referred to in the disclosure made under subparagraph (i), pursuant to a contractual relationship with any such intermediary,
 - (A) a statement that the order will be subject to the order handling and routing practices of the intermediary;
 - (B) a statement that the dealer has examined the order handling and routing practices of the intermediary and is satisfied that they will facilitate best execution; and
 - (C) a description of the order handling and routing practices of the intermediary or information that specifically identifies where that description can be found;
 - (v) a statement as to whether fees are paid or payments or other compensation received by the dealer for a client order routed, or a trade resulting from a client order routed, to any marketplace or intermediary identified or referred to in the disclosure made under subparagraph (i), and a description of the circumstances under which the costs associated with those fees paid or the amounts or compensation received will be passed on to the client.
- (2) A dealer must make the disclosure required under subsection (1) for each class or type of client if the factors and order handling and routing practices referred to in paragraphs 4.4(1)(b) and (c) differ materially for that class or type of client relative to any other class or type of client, or relative to all of the clients of the dealer in aggregate.
- (3) A dealer must specifically identify in the disclosure made pursuant to this section:
 - (a) the class or type of client to which the disclosure applies;
 - (b) the class or type of securities to which the disclosure applies; and
 - (c) the date of the most recent changes to the disclosure made in accordance with subsection (5).
- (4) A dealer must:
 - (a) make the disclosure required under this section publicly available on the dealer's website; and
 - (b) clearly identify to clients where on the website the disclosure is found; or
 - (c) if the dealer does not have a website to allow it to comply with paragraphs (a) and (b), deliver the disclosure required under this section to the client
 - (i) upon account opening; or
 - (ii) if the client has an account already open with the dealer at the time this section comes into force, no later than the 90th day after this section comes into force.

- (5) A dealer that provides disclosure under this section must:
 - (a) review the disclosure on a frequency that is reasonable in the circumstances, and
 - (b) based on the review under paragraph (a), promptly update the disclosure to reflect the dealer's current practices.
- (6) If a dealer makes any change to the disclosure it is required to make under this section, the dealer must,
 - (a) for the website disclosure required under paragraph (4)(a), identify and maintain the change on the website for a period of 6 months after the change has been made; or
 - (b) for any disclosure required to be delivered to a client under paragraph (4)(c), deliver the change to the client no later than the 90th day after the completion of the review and update referred to in subsection (5)..
- 4. **Subsection 6.3(2) is amended by replacing** "a marketplace that routes an order to another marketplace shall immediately notify" **with** "the marketplace that is executing the transaction or routing the order for execution shall immediately notify".
- 5. **Subsection 6.3(3) is amended by adding** "displaying a protected order" **after** "concludes that a marketplace".
- 6. **Subparagraph 6.4(1)(a)(ii) is amended by adding** "," **after** "traded through".
- 7. **Section 6.5 is replaced with:**
 - 6.5 **Locked or Crossed Orders** - A marketplace participant or a marketplace that routes or reprices orders must not intentionally enter a displayed order on a marketplace that is subject to section 7.1 of NI 21-101, at a price that
 - (a) in the case of an order to purchase, is the same as or higher than the best protected offer; or
 - (b) in the case of an order to sell, is the same as or lower than the best protected bid..
- 8. **The following section is added after section 6.6:**
 - 6.6.1 **Trading Fees**
 - (1) For the purposes of this section, "exchange-traded fund" means a mutual fund,
 - (a) the units of which are listed securities or quoted securities, and
 - (b) that is in continuous distribution in accordance with applicable securities legislation.
 - (2) A marketplace that is subject to section 7.1 of NI 21-101 must not charge a fee for executing an order that was entered to execute against a displayed order on that marketplace, greater than
 - (a) \$0.0030 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is greater than or equal to \$1.00; or
 - (b) \$0.0004 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is less than \$1.00..
- 9. **Section 6.7 is amended by replacing** "better-priced orders on a marketplace" **with** "better-priced protected orders".

Coming into force

- 10. This Instrument comes into force on ●.

ANNEX C

**BLACKLINED VERSION OF NI 23-101 AND 23-101CP
IDENTIFYING CHANGES TO IMPLEMENT THE PROPOSED AMENDMENTS**

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

“automated trading functionality” means the ability to

- (a) immediately allow an incoming order that has been entered on the marketplace electronically to be marked as immediate-or-cancel;
- (b) immediately and automatically execute an order marked as immediate-or-cancel against the displayed volume;
- (c) immediately and automatically cancel any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere;
- (d) immediately and automatically transmit a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to the order; and
- (e) immediately and automatically display information that updates the displayed orders on the marketplace to reflect any change to their 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 an option, that is entered on a marketplace and for which the price of the security

- (a) is not known at the time of order entry; and
- (b) is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to execute the order was made;

“closing-price order” means an order for the purchase or sale of an exchange-traded security, other than an option, 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 the marketplace for that trading day; and
 - (ii) the order be executed subsequent to the establishment of the closing price;

“directed-action order” means an an limit order for the purchase or sale of an exchange-traded security, other than an option, that,

- (a) when entered on or routed to a marketplace is to be immediately
 - (i) executed against a ~~protected~~ displayed order with any remainder to be booked or cancelled; or
 - (ii) placed in an order book;
- (b) is marked as a directed-action order; and
- (c) is entered on or routed to a marketplace to execute against a best-priced displayed order, or at the same time as one or more additional ~~limit~~ orders that are entered on or routed to one or more marketplaces, as necessary, to execute against any protected order with a better price than the entered or routed order referred to in paragraph (a);

“NI 21-101” means National Instrument 21-101 *Marketplace Operation*;

“non-standard order” means an order for the purchase or sale of an exchange-traded security, other than an option, 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; ~~and~~

“protected bid” means a bid for an exchange-traded security, other than an option,

- (a) that is displayed on a marketplace that provides automated trading functionality; and
 - (i) meets or exceeds the market share threshold as set for the purposes of this definition by the regulator, or in Quebec, the securities regulatory authority; or
 - (ii) does not meet or exceed the market share threshold referred to in subparagraph (i), if
 - (A) the marketplace is a recognized exchange, and
 - (B) the bid is for a security listed by and traded on that recognized exchange; and
- (b) about which information is required to be 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 an option,

- (a) that is displayed on a marketplace that provides automated trading functionality; and
 - (i) meets or exceeds the market share threshold as set for the purposes of this definition by the regulator, or in Quebec, the securities regulatory authority; or
 - (ii) does not meet or exceed the market share threshold referred to in subparagraph (i), if
 - (A) the marketplace is a recognized exchange, and
 - (B) the offer is for a security listed by and traded on that recognized exchange; and
- (b) about which information is required to be 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 an order at a price that is,

- (a) in the case of a purchase, higher than any protected offer, or
- (b) in 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, Québec 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* and the *Derivatives Act* (Québec) 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 Disclosure by Dealers of Best Execution Policies

(1) A dealer must provide in writing to its clients:

- (a) a description of the dealer's obligation under section 4.2;
- (b) a description of the factors the dealer considers for the purpose of complying with its obligation under section 4.2;
- (c) a description of the dealer's order handling and routing practices intended to comply with its obligation under section 4.2 for orders for exchange-traded securities, other than options, including:
 - (i) the identity of any marketplace and each type of intermediary to which the dealer might route the orders for handling or execution;
 - (ii) the circumstances in which the dealer might route the orders to a marketplace or intermediary identified or referred to in the disclosure made under subparagraph (i);
 - (iii) the nature of any ownership by the dealer or affiliated entity of the dealer in, or arrangement with, any marketplace or intermediary identified or referred to in the disclosure made under subparagraph (i);
 - (iv) if any of the orders may be routed to an intermediary referred to in the disclosure made under subparagraph (i), pursuant to a contractual relationship with any such intermediary,
 - (A) a statement that the order will be subject to the order handling and routing practices of the intermediary;
 - (B) a statement that the dealer has examined the order handling and routing practices of the intermediary and is satisfied that they will facilitate best execution; and
 - (C) a description of the order handling and routing practices of the intermediary or information that specifically identifies where that description can be found;

- (v) a statement as to whether fees are paid or payments or other compensation received by the dealer for a client order routed, or a trade resulting from a client order routed, to any marketplace or intermediary identified or referred to in the disclosure made under subparagraph (i), and a description of the circumstances under which the costs associated with those fees paid or the amounts or compensation received will be passed on to the client.
- (2) A dealer must make the disclosure required under subsection (1) for each class or type of client if the factors and order handling and routing practices referred to in paragraphs 4.4(1)(b) and (c) differ materially for that class or type of client relative to any other class or type of client, or relative to all of the clients of the dealer in aggregate.
- (3) A dealer must specifically identify in the disclosure made pursuant to this section:
 - (a) the class or type of client to which the disclosure applies;
 - (b) the class or type of securities to which the disclosure applies; and
 - (c) the date of the most recent changes to the disclosure made in accordance with subsection (5).
- (4) A dealer must:
 - (a) make the disclosure required under this section publicly available on the dealer's website; and
 - (b) clearly identify to clients where on the website the disclosure is found; or
 - (c) if the dealer does not have a website to allow it to comply with paragraphs (a) and (b), deliver the disclosure required under this section to the client
 - (i) upon account opening; or
 - (ii) if the client has an account already open with the dealer at the time this section comes into force, no later than the 90th day after this section comes into force.
- (5) A dealer that provides disclosure under this section must:
 - (a) review the disclosure on a frequency that is reasonable in the circumstances, and
 - (b) based on the review under paragraph (a), promptly update the disclosure to reflect the dealer's current practices.
- (6) If a dealer makes any change to the disclosure it is required to make under this section, the dealer must,
 - (a) for the website disclosure required under paragraph (4)(a), identify and maintain the change on the website for a period of 6 months after the change has been made; or
 - (b) for any disclosure required to be delivered to a client under paragraph (4)(c), deliver the change to the client no later than the 90th day after the completion of the review and update referred to in subsection (5).

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 ORDER PROTECTION

6.1 Marketplace Requirements for Order Protection –

- (1) A marketplace shall establish, maintain and ensure compliance with written policies and procedures that are reasonably designed
 - (a) to prevent trade-throughs on that marketplace other than the trade-throughs referred to in section 6.2; and

- (b) to ensure that the marketplace, when executing a transaction that results in a trade-through referred to 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 under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.
- (3) At least 45 days before implementation, a marketplace shall file with the securities regulatory authority and, if applicable, its regulation services provider the policies and procedures, and any significant changes to those policies and procedures established under subsection (1).

6.2 List of Trade-throughs – For the purposes of paragraph 6.1(1)(a) the permitted trade-throughs are

- (a) a trade-through that occurs when the marketplace has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;
- (b) the execution of a directed-action order;
- (c) a trade-through by a marketplace that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;
- (d) a trade-through if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through;
- (e) a trade-through that results when executing
 - (i) a non-standard order;
 - (ii) a calculated-price order; or
 - (iii) a closing-price order;
- (f) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer.

6.3 Systems or Equipment Failure, Malfunction or Material Delay –

- (1) If a marketplace experiences a failure, malfunction or material delay of its systems, equipment or its ability to disseminate marketplace data, the marketplace shall immediately notify
 - (a) all other marketplaces;
 - (b) all regulation services providers;
 - (c) its marketplace participants; and
 - (d) any information processor or, if there is no information processor, any information vendor that disseminates its data under Part 7 of NI 21-101.
- (2) If executing a transaction described in paragraph 6.2(a), and a notification has not been sent under subsection (1), ~~a the marketplace that is executing the transaction or routing~~ the marketplace that is executing the transaction or routing ~~as an the order for execution to another marketplace~~ shall immediately notify
 - (a) the marketplace that it reasonably concluded is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data;
 - (b) all regulation services providers;
 - (c) its marketplace participants; and
 - (d) any information processor disseminating information under Part 7 of NI 21-101.

- (3) If a marketplace participant reasonably concludes that a marketplace displaying a protected order is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data, and routes an order to execute against a protected order on another marketplace displaying an inferior price, the marketplace participant must notify the following of the failure, malfunction or material delay

- (a) the marketplace that may be experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data; and
- (b) all regulation services providers.

6.4 Marketplace Participant Requirements for Order Protection –

- (1) A marketplace participant must not enter a directed-action order unless the marketplace participant has established, and maintains and ensures compliance with, written policies and procedures that are reasonably designed

- (a) to prevent trade-throughs other than the trade-throughs listed below:
 - (i) a trade-through that occurs when the marketplace participant has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;
 - (ii) a trade-through by a marketplace participant that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;
 - (iii) a trade-through if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through transaction;
 - (iv) a trade-through that results when executing
 - (A) a non-standard order;
 - (B) a calculated-price order; or
 - (C) a closing-price order;
 - (v) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer; and
 - (b) to ensure that when executing a trade-through listed in paragraphs (a)(i) to (a)(v), it is doing so in compliance with this Part.
- (2) A marketplace participant that enters a directed-action order shall regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.

6.5 Locked or Crossed Orders – A marketplace participant or a marketplace that routes or reprices orders ~~shall must~~ not intentionally enter a displayed order on a marketplace that is subject to section 7.1 of NI 21-101, at a price that

- (a) in the case of an order to purchase, enter on a marketplace a protected order to buy a security at a price that is the same as or higher than the best protected offer; or
- (b) in the case of an order to sell, enter on a marketplace a protected order to sell a security at a price that is the same as or lower than the best protected bid.

6.6 Trading Hours – A marketplace shall set the hours of trading to be observed by marketplace participants.

6.6.1 Trading Fees

- (1) For the purposes of this section, “exchange-traded fund” means a mutual fund,
- (a) the units of which are listed securities or quoted securities, and

(b) that is in continuous distribution in accordance with applicable securities legislation.

(2) A marketplace that is subject to section 7.1 of NI 21-101 must not charge a fee for executing an order that was entered to execute against a displayed order on that marketplace, greater than

(a) \$0.0030 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is greater than or equal to \$1.00 at the time of the execution of the order; or

(b) \$0.0004 per security traded for an equity security, or per unit traded for an exchange-traded fund, if the execution price of each security or unit traded is less than \$1.00 at the time of the execution of the order.

6.7 Anti-Avoidance – No person or company shall send 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 protected orders on a marketplace.

6.8 Application of this Part – In Québec, this Part does not apply to standardized derivatives.

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

(i) directly, or

(ii) 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 to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:

(i) the conduct of and trading by marketplace participants on and across marketplaces, and

(ii) the conduct of the recognized exchange, as applicable; 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 to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:
 - (i) the conduct of and trading by marketplace participants on and across marketplaces, and
 - (ii) the conduct of the recognized quotation and trade reporting system, as applicable; 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 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 to the regulation services provider the information required by Part 11 of NI 21-101 and any other information reasonably required to effectively monitor:
 - (i) The conduct of and trading by marketplace participants on and across marketplaces, and
 - (ii) the conduct of the ATS; 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 INTER-DEALER 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 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 the requirements in section 11.2 if the dealer or interdealer 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 in electronic form 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;
 - (s) any other markers required by a regulation services provider;
 - (t) each unique client identifier assigned to a client accessing the marketplace using direct electronic access; and
 - (u) whether the order is a directed-action order.

- (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) **Record Preservation Requirements** – A dealer and an inter-dealer bond broker shall keep all records in electronic form 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.
- 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 23-101CP TO NATIONAL INSTRUMENT 23-101 TRADING RULES

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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.

1.1.2 Definition of automated trading functionality – Section 1.1 of the Instrument includes a definition of “automated trading 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 trading 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 trading 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 immediate-or-cancel orders.

1.1.3 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 an option, that is displayed on a marketplace that provides

automated trading 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. In addition, a “protected bid” or “protected offer” is a bid or offer displayed on a marketplace that meets or exceeds the market share threshold as set by the regulator, or in Quebec, the securities regulatory authority, or is a recognized exchange that does not meet the market share threshold and the bid displayed is for a security listed by and traded on the recognized exchange.

- (2) The regulator, or in Quebec, the securities regulatory authority, will apply the threshold on an established periodic basis to assess which marketplaces, including which markets or facilities of the marketplace, meet or exceed the market share threshold for the purposes of the definitions of “protected bid” and “protected offer”. The market share threshold will be applied at the market or facility level where the marketplace is comprised of more than one visible continuous auction order book, and will not be calculated in aggregate across those different markets or facilities. A list of those that meet or exceed the market share threshold will be published on the websites of the Canadian securities regulatory authorities and the regulation services provider, so that marketplace participants can easily identify the marketplaces on which displayed orders will be considered to be protected orders in accordance with subparagraph (a)(i) of the definitions of “protected bid” and “protected offer”. An updated list will be published after each periodic assessment of which marketplaces meet or exceed the market share threshold, and participants will be given an appropriate amount of time before the effective date of the published list to make any changes to operational processes that might be needed.
- (3) In accordance with subsection (a)(ii) of the definitions of “protected bid” and “protected offer”, a protected order is also an order displayed on a marketplace that has not met the market share threshold where that marketplace is a recognized exchange, and the order being displayed is for a security listed by and traded on the exchange. The published list will also identify any such recognized exchanges.
- (4) The market share threshold criteria, including the specifics regarding the time periods covered by the calculation and the effective date and duration of the published lists, will also be made public. The application of these criteria will be monitored and reviewed, and modifications will be made if and where appropriate or necessary. Advance public notice will be made regarding any changes to the market share threshold criteria.
- (2)(5) 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.
- (3)(6) 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 order protection. However, those executing against these types of orders are required to execute against all better-priced protected orders first. In addition, when entering a “special terms order” on a marketplace, if it can be executed against existing protected orders despite the special term, then the order protection obligation applies.

1.1.4 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 not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to executing the order was made. 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 or an exchange or quotation and trade reporting system that oversees the conduct of its members or users respectively.

1.1.5 Definition of directed-action order –

- (1) An order marked as a directed-action order informs the receiving marketplace that the marketplace can act immediately to carry out the action specified by either the marketplace or marketplace participant who has sent the order and that the order protection obligation is being met by the sender. Such an order may be marked “DAO” by a marketplace or a marketplace participant. Senders can specify actions by adding markers that instruct a marketplace to:
- (a) execute the order and cancel the remainder using an immediate-or-cancel marker,
 - (b) execute the order and book the remainder,
 - (c) book the order as a passive order awaiting execution, and
 - (d) avoid interaction with hidden liquidity using a bypass marker, as defined in IIROC’s Universal Market Integrity Rules.

The definition allows for the simultaneous routing of more than one directed-action order in order to execute against any better-priced protected orders. In addition, marketplaces or marketplace participants may send a single directed-action order to execute against the best protected bid or best protected offer. When it receives a directed-action order, a marketplace can carry out the sender’s instructions without checking for better-priced protected orders displayed by the other marketplaces and implementing the marketplace’s own policies and procedures to reasonably prevent trade-throughs.

- (2) Regardless of whether the entry of a directed-action order is accompanied by the bypass marker, the sender must take out all better-priced visible protected orders before executing at an inferior price. For example, if a marketplace or marketplace participant combines a directed-action order with a bypass marker to avoid executing against hidden liquidity, the order has order protection obligations regarding the visible protected liquidity. If a directed-action order interacts with hidden liquidity, the requirement to take out all better-priced visible protected orders before executing at a price that is inferior to the best protected bid or best protected offer ~~inferior price~~ remains.

- 1.1.6 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.

- 1.1.7 Definition of trade-through –** The definition of ‘trade-through’ applies only to a trade executed at a price that is inferior to the best protected bid or best protected offer. It is a trade-through regardless of whether the trade occurs on a marketplace that displays protected orders, or one that does not display protected orders. For example, a trade-through would occur if executing against an order that is displayed on an ATS that does not meet the market share threshold and at a price that is inferior to the best-priced protected order. However, a trade-through would not occur if executing against a best-priced protected order despite there being a better-priced order displayed on an ATS that does not meet the market share threshold.

PART 2 APPLICATION OF THE INSTRUMENT

- 2.1 Application of the Instrument –** 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, Québec and Saskatchewan and the relevant provisions of securities legislation apply.

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* (Québec) and *The Securities Act, 1988* (Saskatchewan), respectively, relating to manipulation and fraud apply in Alberta, British Columbia, Ontario, Québec 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" will vary depending on the particular circumstances, and is subject to a "reasonable efforts" test that does not require achieving best execution for each and every order. ~~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 the a-process it has designed towards the objective of to-achieving 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, and (not just those 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 considering activity on appropriate marketplaces and the an evaluation of whether steps should be taken to~~ requirement to evaluate whether taking steps to access orders ~~is appropriate under the circumstances on a marketplace to which it does not have access.~~ 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) As part of an evaluation of whether steps should be taken to access orders on a marketplace to which it does not have access, a dealer should consider how the decision to access or not access orders on that marketplace will impact its ability to achieve best execution for its clients, taking into consideration those clients' objectives and needs. This applies in relation to decisions as to whether to access marketplaces that do not provide pre-trade transparency of orders, as well as those that do display orders that are not protected orders. We expect that documented best execution policies and procedures would include the rationale for accessing or not accessing orders on particular marketplaces, and that the rationale will be reviewed for continued reasonableness at least annually, and more frequently if needed because of changes to the trading environment and market structure. This review might require an analysis of historical data relating to the order and trade activity on marketplaces to which the dealer does not have access. We expect that the factors to be considered in such an analysis would generally include the frequency at which a better price is available, size and depth of quotes, traded volumes, potential market impact, and market share (considering the types and classes of securities traded by clients, generally).

- ~~(6)~~(7) For foreign exchange-traded securities, if they are traded on a marketplace in Canada, dealers should include in their best execution policies and procedures a regular assessment of whether it is appropriate to consider the marketplace as well as the foreign markets upon which the securities trade.
- ~~(7)~~(8) 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)~~(9) 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 Disclosure by Dealers of Best Execution Policies

- (1) Section 4.4 of the Instrument requires the dealer to make certain written disclosures to clients regarding its best execution policies. Paragraphs 4.4(1)(a) and (b) apply with respect to all securities, while paragraph 4.4(1)(c) requiring more detailed disclosure of order handling and routing practices applies only with respect to exchange-traded securities, other than options. This difference in application affects only the disclosure obligations and has no implications for a dealer's best execution obligations under section 4.2 of the Instrument, which applies with respect to all securities.
- (2) Paragraph 4.4(1)(b) of the Instrument requires disclosure of a description of the factors the dealer considers for the purpose of complying with its obligation under section 4.2 of the Instrument. For example, we expect that this disclosure would include a description of how instructions from a client regarding the handling, routing or execution of its order(s) will be taken into account, and how this may affect execution for the client.
- (3) The disclosure requirements outlined in subparagraph 4.4(1)(c)(i) through (v) of the Instrument include disclosure of order handling and routing practices for orders subject to best execution obligations (i.e., client orders). As part of these requirements, subparagraph 4.4(1)(c)(i) requires disclosure to be made regarding the identity of marketplaces to which orders are routed, including markets or facilities in circumstances where a marketplace offers trading on more than one visible continuous auction order book. We expect that foreign marketplaces to which orders are routed will also be identified. The disclosure required under that subparagraph regarding the types of intermediaries to which the dealer may route client orders for handling or execution is intended to identify those types of intermediaries performing dealer-type functions with respect to the handling and execution of the routed orders, regardless of whether or not the intermediary is registered as a dealer in Canada.
- (4) Subparagraph 4.4(1)(c)(iii) of the Instrument requires disclosure of the nature of any ownership by a dealer or affiliated entity of the dealer in, or arrangement with, any marketplace or intermediary identified or referred to in the disclosure made under subparagraph 4.4(1)(c)(i). We expect that any disclosure of ownership in a marketplace or intermediary required to be made under subparagraph 4.4(1)(c)(iii) of the Instrument would specifically identify any particular marketplace or intermediary in which the dealer or affiliated entity of the dealer has an ownership interest.
- (5) The disclosure required under subparagraph 4.4(1)(c)(iv) of the Instrument is intended to ensure that clients have information as to how their orders are being handled by the intermediaries the dealer relies on for order handling or execution. This would include, under clause (C) of subparagraph (iv), a description of the order handling and routing practices of each particular intermediary to whom the dealer routes orders pursuant to a contractual relationship, to the extent that description differs for each such intermediary, or information that specifically identifies where that description can be found. This particular requirement can be satisfied by providing a link to the location on the website of the intermediary where that information can be found.
- (6) Regarding the disclosure required under paragraph 4.4(1)(c) of the Instrument, it is expected that the disclosure will include sufficient information to help clients make an informed decision about whether to use the services of the dealer. It is also expected that sufficient information will be provided to allow clients to understand how, when and why the handling of their orders might differ. For example, we expect that the information would explain to clients how their orders will be handled outside of regular trading hours, or when orders for securities might be executed on foreign markets or handled for execution by other intermediaries.
- (7) Subsection 4.4(2) of the Instrument indicates that the disclosure required under subsection 4.4(1) of the Instrument must be made for each class or type of client if the factors and order handling and routing practices differ materially for that class or type of client, relative to any other class or type of client, or relative to all of the clients of the dealer in aggregate. It is intended that types or classes of clients would receive separate disclosure if it is needed to allow them to make an informed decision about whether to use the services of the dealer, based on how the dealer's best execution policies, including its order handling and routing practices, apply to that type or class of client. Where the best execution policies generally apply to all clients, and there is no material difference between types or class of client,

then no separate disclosure would likely be needed. A dealer is not precluded from providing client-specific disclosure, and would likely need to do so for compliance with subsection 4.4(2) of the Instrument if the best execution policies are unique to the particular client and differ materially from the best execution policies applied to other clients.

- (8) Subsection 4.4(4) of the Instrument sets out how the disclosure is to be made. The disclosure is required to be made publically available on the dealer's website, or if the dealer does not have a website, it must be delivered to a client. For disclosure made on the dealer's website, the dealer must clearly identify to the clients where on the dealer's website the information can be found. Any written disclosure delivered to a client under paragraph 4.4(4)(c) of the Instrument can be delivered in electronic form if a client consents. For further guidance, see National Policy 11-201 *Delivery of Documents by Electronic Means*.
- (9) Subsection 4.4(5) of the Instrument sets out the requirements for reviewing and updating the disclosure required to be made under subsection 4.4 of the Instrument. The disclosure is required to be reviewed on a frequency that is reasonable in the circumstances. It is expected that the review of the disclosure will be undertaken whenever changes are made to the dealer's best execution policies and procedures, including its order handling and routing practices, that could reasonably affect a client's expectations regarding the dealer's efforts to achieve best execution for the client.

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, or a recognized quotation and trade reporting system. 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, or the recognized quotation and trade reporting system 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, or recognized quotation and trade reporting system.

PART 6 ORDER PROTECTION

6.1 Marketplace Requirements for Order Protection

- (1) Subsection 6.1(1) of the Instrument requires a marketplace to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs by orders entered on that marketplace, regardless of whether the marketplace on which that order is entered displays orders that are protected orders. 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 voluntarily 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. Relevant information would include information that describes:
- (a) steps taken by the marketplace to evaluate its policies and procedures;
 - (b) any breaches or deficiencies found; and
 - (c) the steps taken to resolve the breaches or deficiencies.
- (3) 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 trading functionality and how they will handle potential delayed responses as a result of an equipment or systems failure or malfunction experienced by any other marketplace displaying protected orders. In addition, marketplaces should include a discussion of how they treat a directed-action order when received and how it will be used.
- (4) Order protection applies whenever two or more marketplaces that display orders subject to the pre-trade transparency requirements in Part 7 of NI 21-101 are open for trading, and the displayed orders of at least one of those marketplaces

~~are with-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 subparagraph 6.2(e)(iii), a marketplace that provides such sessions would not be required to take steps to reasonably prevent trade-throughs of protected orders on another marketplace.

6.2 Marketplace Participant Requirements for Order Protection

- (1) For a marketplace participant that wants to use a directed-action order, section 6.4 of the Instrument requires a marketplace participant to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs of protected orders, regardless of whether the marketplace on which it is entering the directed-action order displays orders that are protected orders. In general, it is expected that a marketplace participant that uses a directed-action order would maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities. Relevant information would include information that describes:

- (a) steps taken by the marketplace participant to evaluate its policies and procedures;
- (b) any breaches or deficiencies found; and
- (c) the steps taken to resolve the breaches or deficiencies.

The policies and procedures should also outline when it is appropriate to use a directed-action order and how it will be used as set out in paragraph 6.4(a) of the Instrument.

- (2) Order protection applies whenever two or more marketplaces that display orders subject to the pre-trade transparency requirements in Part 7 of NI 21-101 are open for trading, and the displayed orders of at least one of those marketplaces are with-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 6.4(a)(iv)(C) of the Instrument, a marketplace participant would not be required to take steps to reasonably prevent trade-throughs of protected orders on other marketplaces that result from an execution of the closing-price order between marketplaces.

6.3 List of Trade-throughs – Section 6.2 and paragraphs 6.4(a)(i) to (a)(v) of the Instrument set forth a list of “permitted” trade-throughs that are primarily designed to achieve workable order protection and to facilitate certain trading strategies and order types that are useful to investors.

- (a) (i) Paragraphs 6.2(a) and 6.4(a)(i) of the Instrument would apply where a marketplace or marketplace participant, as applicable, has reasonably concluded that a-the marketplace displaying the protected order that has been traded through is experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data. A material delay occurs when a marketplace repeatedly fails to respond immediately after receipt of an order. This is intended to provide marketplaces and marketplace participants with flexibility when dealing with a marketplace that is experiencing systems problems (either of a temporary nature or a longer term systems issue).
- (ii) Under subsection 6.3(1) of the Instrument, a marketplace that is experiencing systems issues is responsible for informing all other marketplaces, its marketplace participants, any information processor, or if there is no information processor, an information vendor disseminating its information under Part 7 of NI 21-101 and regulation services providers when a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data occurs. This applies both to marketplaces that display orders that are protected orders and marketplaces that display orders that are not protected orders. However, if a marketplace that displays orders that are protected orders 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 may, pursuant to subsections 6.3(2) and 6.3(3) of the Instrument respectively, reasonably conclude that the marketplace is having systems issues and may therefore rely on paragraph 6.2(a) or 6.4(a)(i) of the Instrument respectively. 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 conclusion. 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) or paragraph 6.4(a)(i) of the Instrument respectively.

- (b) Paragraph 6.2(b) of the Instrument provides an exception from the obligation on marketplaces to use their policies and procedures to reasonably prevent trade-throughs when a directed-action order is received. Specifically, a marketplace that receives a directed-action order may immediately execute or book the order (or its remaining volume) and not implement the marketplace's policies and procedures to reasonably prevent trade-throughs. However, the marketplace will need to describe its treatment of a directed-action order in its policies and procedures. Paragraphs 6.2(c) and 6.4(a)(iii) of the Instrument provide an exception where a marketplace or marketplace participant simultaneously routes directed-action orders to execute against the total displayed volume of any protected order traded through. This accounts for the possibility that orders that are routed simultaneously as directed-action orders are not executed simultaneously causing one or more trade-throughs to occur because an inferior-priced order is executed first.
- (c) Paragraphs 6.2(d) and 6.4(a)(iii) of the Instrument provide some relief due to moving or changing markets. Specifically, the exception allows for a trade-through to occur when immediately before executing the order that caused the trade-through, the marketplace on which the execution occurred had the best price but at the moment of execution, the market changes and another marketplace has the best priced protected order. The "changing markets" exception allows for the execution of an order on a marketplace, within the best bid or offer on that marketplace but outside the best protected bid or best protected offer displayed across all marketplaces that display protected orders, in certain circumstances. This could occur for example:
- (i) where orders are entered on a marketplace but by the time they are executed, the best protected bid or best protected offer displayed across marketplaces changed; and
 - (ii) where a trade is agreed to off-marketplace and entered on a marketplace within the best protected bid and best protected offer across marketplaces, but by the time the order is executed on the marketplace (i.e. printed) the best protected bid or best protected offer as displayed across marketplaces may have changed, thus causing a trade-through.
- (d) The basis for the inclusion of calculated-price orders, non-standard orders and closing-price orders in paragraphs 6.2(e) and 6.4(a)(iv) 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 (nonstandard orders) that are not set by an exchange or a quotation and trade reporting system.
- (e) Paragraphs 6.2(f) and 6.4(a)(v) of the Instrument include a transaction that occurred when there is a crossed market between protected orders in the exchange-traded security. Without this allowance, no marketplace could execute transactions where the best protected bid and best protected offer are crossed in a crossed market because it would constitute a trade-through. With order protection only applying to displayed protected orders or parts of protected orders, hidden or reserve orders may remain in the book after all displayed protected orders are executed. Consequently, crossed markets between protected orders may occur. Intentionally crossing the best protected bid and best protected offer ~~market~~ to take advantage of paragraphs 6.2(f) and 6.4(a)(v) of the Instrument would be a violation of section 6.5 of the Instrument.

6.4 Locked and Crossed Markets

- (1) Section 6.5 of the Instrument provides that a marketplace participant or a marketplace that routes or reprices orders ~~shall must~~ not intentionally lock or cross a protected order ~~market~~ by entering a ~~protected displayed order on any marketplace to either~~ buy a security at a price that is the same as or higher than the best protected offer, ~~or entering a protected order to sell~~ a security at a price that is the same as or lower than the best protected bid. The intention of section 6.5 of the Instrument is to prevent intentional locks and crosses of protected orders. This applies regardless of whether the locking or crossing order is entered on a marketplace that displays orders that are protected orders. This provision is not intended to prohibit the use of marketable limit orders. Paragraphs 6.2(f) and 6.4(a)(v) of the Instrument allow for the resolution of crossed markets that occur unintentionally.

The Canadian securities regulatory authorities consider an order that is routed or repriced to be "entered" on a marketplace. The Canadian securities regulatory authorities do not consider the triggering of a previously-entered on-stop order to be an "entry" or "repricing" of that order.

- (2) Section 6.5 of the Instrument does not restrict the ability for a marketplace participant or a marketplace that routes or reprices orders from routing or entering a displayed order that will lock or cross with another displayed order that is *not* a protected order.
- (a) If the entry of a protected order locks or crosses with a displayed order on another marketplace that is not a protected order, section 6.5 of the Instrument would restrict the ability for additional orders to be entered that

would lock or cross with the protected order. This should help to minimize the duration of a locked or crossed markets in these circumstances.

(b) A displayed order that is not a protected order that becomes locked or crossed with a subsequently entered protected order does not need to be repriced or cancelled. If, however, the marketplace subsequently reprices the non-protected displayed order, as might occur with a pegged order, it will be considered to be "entered" upon repricing and subject to the restrictions against locking or crossing with a protected order.

(c) If a marketplace participant deliberately attempts to circumvent section 6.5 of the Instrument by first entering a displayed order on a marketplace that is not a protected order, followed by the entry of a protected order on another marketplace that locks or crosses with the first displayed non-protected order it entered, the Canadian securities regulatory authorities would consider this to be a violation of section 6.5.

(2)(3) An intentional locking or crossing of a protected order. Section 6.5 of the Instrument prohibits a marketplace participant or a marketplace that routes or reprices orders from intentionally locking or crossing a market. This would occur, for example, when a marketplace participant enters a locking or crossing order on a particular marketplace or marketplaces to avoid fees charged by a marketplace or to take advantage of rebates offered by a particular marketplace. This could also occur where a marketplace system is programmed to reprice orders without checking to see if the new price would lock a protected order the market or where the marketplace routes orders to another marketplace that results in a locked market with a protected order. It could also occur where the intention of the marketplace participant was to lock or cross a protected order to avoid fees charged by a marketplace or to take advantage of rebates.

There are situations where a locked or crossed market of a protected order may occur unintentionally. For example:

(a) ~~when a marketplace participant routes multiple directed action orders that are marked immediate or cancel to a variety of marketplaces and because of latency issues, a locked or crossed market results;~~

(b)(a) the locking or crossing order was displayed at a time when the marketplace displaying the locked or crossed protected order was experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data;

(c)(b) the locking or crossing order was displayed at a time when a protected bid was higher than a protected offer;

(d)(c) the locking or crossing order was posted after all displayed protected liquidity was executed and a reserve order generated a new visible protected bid above the displayed protected offer, or new visible protected offer below the displayed protected bid;

(e)(d) the locking or crossing order was entered on a particular marketplace in order to comply with securities legislation requirements such as Rule 904 of Regulation S of the Securities Act of 1933 that requires securities subject to resale restrictions in the United States to be sold in Canada on a "designated offshore securities market";

(f)(e) the locking or crossing order was displayed due to "race conditions" when competing orders, at least one of which is a protected order, are entered on marketplaces at essentially the same time with neither party having knowledge of the other order at the time of entry;

(g)(f) the locking or crossing order was a result of the differences in processing times and latencies between the systems of the marketplace participant, marketplaces, information processor and information vendors;

(h)(g) the locking or crossing order was a result of marketplaces having different mechanisms to "restart" trading following a halt in trading for either regulatory or business purposes; and

(i)(h) the locking or crossing order was a result of the execution of an order during the opening or closing allocation process of one market, while trading is simultaneously occurring on a continuous basis on another market displaying protected orders.

If a marketplace participant using a directed-action order chooses to book the order, or the remainder of the the order not immediately executed, then it is responsible for ensuring that the booked portion of the directed-action order does not lock or cross the market a protected order. The Canadian securities regulatory authorities would consider a directed-action order or remainder of directed-action order that is booked and that locks or crosses a the market protected order to be an intentional locking or crossing of a protected order the market and a violation of section 6.5 of the Instrument.

- 6.5 Anti-Avoidance Provision** – Section 6.7 of the Instrument prohibits a person or company from sending 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 protected 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 order protection 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 interdealer 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 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 Agreement between a Marketplace and a Regulation Services Provider** – The purpose of subsections 7.2(c) and 7.4(c) of the Instrument is to facilitate the monitoring of trading by marketplace participants on and across multiple marketplaces by a regulation services provider. These sections of the Instrument also facilitate monitoring of the conduct of a recognized exchange and recognized quotation and trade reporting system for particular purposes. This may result in regulation services providers monitoring 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 regulatory requirements or the terms of its own rules or policies and procedures. While the scope of this monitoring may change as the market evolves, we expect it to include, at a minimum, monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, order protection requirements and audit trail requirements.
- 7.6 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 is required in order to achieve cross-marketplace monitoring.

- (2) 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 in order to ensure effective cross-marketplace monitoring.
- (3) Currently, only IIROC is the regulation services provider for both exchange-traded securities, other than options and in Québec, other than standardized derivatives, 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).

ANNEX D

REGULATORY IMPACT ANALYSIS: ORDER PROTECTION RULE REVIEW

What is the problem or concern?

Under the current Order Protection Rule (OPR), execution priority is given to better-priced limit orders on markets that display orders for exchange traded securities other than options. The rule requires that marketplaces establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs.

Marketplace participants can bypass marketplace controls and assume OPR responsibilities for their submitted orders. If a marketplace participant chooses to take on these responsibilities, they must establish, maintain and ensure compliance with policies and procedures that are reasonably designed to prevent trade-throughs.

This requirement means that investment dealers that choose to assume OPR responsibilities must:

- have access to displayed bids and offers on all marketplaces. This can be done by directly connecting to a marketplace or by entering into a jitney arrangement with another dealer;
- trade against better-priced bids or offers displayed on other marketplaces regardless of the trading fees charged by those marketplaces; and
- be able to identify better-priced bids and offers through the monitoring of real-time market data from each of the displayed marketplaces. This can be done directly or through a third-party order routing provider.

The benefits of this framework include:

- protection of price priority for all dealer and client orders across visible markets. This increases the efficiency of the market by fostering virtual consolidation of fragmented marketplaces;
- increased investor confidence in the market as their visible better-priced orders trade ahead of other inferior-priced orders; and
- enhanced competition between marketplaces.

However, these benefits come with costs. It is our view that the current OPR, while providing certain benefits, lessens the efficiency of the market for trading in Canadian equities.

The OPR requirements afford marketplaces a degree of market power as marketplace participants are constrained in choosing whether or not to consume and pay for certain marketplace services, in particular, trading and market data.

As a result, some marketplaces may be able to charge fees for their services that are greater than they would be absent the OPR requirements. At the extreme, some marketplaces may remain financially viable as a result of the current OPR.

Who are the impacted stakeholders?

Based on our review and analysis, the current environment has impacts for the following participants and stakeholders:

- Retail and institutional investors that trade Canadian equities;
- Investment Dealers – both those that are members/subscribers of one or more marketplaces and those that are introducing dealers;
- Marketplaces that display bids and offers for Canadian equities; and
- Third-party vendors of order routing services.

How are stakeholders impacted?

Retail Investors	<p>Under the current OPR framework, investors can be confident that their orders will be executed ahead of inferior-priced orders regardless of the marketplace to which their limit orders are sent.</p> <p>Retail investors do not generally pay the trading fees charged by marketplaces directly. However, to the extent that the current OPR is promoting inefficiencies, investors may be paying additional transaction costs to their dealers via commissions and account fees.</p>
Institutional Investors	<p>Under the current OPR framework, investors can be assured that their orders will be executed ahead of inferior-priced orders regardless of the marketplace to which their limit orders are sent.</p> <p>Institutional investors do not generally pay the trading fees charged by marketplaces directly. However, to the extent that the current OPR is promoting inefficiencies, investors may be paying additional transaction costs to their dealers via commissions and account fees.</p>
Marketplace Participants	<p>The impact of the current framework is generally in the form of costs incurred by marketplace participants.</p> <p>To the extent that the current OPR has fostered greater competition between equities marketplaces, marketplace participants may have benefits from lower costs in some areas.</p> <p>However, our review has indicated that increasing fragmentation and pricing power afforded to marketplaces has led to issues of increasing costs in certain areas. These can include access/connectivity costs, trading fees and market data costs. These costs can vary depending on the size and business model of the marketplace participant.</p> <p>Access and Connectivity Costs</p> <p>Dealers that choose to directly connect to marketplaces will need to pay any applicable membership/subscriber fees to marketplaces. We estimate that the cost of being a member/subscriber of all current visible marketplaces is approximately \$5,000.</p> <p>In addition to member/subscriber fees, marketplaces may also charge connectivity fees. These fees vary depending on the marketplace, the volumes traded by the participant and the participant's business model.</p> <p>Participants that opt to directly connect to a marketplace also incur technology related costs. These include the infrastructure and staffing costs associated with managing a participant's trading systems and updating them in response to the introduction of new marketplaces or changes to the systems or functionality of existing marketplaces. Participants also incur costs related to telecommunication connections to the trading systems of the various marketplaces.</p> <p>The connectivity and technology related costs of accessing marketplaces can be managed by using a vendor of order routing services, however, the vendor will incur these costs and these will be factored into their own service fees.</p> <p>Marketplace participants may choose to access some marketplaces via a jitney arrangement with another marketplace participant. The participant in a jitney arrangement would not need to pay membership/subscriber fees or connectivity costs for access to all marketplaces, but will incur a cost for the jitney arrangement.</p> <p>Trading Fees</p> <p>Marketplace participants must avoid trading through better-priced orders on a marketplace regardless of the cost of trading on that marketplace. As a result, participants are limited in their ability to control their trading fees.</p> <p>Within each price level in the order book, participants can choose to execute first on marketplaces with lower fees. This provides some competitive pressure. However, participants need to trade against all displayed orders, including those on marketplaces with higher fees, before moving to the next price level in the order book.</p>

	<p>There has been a general downward trend in trading fees in recent years, in particular for securities below \$1, and there have been a growing number of marketplaces that pay rebates for active order flow (referred to as “inverted maker-taker”). Trading fees for securities at or above \$1 have become somewhat static and there is the potential for marketplaces to use high rebate, high active fee business models as OPR limits the ability of participants to choose to not trade on marketplaces with high active fees.</p> <p>Data Fees</p> <p>The cost of accessing real-time market data from all marketplaces has increased along with the number of visible marketplaces. We estimate that the single monthly professional subscriber cost of accessing level 1 and level 2 data from all marketplaces is approximately \$110 and \$275, respectively.</p> <p>Marketplaces are monopoly providers of their own market data and data from one marketplace cannot be used as a substitute for data from another marketplace. This market power may allow some marketplaces to charge market data fees that are not proportionate to the trading activity on those marketplaces.⁸¹</p> <p>Other Costs</p> <p>Marketplace participants have also indicated that OPR creates or compounds certain inefficiencies. For example, the current OPR may create excessive fragmentation of displayed liquidity which can lead to increased transaction costs.⁸²</p> <p>Increasing costs may threaten the financial viability of some market participants. This risk is likely to be higher for smaller firms that are limited in their ability to benefit from economies of scale and scope.</p>
Marketplaces	<p>Under the current framework, marketplaces are able to price services based on market conditions and the current regulatory requirements for marketplace participants. Some may take advantage of the fact that some marketplace participants are constrained in their ability to not consume certain services.</p> <p>All marketplaces that display bids and offers benefit from the current OPR. Since marketplaces and marketplace participants need to take steps to ensure that better-priced orders are not traded-through, marketplaces are able to compete for limit and marketable orders. In particular, marketplace participants are not able to wholly focus their order routing on marketplaces in which they have an ownership stake regardless of any better-priced orders displayed on other marketplaces.</p>
Vendors	<p>Third-party vendors of order routing services are subject to the same access and connectivity costs as those identified for marketplace participants and so are subject to similar issues associated with cost inefficiencies. These costs are ultimately passed through to clients either directly or indirectly.</p>

What alternative solutions were considered?

Through the course of our review and analysis we have identified a number of potential courses of action:

1. *Maintain the status quo*

While the status quo maintains all the benefits of the current OPR regime it does so at the cost of creating potential market power for marketplaces and fostering certain inefficiencies. It is our view that the costs of the status quo are not proportionate to the benefits achieved and that changes should be made to address the identified concerns.

⁸¹ The issues surrounding fees for real-time market data were discussed in detail in CSA Staff Consultation Paper 21-401 *Real-Time Market Data Fees*.

⁸² See Notice for further discussion of inefficiencies and potential transaction costs.

2. *Remove the Order Protection Rule and rely on the application of Best Execution requirements*

Removing OPR completely would likely result in retail and institutional investors finding their limit orders being traded through on some marketplaces as marketplace participants would have more flexibility to determine which marketplaces to access for trading. Best execution obligations would still apply to marketplace participants when executing client orders, however, there would be an increased risk that investor confidence in the efficiency and fairness of the market would be adversely impacted.

Marketplace participants would have greater ability to determine which marketplaces they access and buy data from, and may have flexibility to no longer access each marketplace (subject to best execution obligations). Connecting to fewer marketplaces would provide the opportunity for reduced access and connectivity costs, and would allow for more flexibility to avoid trading on marketplaces with high trading fees.

Allowing marketplace participants greater flexibility regarding which marketplaces they send orders to (subject to best execution) may increase the extent to which marketplaces compete on the basis of fees. In the longer run, this option could lead to fewer marketplaces in Canada and a less competitive environment. This could mean less innovation and the potential for increases in some costs.

Removing OPR provides marketplace participants with the greatest degree of flexibility in controlling their costs. However, it would likely reduce the confidence that investors have that if they display a best-priced order it will be executed before other orders at an inferior price.

There may also be increased instances of harm to participants posting limit orders where best execution may not be consistent with best price, for example when a participant would rather execute a larger order at a slightly inferior price rather than execute an order in more than one part.

Given the high likelihood of negative impact on market confidence, it is our view that this option should not be pursued.

3. *Focus on regulating fees charges by marketplaces*

While addressing a number of the symptoms of the current cost and efficiency concerns arising from OPR, it would not address the market power issues that may be leading to cost inefficiencies.

Focusing on fee regulation would preserve the current OPR framework and the associated benefits. Impacts from this approach would be focused on the fees charged by marketplaces and may impact the revenue generated by those fees.

To the extent that greater fee regulation results in lower fees, marketplace participants would see reduced costs. However, this approach would not impact the source of the issue, namely the application of OPR.

4. *Limit the application of the Order Protection Rule to those marketplaces that meet a stated threshold of activity (e.g. volume traded)*

Retail and institutional investors may be impacted to the extent their limit orders are placed on marketplaces that are no longer protected. They would risk being traded-through. However, price priority across marketplaces would still apply for those marketplaces that are deemed protected.

Marketplace participants would have greatly flexibility to determine whether or not to connect to or access trading on those marketplaces that are below the applied threshold. For those marketplaces that are no longer accessed, marketplace participants would save with respect to the costs of access, connectivity and market data.

Marketplaces below the threshold would have increased need to compete based on their service offerings. These marketplaces could no longer rely on OPR to ensure that active orders were routed to execute against their displayed orders.

In isolation, the threshold approach would provide increased flexibility to marketplace participants and address some of the costs and inefficiencies of the current regime. However, this approach does not address concerns about the pricing of services by marketplaces above the OPR threshold.

Policy Proposal

Given the above comparison of alternative solutions, CSA staff are, as discussed in the Notice, proposing a combination of a threshold for the application of OPR and enhanced fee regulation. The proposal includes the following changes:

- OPR would be amended so that only orders on marketplaces that meet a 5% adjusted market share threshold will be protected.⁸³
- New best execution disclosure requirements for dealers would be imposed.
- Limits would be placed on the amounts marketplaces can charge for active trading fees. Specifically a \$0.003 per security / unit cap for equity securities and ETFs trading at or above \$1 and \$0.0004 per security / unit for equity securities and ETFs trading below \$1.
- Implement a transparent methodology for assessing the relative value of real-time market data for the purposes of conducting regulatory oversight of professional real-time data subscriber fees.
- Require marketplaces to submit their professional market data fees for review and re-approval on an annual basis.

Anticipated Impact of Proposals

Retail Investors

The proposed changes will have a limited impact on retail investors in Canada's equities markets. Most retail investor limit orders are sent to those markets with the largest market share. Our analysis of order routing activity indicates that the majority of retail limit orders may be sent to the marketplaces that would be protected under the proposed threshold approach.⁸⁴ We anticipate that retail investors will see little impact as a result of some marketplaces no longer benefiting from OPR protection. As such, confidence will be maintained that their orders will not be traded-through.

Retail investors may see some reduction in their trading costs if the proposals address the current market inefficiencies and reduce dealer costs. This assumes that any cost savings on the part of dealers are passed on in some form to clients.

Institutional Investors

Institutional investors may also see some reduction in their trading costs if the proposals address the current market inefficiencies and reduce dealer costs. Although, as with retail investors, this assumes any dealer cost savings will be passed on to clients.

We also do not anticipate that the changes will have a significant impact on protection of institutional limit orders or institutional order routing behaviour. Our analysis indicates that the majority of institutional limit orders are sent to a market that would be protected under the proposed threshold.⁸⁵

Marketplace Participants

The proposed amendments provide marketplace participants with the ability to determine whether to access the displayed orders on marketplaces below the 5% threshold. Some marketplace participants may no longer choose to access trading on those marketplaces below the OPR threshold. It is anticipated that the explicit costs savings associated with this would be approximately \$1,200 per month per marketplace participant.⁸⁶

Marketplace participants may also be able to reduce their expenditure on real-time market data from unprotected marketplaces. There may also be additional connectivity and technology related costs saving. However, the extent of these saving will vary from firm to firm depending on factors such as size and business model.

When choosing whether to maintain access to unprotected marketplaces, marketplace participants will still need to consider their best execution obligations. Marketplaces below the threshold may still offer best execution opportunities for a marketplace participant's clients. This will impact the ultimate cost savings for a marketplace participant. It is anticipated that even with the change in OPR, some marketplace participants will continue to access trading directly on all marketplaces to the extent it is an important product offering or competitive differentiator.

⁸³ We propose that the 5% adjusted market share threshold be calculated on a combined average share of the volume and value traded (each equally weighted). It is proposed that this will be calculated over a one-year period and applied at the market or facility level where the marketplace is comprised of more than one visible market or facility.

⁸⁴ See Appendix A-1 to Annex A for a more detailed discussion of our analysis of order routing activity.

⁸⁵ Ibid.

⁸⁶ The marketplaces that would be below the threshold, if applied to adjusted market share for 2013, have combined subscriber fees of \$1,200 per month.

In addition to the cost savings associated with marketplaces that no longer display protected orders, marketplace participants may see reductions in their trading costs due to the imposition of the proposed trading fee caps. The extent of those cost saving will depend on each marketplace participant's trading activity. The proposed approach to market data fees may also lead to lower costs associated with those marketplaces above the 5% adjusted market share threshold.

Marketplace participants may need to alter programming for order routers to reflect the change in the marketplaces that should be considered/monitored. It is anticipated that there would be an immediate cost associated with this along with annual costs as the list of protected marketplaces is revised.

The proposed amendments include a new best execution disclosure requirement which would result in additional costs for dealers. This would include the initial cost of creating the disclosure and lesser ongoing costs associated with updating the disclosure as necessary and providing it to clients.

The proposal contemplates that the disclosure can be made via the dealer's website, or in writing if the dealer does not have a website. The disclosure must be reviewed and updated on a frequency that is reasonable in the circumstances. As such, we anticipate that the cost of creating and updating the disclosure as well as providing it to clients should be limited.

Marketplaces

The most significant impact would be on those marketplaces that do not meet the proposed 5% threshold level. Based on applying the threshold to adjusted market share for 2013, we would anticipate that orders on five of the nine visible marketplaces operating today would not be protected.

Without protected orders, a marketplace would need to find other ways to attract both passive and active liquidity. The proposed trading fee caps will limit the ability of marketplaces to offer excessive rebates for passive liquidity to attract active orders. Unprotected marketplaces may have to attract liquidity by lowering trading and/or data fees. This may make it more challenging for some unprotected marketplaces to remain financially viable.

The proposed 5% adjusted market share threshold would be expected to impact any party that may consider opening a trading facility in Canada or those that currently operate a marketplace and are considering opening additional trading facilities (e.g. additional order books). The current OPR is seen by many marketplace participants as setting too low a bar for new marketplaces as marketplace participants are required to be able to access, either directly or indirectly, the displayed orders on a new marketplace even before there has been a single share traded. Implementation of the threshold may address this concern by increasing the barriers to entry for new visible equities marketplaces in Canada.

Marketplaces that operate smart order routers would need to reprogram those routers, as well as any functionality to avoid locked and crossed markets, to reflect the list of protected marketplaces. This would need to be done upon implementation of the rule and on an annual basis, thereafter.

The current proposal will also impact those marketplaces that charge trading fees in excess of the proposed cap for trading in equity securities and ETFs. Currently three marketplaces have fees for securities at or above \$1 that are greater than the proposed \$0.003 per share/unit limit. We estimate that approximately 40% of the trading in equity securities at or above \$1 would incur fees in excess of the proposed cap. With respect to the cap for trading in securities below \$1, no marketplaces will be impacted as all have fees that are at or below the proposed cap of \$0.0004 per share/unit.

Impacted marketplaces may be able to adjust the rebate they provide to passive orders to maintain the profit they currently make on each trade. Rebates are intended to incent participants to display liquidity for stocks. Reducing that incentive may impact the amount of liquidity that is displayed on a marketplace. Marketplaces that are forced to lower their active fees and potentially their passive rebates may see a reduction in the number of executed trades and therefore lower revenue. However, we are not able to predict the impact of lower fees and rebates in advance of the change being implemented.

While the current proposals do not impose limits on market data fees, we anticipate that there is the potential for an impact on marketplace data fee revenues. Implementation of the proposed assessment methodology and annual resubmission of market data fees for review and re-approval may result in downward pressure on the fees charged by some marketplaces. In addition, marketplaces that are below the OPR threshold may experience competitive pressure to reduce the market data fees in order to attract purchasers.

We anticipate that marketplaces will incur minor process related costs associated with the resubmission and re-approval of fees each year. At this time it is challenging to predict how marketplaces will respond to the proposal and how market data fees may change over time.

The proposals are likely to have some impact on the revenue that marketplaces earn from trading fees and market data fees. At this time, we are unable to quantify the ultimate impact on marketplace revenues. However, as profit maximizing organisations we would expect that affected marketplaces will look for opportunities to make up for any reductions in revenue in other areas. This could take place in a number of forms including, looking for opportunities to attract greater trading activity, offering increased value-added services or raising other fees.

It is our view that these impacts are proportionate to the benefits sought. We request comment on all aspects of the impacts of the proposals and possible alternatives, in particular comments that include both qualitative information and data quantifying the costs and the benefits identified.

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 SecuritiesSource (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

REPORT OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price (\$)	No. of Securities Distributed
02/14/2014 to 02/19/2014	5	Barclays Bank PLC - Notes	428,408.75	3,849.83
01/02/2013 to 12/31/2013	24	Barometer Global Tactical Balanced Pool - Trust Units	855,034.90	77,661.22
10/31/2013 to 11/29/2013	2	Black Creek Focus Fund - Units	88,502,841.23	N/A
11/29/2013 to 12/31/2013	4	BT Global Growth Fund L.P. - Units	264,111.45	N/A
01/31/2013 to 12/31/2013	121	Caldwell Canadian Value Momentum Fund - Units	8,823,863.31	720,799.03
11/29/2013 to 12/31/2013	7	Caldwell ICM Market Strategy Trust - Units	143,453.22	13,626.09
02/05/2014	3	Carube Resources Inc. - Units	50,000.00	250,000.00
09/12/2013	2	Catterton Partners VII L.P. - Limited Partnership Interest	139,320,000.00	N/A
01/31/2013 to 10/31/2013	209	Claret Growth Limited Partnership - Limited Partnership Units	354,107.16	386,093.00
11/01/2013 to 12/27/2013	294	Covenant Fixed Income Pool - Trust Units	31,782,768.20	3,182,014.23
01/08/2013 to 12/06/2013	296	Covenant Mortgage Pool - Trust Units	17,319,688.16	1,712,562.28
06/01/2013 to 11/01/2013	4	Crestline Offshore Recovery Fund II L.P. - Limited Partnership Interest	8,053,321.62	1.00
04/30/2013 to 12/17/2013	3	Crestpoint Institutional Real Estate Trust - Units	11,364,639.00	1,060,129.00
04/30/2013 to 12/17/2013	11	Crestpoint Real Estate Investments Limited Partnership - Units	49,009,524.93	3,985,135.00
01/01/2013 to 12/31/2013	202	Cypress Canadian Equity Fund - Units	2,747,581.59	2,324.14
01/01/2013 to 12/31/2013	277	Cypress High Yield Fund - Units	6,345,924.74	13,869.14
01/01/2013 to 12/31/2013	26	Cypress Oil & Gas Fund - Units	108,500.00	294.93
01/01/2013 to 12/31/2013	84	Cypress Resource Fund - Units	1,132,680.00	1,336.08
01/01/2013 to 12/31/2013	135	Cypress Science & Technology Fund - Units	1,056,700.00	5,118.59

Notice of Exempt Financings

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price (\$)	No. of Securities Distributed
01/01/2013 to 12/31/2013	243	Cypress Small Cap Growth Fund - Units	2,124,500.00	1,265.71
01/01/2013 to 12/31/2013	288	Cypress US Equity Fund - Units	3,432,817.00	9,101.57
12/20/2013	11	Delbrook Resource Opportunities Fund - Units	2,283,246.70	N/A
12/02/2011 to 12/06/2011	3	Delivra Inc. - Common Shares	840,000.00	1,386,000.00
02/18/2011	1	Delivra Inc. - Common Shares	50,000.00	100,000.00
10/30/2010 to 10/31/2010	4	Delivra Inc. - Common Shares	285,000.00	570,000.00
10/16/2009 to 10/21/2009	2	Delivra Inc. - Common Shares	20,000.00	50,000.00
10/26/2009 to 11/01/2009	4	Delivra Inc. - Common Shares	170,000.00	377,500.00
11/20/2009	4	Delivra Inc. - Common Shares	40,150.00	80,300.00
02/04/2010	1	Delivra Inc. - Common Shares	10,000.00	20,000.00
07/19/2010 to 07/29/2010	4	Delivra Inc. - Common Shares	100,000.00	200,000.00
12/10/2009 to 12/17/2009	19	Delivra Inc. - Common Shares	355,000.00	710,000.00
10/30/2009 to 12/07/2009	5	Delivra Inc. - Common Shares	80,000.00	160,000.00
02/28/2013 to 07/31/2013	2	Duncan Ross Pooled Trust - Units	685,000.00	1,723.10
10/11/2013	11	dynaCert Inc. (Formerly Dynamic Fuel Systems Inc.) Amended - Units	590,500.05	3,374,286.00
01/01/2013 to 12/31/2013	2	Emerging Sovereign Group LLC - Common Shares	2,547,950.00	1,894.44
01/01/2013 to 12/31/2013	1	Emerging Sovereign Group LLC - Common Shares	499,350.00	702.40
01/01/2013 to 12/31/2013	74	FGP Balanced Pooled Fund - Units	21,847,558.00	462,252.48
01/01/2013 to 12/31/2013	357	FGP Bond Pooled Fund - Units	143,509,694.00	4,193,985.79
01/01/2013 to 12/31/2013	11	FGP Canadian Balanced Pooled Fund - Units	11,444,118.00	1,084,778.28
01/01/2013 to 12/31/2013	215	FGP Canadian Equity Pooled Fund - Units	138,498,931.00	1,086,732.87
01/01/2013 to 12/31/2013	55	FGP Corporate Bond Pooled Fund - Units	42,168,773.00	3,446,324.72
01/01/2013 to 12/31/2013	2	FGP Developing Markets Pooled Fund - Units	15,040,000.00	2,069,104.83

Notice of Exempt Financings

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price (\$)	No. of Securities Distributed
01/01/2013 to 12/31/2013	1	FGP Enhanced Yield Corporate Bond Pooled Fund - Units	5,289,228.00	532,919.66
01/01/2013 to 12/31/2013	7	FGP Foreign Equity Class 'A' Pooled Fund - Units	2,747,100.00	218,363.37
01/01/2013 to 12/31/2013	6	FGP Foreign Equity Class 'B' Pooled Fund - Units	17,345,984.00	1,262,708.30
01/01/2013 to 12/31/2013	187	FGP Income Pooled Fund - Units	22,067,935.00	551,996.71
01/01/2013 to 12/31/2013	106	FGP International Equity Pooled Fund - Units	60,305,824.00	1,589,280.18
01/01/2013 to 12/31/2013	13	FGP Private Balanced Pooled Fund - Units	2,762,521.00	57,626.47
01/01/2013 to 12/31/2013	159	FGP Private Canadian Equity Pooled Fund - Units	15,213,930.00	205,376.51
01/01/2013 to 12/31/2013	16	FGP Private Developing Markets Pooled Fund - Units	13,352,680.00	1,691,892.07
01/01/2013 to 12/31/2013	280	FGP Private International Equity Pooled Fund - Units	45,785,519.00	628,534.27
01/01/2013 to 12/31/2013	101	FGP Private U.S. Equity Pooled Fund - Units	9,861,980.00	194,401.32
01/01/2013 to 12/31/2013	13	FGP Short Bond Pooled Fund - Units	1,773,000.00	175,513.29
01/01/2013 to 12/31/2013	282	FGP Short Term Investment Pooled Fund - Units	1,117,083,221.00	61,269,320.00
01/01/2013 to 12/31/2013	79	FGP Small Cap Canadian Equity Pooled Fund - Units	57,456,624.00	3,658,968.43
01/01/2013 to 12/31/2013	77	FGP U.S. Equity Pooled Fund - Units	19,012,920.00	562,995.13
03/19/2013 to 03/22/2013	1	Forex Capital Markets, LLC - N/A	0.00	13,585.00
04/01/2013 to 12/01/2013	31	Forge First Long Short LP - Limited Partnership Units	5,455,000.00	5,455.00
07/01/2013 to 12/01/2013	26	Forge First Multi Strategy LP - Limited Partnership Units	7,245,000.00	7,245.00
03/24/2013 to 04/02/2013	1	FXCM Securities Limited - N/A	0.00	17,971.00
04/04/2013 to 04/16/2013	1	FXCM Securities Limited - N/A	0.00	38,757.00
04/17/2013 to 04/30/2013	1	FXCM Securities Limited - N/A	0.00	45,256.00
01/01/2013 to 12/31/2013	300	Heward Canadian Dividend Growth Fund - Units	6,960,681.73	509,296.84
01/01/2013 to 12/31/2013	91	Heward Fund - Units	2,624,400.00	246,477.05

Notice of Exempt Financings

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price (\$)	No. of Securities Distributed
01/01/2013 to 12/31/2013	6	Lazard Global Listed Infrastructure (Canada) Fund - Units	39,602,736.90	3,308,118.21
05/01/2013 to 11/01/2013	2	Marathon Special Opportunity Fund Ltd. - Common Shares	39,114,534.00	379,129.00
02/28/2013 to 06/28/2013	3	Niagara Discovery Fund - Units	554,507.35	28,368.63
01/31/2013 to 12/31/2013	8	Niagara Legacy Class B Fund - Limited Partnership Units	3,751,854.95	143,201.86
01/23/2014	30	Palisade Vantage Fund - Units	1,849,119.03	151,443.00
01/15/2013 to 12/31/2013	232	Perennial Equity Portfolio - Units	10,482,206.77	926,876.82
03/01/2013 to 07/01/2013	5	Performance Balanced Fund - Units	593,835.75	N/A
01/01/2013 to 12/01/2013	15	Performance Diversified Fund - Units	1,068,322.60	N/A
07/01/2013	2	Pershing Square Holdings Ltd. - Units	2,231,153.60	N/A
02/01/2013 to 12/01/2013	3	Pershing Square International Ltd. - Units	7,232,447.10	NA
01/11/2013 to 10/18/2013	23	Pier 21 Global Value Pool - Units	25,450,020.00	N/A
01/02/2013 to 12/02/2013	638	Romspen Mortgage Investment Fund - Units	138,327,650.00	13,832.77
01/01/2013 to 12/31/2013	191	SMI Defensive LP - Units	55,153,633.81	N/A
02/01/2013 to 07/31/2013	7	SMI Income LP - Units	682,762.69	578.76
01/01/2013 to 09/30/2013	49	SMI Opportunities LP - Units	18,687,213.97	N/A
01/02/2013 to 12/02/2013	20	SW8 Asset Management Inc. - Trust Units	730,331.72	68,574.92
02/18/2014	21	UBS AG, Jersey Branch - Certificates	9,237,247.23	N/A
01/01/2013 to 12/31/2013	34	Walter Scott & Partners Global Fund - Units	524,402,651.45	30,049,213.37
06/13/2013	80	Yonge-Yorkville-Cumberland Fund - Units	6,906,000.00	69,060.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:

Atrium Mortgage Investment Corporation
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated May 7, 2014
NP 11-202 Receipt dated May 7, 2014

Offering Price and Description:

\$30,096,000.00 - 2,640,000 Common Shares
Price: \$11.40 per Offered Share

Underwriter(s) or Distributor(s):

TD SECURITIES INC.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
INDUSTRIAL ALLIANCE SECURITIES INC.
DUNDEE SECURITIES LTD.
MACKIE RESEARCH CAPITAL CORPORATION

Promoter(s):

-

Project #2203066

Issuer Name:

Canacol Energy Ltd.
Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated May 9, 2014
NP 11-202 Receipt dated May 9, 2014

Offering Price and Description:

\$125,001,700.00 - 15,823,000 Common Shares
Price: \$7.90 per Common Share

Underwriter(s) or Distributor(s):

CANACCORD GENUITY CORP.
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
CORMARK SECURITIES INC.
DESJARDINS SECURITIES INC.
GMP SECURITIES L.P.
MACKIE RESEARCH CAPITAL CORPORATION

Promoter(s):

-

Project #2204672

Issuer Name:

Crombie Real Estate Investment Trust
Principal Regulator - Nova Scotia

Type and Date:

Preliminary Base Shelf Prospectus dated May 6, 2014
NP 11-202 Receipt dated May 6, 2014

Offering Price and Description:

\$500,000,000.00:
Units

Debt Securities

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #2204464

Issuer Name:

DeeThree Exploration Ltd.
Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated May 9, 2014
NP 11-202 Receipt dated May 9, 2014

Offering Price and Description:

\$60,051,000.00 - 5,410,000 Common Shares
Price: \$11.10 per Common Share
and

\$10,001,600 - 752,000 Flow-Through Shares
Price: \$13.30 per Flow-Through Share

Underwriter(s) or Distributor(s):

CORMARK SECURITIES INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
RAYMOND JAMES LTD.
CIBC WORLD MARKETS INC.
DUNDEE SECURITIES LTD.
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
DESJARDINS SECURITIES INC.

Promoter(s):

-

Project #2206761

Issuer Name:

Dividend 15 Split Corp.
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated May 12, 2014
NP 11-202 Receipt dated May 12, 2014

Offering Price and Description:

Maximum: \$ * - * Preferred Shares and * Class A Shares
Prices: \$* per Preferred Share and \$ * per Class A Share

Underwriter(s) or Distributor(s):

National Bank Financial Inc.

Promoter(s):

-

Project #2207287

Issuer Name:

Immunovaccine Inc.
Principal Regulator - Nova Scotia

Type and Date:

Preliminary Short Form Prospectus dated May 6, 2014
NP 11-202 Receipt dated May 6, 2014

Offering Price and Description:

\$ * - * Common Shares
Price: \$ * per Offered Share

Underwriter(s) or Distributor(s):

CORMARK SECURITIES INC.

Promoter(s):

-

Project #2204470

Issuer Name:

Long Run Exploration Ltd.
Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated May 6, 2014
NP 11-202 Receipt dated May 6, 2014

Offering Price and Description:

\$67,702,297 - 12,654,635 Common Shares
Price \$5.35 per Common Share

Underwriter(s) or Distributor(s):

National Bank Financial Inc.

Cormark Securities Inc.

GMP Securities L.P.

TD Securities Inc.

Canaccord Genuity Corp.

Clarus Securities Inc.

Scotia Capital Inc.

Promoter(s):

-

Project #2202533

Issuer Name:

NorthWest International Healthcare Properties Real Estate
Investment Trust
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated May 6, 2014
NP 11-202 Receipt dated May 6, 2014

Offering Price and Description:

\$20,000,000.00 - 9,756,098 Units
Price: \$2.05 per Unit

Underwriter(s) or Distributor(s):

National Bank Financial Inc.

GMP Securities L.P.

BMO Nesbitt Burns Inc.

Canaccord Genuity Corp.

Scotia Capital Inc.

Dundee Securities Ltd.

Manulife Securities Incorporated

Raymond James Ltd.

Desjardins Securities Inc.

Laurentian Bank Securities Inc.

All Group Financial Services Inc.

Promoter(s):

-

Project #2201332

Issuer Name:

Searchtech Ventures Inc.
Principal Regulator - Ontario

Type and Date:

Preliminary CPC Prospectus dated May 5, 2014
NP 11-202 Receipt dated May 6, 2014

Offering Price and Description:

Minimum of \$ * - * Common Shares
Maximum of \$ * - * Common Shares
Price: \$0.10 per Common Share

Underwriter(s) or Distributor(s):

M Partners Inc.

Promoter(s):

-

Project #2204006

Issuer Name:

Stornoway Diamond Corporation
Principal Regulator - Quebec

Type and Date:

Second Amended and Restated Preliminary Short Form
Prospectus dated May 7, 2014
NP 11-202 Receipt dated May 7, 2014

Offering Price and Description:

\$184,000,000 - * Subscription Receipts, each representing
the right to receive
one Common Share and one-half of one Common Share
Purchase Warrant

Price: \$ * per Subscription Receipt

Underwriter(s) or Distributor(s):

SCOTIA CAPITAL INC.
DUNDEE SECURITIES LTD.
RBC DOMINION SECURITIES INC.
DESJARDINS SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
LAURENTIAN BANK SECURITIES INC.
PARADIGM CAPITAL INC.

Promoter(s):

-

Project #2191552

Issuer Name:

Vanguard FTSE All-World ex Canada Index ETF
Vanguard FTSE Developed Asia Pacific Index ETF
Vanguard FTSE Developed Europe Index ETF
Vanguard Global ex-U.S. Aggregate Bond Index ETF
(CAD-hedged)
Vanguard U.S. Aggregate Bond Index ETF (CAD-hedged)
Principal Regulator - Ontario

Type and Date:

Preliminary Long Form Prospectus dated May 9, 2014
NP 11-202 Receipt dated May 12, 2014

Offering Price and Description:

Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

VANGUARD INVESTMENTS CANADA INC.
Project #2207071

Issuer Name:

Altius Minerals Corporation
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated May 6, 2014
NP 11-202 Receipt dated May 7, 2014

Offering Price and Description:

\$65,002,000.00
4,643,000 Common Shares
Price: \$14.00 per Common Share

Underwriter(s) or Distributor(s):

SCOTIA CAPITAL INC.
HAYWOOD SECURITIES INC.
BMO NESBITT BURNS, INC.
SPROTT PRIVATE WEALTH L.P.
RAYMOND JAMES LTD.
SALMAN PARTNERS INC.

Promoter(s):

-

Project #2198470

Issuer Name:

Australian REIT Income Fund
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated May 7, 2014
NP 11-202 Receipt dated May 7, 2014

Offering Price and Description:

Warrants to Subscribe for up to 2,665,637 Class A Units at
a Subscription Price of \$8.93 per Class A Unit
Warrants to Subscribe for up to 69,835 Class F Units at a
Subscription Price of \$9.26 per Class F Unit

Underwriter(s) or Distributor(s):

-

Promoter(s):

Harvest Portfolio Group Inc.
Project #2194697

Issuer Name:

BMO Harris Canadian Money Market Portfolio
 BMO Harris Canadian Short-Term Bond Portfolio
 BMO Harris Canadian Mid-Term Bond Portfolio
 BMO Harris Canadian Corporate Bond Portfolio
 BMO Harris Diversified Yield Portfolio
 BMO Harris Canadian Income Equity Portfolio
 BMO Harris Canadian Conservative Equity Portfolio
 BMO Harris Canadian Growth Equity Portfolio
 BMO Harris Canadian Special Growth Portfolio
 BMO Harris U.S. Equity Portfolio
 BMO Harris U.S. Growth Portfolio
 BMO Harris U.S. Special Equity Portfolio
 BMO Harris International Equity Portfolio
 BMO Harris Emerging Markets Equity Portfolio
 Principal Regulator - Ontario

Type and Date:

Final Simplified Prospectuses dated May 7, 2014
 NP 11-202 Receipt dated May 8, 2014

Offering Price and Description:

Mutual fund at Net Asset Value

Underwriter(s) or Distributor(s):

BMO Investments Inc.

Promoter(s):

BMO Harris Investment Management Inc.

Project #2190291

Issuer Name:

Series A, Series C, Series F and Series I Units (as indicated) of:

CC&L Core Income and Growth Fund
 (Series A, Series C and Series F)
 CC&L Equity Income and Growth Fund
 (Series A and Series F)
 CC&L Global Alpha Fund
 (Series A and Series F)
 CC&L High Yield Bond Fund
 (Series A, Series F and Series I)
 Principal Regulator - Ontario

Type and Date:

Final Simplified Prospectuses dated April 30, 2014
 NP 11-202 Receipt dated May 8, 2014

Offering Price and Description:

Series A, Series C, Series F and Series I Units @ Net Asset Value

Underwriter(s) or Distributor(s):

-

Promoter(s):

Connor, Clark & Lunn Funds Inc.

Project #2177941

Issuer Name:

CI G5|20 2039 Q2 Fund
 Principal Regulator - Ontario

Type and Date:

Final Simplified Prospectus dated May 9, 2014
 NP 11-202 Receipt dated May 12, 2014

Offering Price and Description:

Class A, F and O units @ Net Asset Value

Underwriter(s) or Distributor(s):

-

Promoter(s):

CI Investments Inc.

Project #2176919

Issuer Name:

CI G5|20i 2034 Q2 Fund
 Principal Regulator - Ontario

Type and Date:

Final Simplified Prospectus dated May 9, 2014
 NP 11-202 Receipt dated May 12, 2014

Offering Price and Description:

Class A, F and O units @ Net Asset Value

Underwriter(s) or Distributor(s):

-

Promoter(s):

CI Investments Inc.

Project #2163935

Issuer Name:

EdgePoint Canadian Portfolio
 EdgePoint Global Portfolio
 EdgePoint Canadian Growth & Income Portfolio
 EdgePoint Global Growth & Income Portfolio
 (Series A Units, Series B Units, Series F Units, Series I Units, Series O Units, Series A(N) Units, Series B(N) Units and Series F(N) Units)
 Principal Regulator - Ontario

Type and Date:

Final Simplified Prospectuses dated May 9, 2014
 NP 11-202 Receipt dated May 12, 2014

Offering Price and Description:

Series A Units, Series B Units, Series F Units, Series I Units, Series O Units, Series A(N) Units, Series B(N) Units and Series F(N) Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #2191398

Issuer Name:

First Asset Canadian Dividend Opportunity Fund
Principal Regulator - Ontario

Type and Date:

Amendment #1 dated May 1, 2014 to the Annual
Information Form dated April 21, 2014
NP 11-202 Receipt dated May 12, 2014

Offering Price and Description:

Class A units and Class F Units @ Net Asset Value

Underwriter(s) or Distributor(s):

-

Promoter(s):

First Asset Investment Management Inc.

Project #2154445

Issuer Name:

Goviex Uranium Inc.
Principal Regulator - British Columbia

Type and Date:

Final Long Form Prospectus dated May 8, 2014
NP 11-202 Receipt dated May 9, 2014

Offering Price and Description:

Minimum 697,674 Class A Common Shares
(US\$1,500,000)
Maximum 2,325,581 Class A Common Shares
(US\$5,000,000)
US\$2.15 per Class A Common Share

Underwriter(s) or Distributor(s):

Salman Partners Inc.

Promoter(s):

Govind Friedland

Project #2184770

Issuer Name:

Grenville Strategic Royalty Corp.
Principal Regulator - British Columbia

Type and Date:

Final Short Form Prospectus dated May 9, 2014
NP 11-202 Receipt dated May 9, 2014

Offering Price and Description:

\$10,000,000.00 - 20,000,000 Common Shares Issuable on
Exercise or Deemed Exercise of 20,000,000 Special
Warrants

Underwriter(s) or Distributor(s):

National Bank Financial Inc.
Raymond James Ltd.
Canaccord Genuity Corp.
Haywood Securities Inc.

Promoter(s):

William R. Tharp
Steven Parry
Project #2196079

Issuer Name:

Hemisphere Energy Corporation
Principal Regulator - British Columbia

Type and Date:

Final Short Form Prospectus dated May 7, 2014
NP 11-202 Receipt dated May 7, 2014

Offering Price and Description:

\$10,000,125.00
13,333,500 COMMON SHARES
Price: \$0.75 per Common Share

Underwriter(s) or Distributor(s):

Canaccord Genuity Corp.
Dundee Securities Ltd.
Industrial Alliance Securities Inc.
Integral Wealth Securities Limited
PI Financial Corp.

Promoter(s):

-

Project #2198125

Issuer Name:

MDPIM Emerging Markets Equity Pool
Principal Regulator - Ontario

Type and Date:

Final Simplified Prospectus dated May 7, 2014
NP 11-202 Receipt dated May 12, 2014

Offering Price and Description:

Series A and Series T units @ Net Asset Value

Underwriter(s) or Distributor(s):

MD Management Limited

Promoter(s):

MD Physician Services Inc.

Project #2162524

Issuer Name:

North American Preferred Share Fund
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated May 5, 2014
NP 11-202 Receipt dated May 6, 2014

Offering Price and Description:

Warrants to Subscribe for up to 1,478,500 Units at a
Subscription Price of \$22.80

Underwriter(s) or Distributor(s):

-

Promoter(s):

Propel Capital Corporation

Project #2193167

Issuer Name:

North American REIT Income Fund
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated May 5, 2014
NP 11-202 Receipt dated May 6, 2014

Offering Price and Description:

Warrants to Subscribe for up to 2,140,000 Units at a
Subscription Price of \$9.93

Underwriter(s) or Distributor(s):

-

Promoter(s):

Propel Capital Corporation

Project #2193157

Issuer Name:

ROI Canadian Retirement Fund
(Series A Units, Series F Units, Series O Units, Series 5
Units and Series 7 Units)
ROI Global Retirement Fund
(Series A Units, Series F Units, Series O Units, Series 5
Units, Series 7 Units and Series 9 Units)
ROI Canadian Top 30 Small Cap Picks Fund
(Series A Units, Series C-7 Units, Series F Units, Series 7
Units and Series 9 Units)
ROI Global Supercycle Fund
(Series A Units, Series F Units, Series O Units, Series 7
Units and Series 9 Units)
ROI Canadian Top 20 Picks Fund
(Series A Units and Series F Units)
Principal Regulator - Ontario

Type and Date:

Final Simplified Prospectuses and Annual Information Form
dated May 9, 2014

NP 11-202 Receipt dated May 12, 2014

Offering Price and Description:

Series A Units, Series F Units, Series O Units, Series 5
Units, Series 7 Units, Series C-7 Units and Series 9 Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

Return On Innovation Advisors Ltd.

Project #2191276

Issuer Name:

Senior Secured Floating Rate Loan Fund
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated May 5, 2014
NP 11-202 Receipt dated May 6, 2014

Offering Price and Description:

Warrants to Subscribe for up to 8,600,000 Class A Units at
a Subscription Price of \$9.84

Underwriter(s) or Distributor(s):

-

Promoter(s):

Propel Capital Corporation

Project #2193164

Issuer Name:

Tweed Marijuana Inc.
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated May 8, 2014
NP 11-202 Receipt dated May 9, 2014

Offering Price and Description:

4,687,500 Common Shares
Price: \$3.20 per Share

Underwriter(s) or Distributor(s):

GMP Securities LP
Jacob Securities Inc.

Promoter(s):

Bruce Linton
Charles Rifici

Project #2201262

Issuer Name:

Western Lithium USA Corporation
Principal Regulator - British Columbia

Type and Date:

Final Short Form Prospectus dated May 9, 2014
NP 11-202 Receipt dated May 9, 2014

Offering Price and Description:

\$8,004,000.00
13,800,000 Units
Price: \$0.58 per Unit

Underwriter(s) or Distributor(s):

Dundee Securities Ltd.
Haywood Securities Inc.

Promoter(s):

-

Project #2196487

Issuer Name:

Yangarra Resources Ltd.
Principal Regulator - Alberta

Type and Date:

Final Short Form Prospectus dated May 6, 2014
NP 11-202 Receipt dated May 6, 2014

Offering Price and Description:

\$25,000,250.00:
22,727,500 Common Shares
\$1.10 per Common Share

Underwriter(s) or Distributor(s):

ALTACORP CAPITAL INC.
CLARUS SECURITIES INC.
DUNDEE SECURITIES INC.
ACUMEN CAPITAL FINANCE PARTNERS LIMITED
INDUSTRIAL ALLIANCE SECURITIES INC.
PARADIGM CAPITAL INC.

Promoter(s):

-

Project #2196618

Issuer Name:

Global Convertibles Short Duration Fund
Principal Jurisdiction - Ontario

Type and Date:

Preliminary Long Form Prospectus dated January 29, 2014
Withdrawn on May 7, 2014

Offering Price and Description:

Maximum: \$100,000,000 - 10,000,000 Units
Price: \$10.00 per Unit
Minimum Purchase: 100 Units

Underwriter(s) or Distributor(s):

CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
CANACCORD GENUITY CORP.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
MANULIFE SECURITIES INCORPORATED

Promoter(s):

PROPEL CAPITAL CORPORATION

Project #2158987

Issuer Name:

Hakim Wealth Management Inc.

Type and Date:

Preliminary Long Form Prospectus dated October 31, 2013
Withdrawn on May 6, 2014

Offering Price and Description:

Maximum Offering: \$60,000,000 - 6,000,000 Preferred
Shares

Price: \$10.00 per Preferred Share

Underwriter(s) or Distributor(s):

-

Promoter(s):

Hamed Ali

Project #2119324

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Business	Stevloc Management Inc.	Exempt Market Dealer	April 8, 2014
New Business	Silverthorn Capital Incorporated	Exempt Market Dealer	April 28, 2014
Voluntary Surrender	Sora Group Wealth Advisors Inc.	Investment Dealer	May 8, 2014

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 IIROC – OSC Staff Notice of Request for Comment – Proposed Amendments to Universal Market Integrity Rules Regarding Order Protection

OSC STAFF NOTICE OF REQUEST FOR COMMENT

THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

PROPOSED AMENDMENTS TO UNIVERSAL MARKET INTEGRITY RULES (UMIR) REGARDING ORDER PROTECTION

On May 7, 2014, the Board of Directors of IIROC approved the publication for comment of proposed amendments to UMIR (“Proposed Amendments”) that are intended to align UMIR with amendments being proposed by the Canadian Securities Administrators to National Instrument 23-101 Trading Rules regarding order protection. The comment period for the Proposed Amendments ends on September 19, 2014.

A copy of the IIROC Notice including the Proposed Amendments is published on our website at www.osc.gov.on.ca.

13.2 Marketplaces

13.2.1 Chi-X Canada ATS and CX2 Canada ATS – OSC Staff Notice of Proposed Changes and Request for Comment – Form 21-101F2 – No-Self Cross Feature

CHI-X CANADA ATS AND CX2 CANADA ATS

OSC STAFF NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

Chi-X Canada ATS Limited has announced plans to implement changes to its Form 21-101F2 for both Chi-X Canada ATS and CX2 Canada ATS on or about 45 days after approval, and is publishing the Notice of Proposed Changes in accordance with the “Process for the Review and Approval of Rules and the Information Contained in Form 21-101F2 and the Exhibits Thereto”.

The changes will introduce a new option as part of the No-Self Cross Feature offered as part of the Chi-Controls Risk Management Suite. Subscribers will be able to select to have fill reports received for both orders without having a trade be reported on the public feed.

A copy of the Chi-X Canada Notice including the proposed changes was published on our website at www.osc.gov.on.ca.

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