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Dear Members of the Canadian Securities Administrators,

Re: Proposed Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules (Proposal)

TMX Group Inc. (TMX Group) welcomes the opportunity to comment on the Proposal published by the Canadian Securities Administrators (CSA). We believe that public comment is valuable and supports the integrity of the CSA's process. We respond to the Proposal in this letter and we address the specific questions raised by the CSA in Appendix I to this letter.

TMX Group owns and operates Canada's two largest national equities exchanges – Toronto Stock Exchange (TSX) serving the senior equity market and TSX Venture Exchange (TSXV) serving the public venture capital market - as well as Canada's national derivatives exchange, Montreal Exchange Inc. (MX). We endorse many of the ideas that are captured in the Proposal,

and we believe that an appropriate and vibrant securities regulatory framework is necessary in order to provide efficient Canadian markets to both domestic and global investors.

Two of TMX Group's main strategies are to enhance our core offering and to provide innovation through new products. While innovation can drive efficient capital markets, both of these strategies rely on a regulatory structure that enables marketplaces – both exchanges and ATSs - to compete fairly with one another and compete effectively with our global counterparts. One of the main goals of the Canadian multi-marketplace structure should be to deepen liquidity and narrow spreads on issues with the ultimate result of lowering the cost of capital for issuers listed on TSX and TSXV and making Canadian markets more attractive, thus benefitting investors. TMX Group continually improves our technology and develops new products in order to attract investors who want better and faster trade execution services, and who will thereby add liquidity to our markets and positively impact price discovery on TSX and TSXV.

ATSs and exchanges should be subject to the same level of regulatory scrutiny. Standards and requirements must be applied equally across all marketplaces by regulators. Issuers and investors should expect that a high quality level will be met by any marketplace in Canada that is permitted to execute trades. To facilitate marketplace innovation, regulatory response to new products must be immediate and applied fairly across market participants.

As marketplaces link for trade-through purposes (an option that is identified in the Proposal), the legacy view that exchanges serve a public policy function, while ATSs do not, must be revisited. As part of this review, the CSA should question the thesis that a marketplace (such as an ATS) does not need to meet the same standards as other marketplaces (such as exchanges) when it has less than 20 percent of any of the average daily dollar value, total trading volume, or number of trades[1]. Investors who trade Canadian-listed securities deserve to have their orders executed by reputable marketplaces that meet common criteria for quality and standards. To require any less, and to use an arbitrary 20 percent threshold to determine when different criteria are applied, seems inappropriate particularly given that an investor has no control over which marketplace will execute its order.

When an investor's order is routed to an ATS for best price execution, he or she should be able to review and understand the order matching rules that will govern the order's execution. Currently ATS allocation rules are not made public and any amendments thereto or new order types that are introduced by ATSs do not need to be published. When contrasted with the significant public comment procedures for new exchange rules or exchange rule amendments, this dichotomy is unwarranted. Similarly, it is not sensible that an exchange must prove to CSA members on a regular basis that it is financially sound[2], while an ATS can operate continuously without having to provide such information. ATSs and exchanges should operate pursuant to the same rules and meet the same standards if they will be trading the same securities for the same investors. Similarly, any exemptions granted to an ATS or an exchange must be made public in order for market participants to have full information.

[1] Section 6.7 of NI 21-101 provides a 20% notification threshold for ATSs. One can assume that this threshold would trigger the CSA's review of the entity's status as an ATS with a view to changing the ATS's status to that of an exchange, thereby prompting the application of higher regulatory standards on the entity.

[2] Section 5.6 of NI 21-101 requires exchanges and QTRSs to file annual audited financial statements. TSX and TSXV's Recognition Orders also impose significant financial requirements and ongoing financial reporting obligations.

In this letter, we comment both on existing provisions of, and proposed amendments to, National Instrument 21-101 Marketplace Operation (NI 21-101) and National Instrument 23-101 Trading Rules (NI 23-101) (together, the ATS Rules).

Trade-Through Protection

Marketplace Obligation

We agree that trade-through protection can be effected as a marketplace obligation that covers the full depth-of-book. We strongly agree with the concept that each marketplace should be able to determine the manner in which it will prevent trade-throughs from occurring. We think that it is reasonable to require each marketplace to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs.

We would like to understand how the trade-through protection obligation will be monitored and enforced. Will each marketplace's policies be reviewed periodically by CSA staff, or will policy reviews occur solely upon initial filing and material amendment filings as per proposed subsection 6.1(3) of NI 23-101? If the Investment Industry Regulatory Organization of Canada (IIROC) monitors for occurrences of trade-throughs across marketplaces, will this function be performed on behalf of the CSA based on a delegation of CSA responsibilities or pursuant to a contractual arrangement between the CSA and IIROC, or otherwise? If IIROC reports alleged violations of the trade-through obligation to the CSA, will the lead regulator model[3] apply with respect to TSX and TSXV in determining which CSA member investigates the alleged violation? How will it be determined which CSA member will investigate alleged violations by other marketplaces?

We ask the above questions to underscore the need for a mechanism underpinning the Proposal that clearly and fairly addresses all of the practical issues that will arise in connection with the shift from an IIROC best-price rule imposed on participants to a CSA trade-through rule imposed on marketplaces.

Protected Orders

We agree that trade-through protection should not apply to special terms orders that are not immediately executable. However, we submit that the definitions of "protected bid" and "protected offer" as proposed in section 1.1 of NI 23-101 need to be narrowed to include only those orders that are required to be provided to an information processor (IP) or information vendor, as the case may be. We suggest the following language for subsection (b) of the definitions of both "protected bid" and "protected offer": "…about which information is required to be provided pursuant to Part 7 of NI 21-101 to an information processor…". In many instances, information about special terms orders and trades is provided through data feeds to information vendors, even though subsection 5.1(3) of the Companion Policy 21-101CP to NI 21-101 (21-101CP) confirms that special terms orders that are not immediately executable do not need to be provided to an IP/information vendor. We submit that the definition of "protected bid" and "protected offer" must therefore clearly distinguish between order/trade information that must be provided to an IP/information vendor (thereby creating a protected bid/offer) as opposed to

[3] Memorandum of Understanding about the Oversight of Exchanges and Quotation and Trade Reporting Systems among: Alberta Securities Commission, British Columbia Securities Commission, autorité des marchés financiers (then the Commission des valeurs mobilières du Québec), Ontario Securities Commission, and Manitoba Securities Commission dated as of September 3, 2002.

information that is, but is not required to be, provided to an IP/information vendor (where the bid/offer would not be protected).

We agree that orders should only be protected if they are displayed by a marketplace that has automated functionality. We believe that the definition of "automated functionality" as proposed in section 1.1 of NI 23-101 should be revised to replace the references to "fill-or-kill" with "Immediate Or Cancel" (IOC). TSX has historically used the term "fill or kill" when referring to orders that can receive both full and partial fills before expiring. TMX Group is altering this terminology in January, at which time we will begin using the term Immediate or Cancel to refer to market and limit orders that trade immediately and automatically cancel any unfilled portion of the order. IOC is the term that is used consistently throughout marketplaces in the U.S. and we believe that standardizing to the accepted U.S. term will bring clarity to investors trading on our markets.

"Permitted" Trade-throughs – Failure, Malfunction or Material Delay of Systems or Equipment

We agree that a trade-through exception must exist for instances where a routing marketplace is unable to have its routed-away orders dealt with by another marketplace in an appropriate manner. We appreciate that proposed subsection 6.2(a) of NI 23-101 allows a marketplace to make this decision based on "reasonable grounds" and in accordance with its policies and procedures. We agree that a degree of flexibility must be maintained at the marketplace level in order for real-time decisions of "self-help" to be made.

It should be understood for purposes of subsection 6.2(a) of NI 23-101 and subsection 6.2(a)(i) of Companion Policy 23-101CP to NI 23-101 (23-101CP) that both order entry malfunctions as well as data malfunctions could force a routing marketplace to claim "self help" thereby permitting the routing marketplace to trade-through another marketplace. For example, if a marketplace's data feed has been corrupted or is incomplete or otherwise unavailable, other routing marketplaces should be exempt from routing to that marketplace because the routing marketplaces would not have the complete information needed in order to determine where the best priced orders reside.

We believe that it is also important to understand that circumstances may arise where it becomes impossible to route orders to a marketplace due to a connectivity breakdown between marketplaces (for example, a hydro line between two marketplaces becomes broken). This event would not be a failure of a marketplace's systems, but at the time it could appear to one marketplace that the other was failing to respond to its routed orders. We believe that in these circumstances the routing marketplace would have reasonable grounds to stop sending order flow to the first marketplace. Marketplaces would need to act reasonably together and with third party suppliers in the event that the disconnect appeared to be based on failures in communications lines between the two marketplaces.

Proposed amendments to 23-101 CP state "if a marketplace repeatedly fails to respond immediately after receipt of an order, this would constitute a material delay."[4] We note that two concepts in this quote – "repeatedly" and "immediately" - can be left to interpretation. We believe that it is appropriate for the Proposal to allow the marketplaces to retain flexibility in determining when a material delay exists. However, with this flexibility must come a requirement in the ATS Rules for each marketplace to document and retain, in an auditable manner, the data

[4] Proposed subsection 6.2(a)(i) of 23-101CP.

that contributes to the marketplace's decision to cease routing to another marketplace. This data must be retained in a manner that can be reviewed by a regulator or independent third party. It is crucial that this information exists and it is imperative that the ATS Rules mandate retention of this kind of information. We believe the data retention requirements must include time stamp information of the routing marketplace, the marketplace's calculated nbbo information, and other data sufficient to prove the validity of the decision to cease routing. We submit that without this type of data retention requirement, alleged violations of the trade-through obligation cannot be adequately investigated.

"Permitted" Trade-throughs – Inter-market Sweep Order Requirements

We agree with the exception in proposed subsection 6.2(b) of NI 23-101 for inter-market sweep orders (ISOs). Proposed section 6.3 of NI 23-101 requires that the marketplace or marketplace participant responsible for the routing of an ISO must take all reasonable steps to ensure that the order is an ISO. TSX and TSXV will automate the ISO marker, the functionality of which will be dependent on the participant, or other marketplace if applicable, having properly marked the order as an ISO order. We do not believe that any additional steps should be imposed on a marketplace to verify an ISO order. So long as a marketplace feature exists to check for an ISO marker and execute/route accordingly, we believe that the marketplace obligation as articulated in proposed section 6.3 of NI 23-101 will have been fulfilled.

"Permitted" Trade-throughs – Non-Standard Orders

We have identified a gap in the Proposal's drafting that could have the effect of categorizing an odd lot order as a protected order. We do not believe that odd lots should receive trade-through protection. Subsection 5.1(3) of 21-101CP states that special terms orders that trade in special terms books do not need to be provided to an IP.[5] Therefore, odd lot orders that trade in special terms books are not considered to be protected orders under the Proposal because, given that they do not need to be provided to an IP, they do not qualify as protected bids or protected offers as those terms are defined in proposed amendments to section 1.1 of NI 23-101.

However, odd lots and mixed lots that trade in a central limit order book would be provided to an IP and therefore would qualify as protected orders under the Proposal. Further, these order types are not considered to be "non-standard orders" under the Proposal because they are not subject to non-standardized terms of settlement. We believe that odd lot orders and the odd lot portion of mixed lot orders do not warrant trade-through protection. To grant such protection would be unmanageable from a routing perspective, and could result in soaring clearing costs if market participants were required to execute against non-standard trading units.

In order to remedy this scenario, the Proposal must be revised to make it clear that protected orders must be based on standard trading units as prescribed by IIROC. Routing marketplaces cannot be required to break up orders into non-standard trading units in order to fulfil trade-through obligations.

[5] We submit that subsection 5.1(3) of 21-101CP should be revised to clarify that orders that trade in an odd-lot book do not need to be provided to an IP.

Access to Marketplaces

We agree with the concept added into the proposed amendments to sections 7.1 and 8.2 of 21-101CP that a marketplace generally will have a positive obligation to accept orders that are routed to it for purposes of trade-through requirements. We confirm, as is referenced generically in the proposed amendments to section 7.1 of 21-101CP, that any person or company that accesses orders on TSX and TSXV must do so through a TSX Participating Organization or TSXV Participating Organization or Member, as applicable.

We also note that a marketplace should be permitted to reasonably deny access on a temporary basis to a routing marketplace if the orders received from the routing marketplace are corrupt or otherwise determined to be bad orders. Similarly, if the type of orders or pattern of trading from a routing marketplace could be detrimental to the performance of the receiving marketplace and could put the market at risk by virtue of excessive use of bandwidth or consumption of excess data flow then the receiving marketplace should be able to reasonably deny access on a temporary basis to the routing marketplace until such time as the detrimental order flow has ceased. If TSX or TSXV determined, acting reasonably, that such a denial of access was necessary for a temporary period until the quality of the orders received from the routing marketplace reached an acceptable standard, we would consider this action to be compliant with the provisions in subsection 5.1(b) of NI 21-101.

Trading Fee Limitation

As part of their unique product and service offerings, marketplaces must continue to be permitted to establish their trading fees without regulatory intervention. The ATS Rules should not prescribe fee limits. Despite this view, we do not believe that it is reasonable for a marketplace to charge a different trading fee for an order that is routed to it to prevent a trade-through as opposed to an order that comes direct from a participant. Certainly there is a cost to establish links between marketplaces. However, once this fixed cost has been absorbed, the marketplace is not incurring any significant additional costs when filling an order received for trade-through purposes. We agree therefore with the substance of proposed subsection 10.2(b) of NI 21-101 that marketplaces should not impose terms that have the effect of discriminating between orders that are routed to a marketplace to prevent trade-throughs and orders that originate on a marketplace. Further, we submit that the ATS Rules should be amended to make it clear that a marketplace cannot discriminate based on the order's originating marketplace. Proposed subsection 10.2(b) of NI 21-101 should make it clear that imposing different terms on orders depending on the identity of the originating marketplace should not be permitted.

Trade-through and Best Execution

We agree that the Proposal should contain anti-avoidance provisions pursuant to which a person or company is prohibited from routing an order outside of Canada in order to avoid executing against better-priced orders on a Canadian marketplace.

Additional Amendments

Reporting Requirements for Marketplaces and Dealers

Marketplace Reporting

As stated in the Proposal, the purpose of the proposed marketplace reporting requirement is to provide tools for assessing and complying with the best execution obligation.[6] We strongly believe that proposed Part 11.1 of NI 21-101 will not achieve this objective.

Dealers and advisers are sophisticated entities that use real time data to ensure that they are meeting their best execution requirements. Because best execution is a requirement to be met on a trade by trade basis, monthly marketplace website data reporting will not advance a dealer's or adviser's ability to determine whether it is achieving best execution for its clients.

There is no natural consumer for this type of detailed monthly marketplace reporting, and we believe that it is not beneficial to impose additional costs on marketplaces to produce data that will not be used. We believe that the cost to be borne by marketplaces in producing and displaying this data will outweigh any benefits to be received by dealers and advisers. For example, a number of the statistics listed in proposed Part 11.1 of NI 21-101 are not calculated today by any of TSX, TSXV, or MX and it would therefore require considerable TMX Group resources to calculate, create, and display the reports. In addition, the costs incurred will be significant higher for executing venues with the greatest amount of trading volume, which will put larger exchanges at a comparative disadvantage when creating the reports. We agree that it is important for dealers and advisers to have the information that they need to fulfill their best execution obligations. We submit that real time data provides this information currently and real time data will continue to be the reference information that dealers and advisers use when determining best execution.

In the event that the CSA determines conclusively that the market will receive a net benefit through the provision of monthly marketplace reporting, the data produced by marketplaces must present content that has been derived using identical methodology across marketplaces, and must be presented in an identical format across marketplaces. Marketplaces must use standard measuring metrics and conformity in reporting format must be mandated in order for dealers and advisers to truly compare data across marketplaces. There are two mechanisms that could guarantee standardized monthly marketplace reporting: use of a centralized consolidator for monthly reporting, or use of a centralized auditor to ensure that marketplace reporting is indeed standardized. Both of these solutions will impose additional costs on the market. Given that the monthly marketplace reporting data will not achieve the CSA's objective as set out in the Proposal, the need for this reporting must be re-examined.

If the CSA proceeds with marketplace reporting requirements, the ATS Rules would need to be revised, after consultation with marketplaces, in particular to clarify how marketplaces are expected to measure effective spreads and realized spreads[7] in order to meet the requirements in proposed subsections 11.1.1(a)(vi) and (vii) of NI 21-101. As they are currently defined in the Proposal, "effective spread" and "realized spread" are market quality measurements rather than

[6] (2008) 31 OSCB 10041.
[7] The terms "effective spread" and "realized spread" are defined in the Proposal as amendments to section 1.1 of NI 21-101.

marketplace liquidity measurements because they are calculated with reference to the best bid and best ask price across visible marketplaces (nbbo). Without a common nbbo, the marketplaces will not be measuring against the same standard. Further, as this is a market quality statistic that measures liquidity against a market-wide nbbo, we would expect that MX would be exempt from this requirement given that it is the sole Canadian derivatives exchange.

As well, the CSA should reconsider its proposed requirement for speed of execution marketplace data, as marketplace reporting on speed of execution cannot give a clear picture to a dealer or advisor of its true speed of execution. This is due to the additional latency that is incurred between the dealer/adviser's point of origination and the front end of a marketplace, which cannot be measured by a marketplace. The only entity that has statistics to be measured to show true total speed of execution is the dealer itself.

Dealer Reporting

We understand the purpose of proposed section 4.4 of NI 23-101 to be to provide information to dealers' clients about where their orders are being executed. We believe that this is useful information to a client. This is true particularly given that marketplaces can be owned and operated by dealers or dealer affiliates. This data would allow a client to review statistics to assist the client in determining whether it should be concerned about possible conflicts of interest at a dealer that has a material relationship with a marketplace. To make the data more useful, dealers could also provide qualitative information describing how they make their routing decision.

Consistent with that purpose, we submit that the Proposal should consider the dealer itself as an executing venue, by virtue of its internalization processes. To give a clear picture of how a dealer's agency order flow is being executed, the dealer should disclose the percentage of the client order flow that is internalized. This statistic will allow clients to understand what percentage of their order flow is exposed on marketplaces, thereby making the comparative marketplace routing and execution statistics more meaningful.

Marketplace Systems

Systems Reviews

The increased detail in the proposed amendments to Part 12 of NI 21-101 is generally useful. The proposed amendments to section 12.2 that will now require all ATSs to conduct independent systems reviews are a positive change. As discussed at the outset of this letter, if orders will be routed to ATSs for trade-through purposes, these ATSs should be held to the same standards as exchanges. We agree with the requirement that all ATSs use qualified independent third parties to confirm compliance with systems requirements. If an ATS is granted an exemption from the Part 12 requirements, as is a possibility referenced in the Proposal[8], we believe that the exemptive relief should be publicly disclosed so that market participants are made aware that a marketplace has been permitted to operate without independent systems reviews.

[8] See (2008) 31 OSCB 10042, under the subheading "Marketplace Systems".

System Requirements

As ATSs and exchanges begin to connect to each other in order to fulfil trade-through obligations, we submit that the ATS Rules should prescribe specific disaster recovery (DR) standards. The CSA should also consider establishing minimum standards to be met by marketplaces in the event of non-DR systems incidents. Given that each marketplace becomes an integral piece of a large system once marketplace linkages occur, we believe that a subjective requirement – to have a "reasonable" disaster recovery plan – is not sufficient. The ATS Rules should be more specific about requisite DR standards and the ATS Rules should prescribe requirements such as maximum failover times (for both same site and back-up/DR site), and maximum number of lost messages during a failover. Because there are a number of incidents that can bring down a marketplace's systems other than a disaster event, we believe that the CSA needs to consider establishing minimum requirements such as these to address incidents that create systems outages. This will provide confidence to the market that all executing venues have sufficient back-up plans to deal with marketplace disruptions and disaster events.

Availability of Technology Requirements and Testing Facilities

We agree with the proposed amendments to section 12.3 of NI 21-101 regarding new marketplace entrants. It takes considerable time, resources, and effort for market participants to adjust their practices with each new marketplace entrant. Technology specifications and testing facilities must be provided to market participants in order to facilitate this adjustment. In addition to technology requirements, we submit that each new ATS should publish a full description of its fill allocation methodology in order for routing marketplaces to adequately adapt their routing logic in a way that will provide for the most effective execution of their trade-through obligations. As exchanges are required to publish for comment any public interest rule amendments including changes to execution algorithms, similar new requirements need not be imposed on exchanges.

We do not agree with the proposed amendments to section 12.3 of NI 21-101 that impose new obligations on existing marketplaces. The proposed requirements are too onerous and not justified. We believe that imposing new notice and testing period requirements on marketplaces that are already operational is unnecessary and could ultimately be detrimental to participants. TSX, TSXV and MX work regularly with our customers (Participating Organizations, Members, Approved Participants, and vendors) to ensure that they are provided with ample notice of, and the ability to test with respect to, material technology requirements. Although each exchange endeavours to provide 90 days notice to our customers of any material technology requirements, there are events that occur where a shorter notice period is advantageous to all. For example, if a high severity production problem is detected and needs to be remedied, it can be to the advantage of all market players to fix the problem as soon as possible. If a remedy can be applied within 45 days which is beneficial to all market participants, this remedy should not be delayed by the provisions in NI 21-101.

We submit that there should not be publication and testing period requirements imposed on existing marketplaces. If the CSA believes that it is necessary to impose these requirements on existing marketplaces, we suggest shortening the time periods (to 60 and 30 days, from the current proposed 90 and 60 days for notice and testing respectively). If the CSA imposes these new requirements, we strongly advise that an exception clause be added to the notice/testing

period requirements that would allow a marketplace to expedite its material technology changes if it deemed such expedited change to be necessary in the circumstances.

Agreements Between a Marketplace and a Regulation Services Provider

The Proposal states that the proposed amendment to subsection 7.2(c) of NI 23-101 "…in no way changes the existing relationship between the exchange … and the regulation services provider that it has retained."[9] Based on this assertion, we believe that the amendment to subsection 7.2(c) needs to be redrafted. The new amending language in subsection 7.2(c) implies that a regulation services provider monitors not only an exchange's participants, but the exchange itself.[10] This is incorrect.

With the benefit of time, the relationship between each of TSX and TSXV and their regulation services provider, IIROC, has continued to be refined. We submit that it would be useful at this juncture to use what we have learned over the past years to revise the language in section 7.2 of 23-101. At Appendix II to this letter, we set out proposed revised language for section 7.2 of NI 23-101. If the CSA is not willing to update section 7.2 at this time, we urge that, at a minimum, the proposed amended language in subsection 7.2(c) must be revised to remove the notion that a regulation services provider can monitor a recognized exchange.

In reviewing the related section 9.1 of 21-101CP we have identified what we believe to be inconsistent drafting. We submit that the penultimate sentence in subsection 9.1(1) of 21-101CP should be corrected to read, "Some marketplaces, such as exchanges, may be regulation services providers and, where there is not an information processor, will establish standards for the information vendors they use to display order and trade information…". We submit that the final sentence in subsection 9.1(1) of 21-101CP is not necessary because it seems to simply repeat the general requirement under Part 7 of NI 21-101. However, if this sentence cannot be deleted, it should revised in a manner similar to the above drafting suggestion, to clarify that, where there is no information processor, the marketplace must provide information to an information vendor that meets the standards set by the regulation services provider.

Co-ordination of Monitoring and Enforcement

We understand the amendment proposed to section 7.5 of NI 23-101, and acknowledge that if more than one regulation services provider exists, or if an exchange chooses to self-regulate, these entities should agree to coordinate certain monitoring functions where the marketplaces trade the same securities. However, we find that the amendments made to section 7.5 of 23-101CP go beyond the amendment to section 7.5 of NI 23-101 and should be corrected.

Proposed section 7.5 of 23-101CP provides, "this coordination may include having regulation services providers monitor trading on all marketplaces that have retained them and reporting to a recognized exchange, recognized quotation and trade reporting system or securities regulatory authority if a marketplace is not meeting the terms of its own rules or policies and

[9] See (2008) 31 OSCB 10042, under the subheading "Amendments to Sections 7.2, 7.4, and 8.3 of NI 23-101 – Agreement Between a Marketplace and a Regulation Services Provider".
[10] (2008) 31 OSCB 10123, proposed subsection 7.2(c), "…for the regulation services provider to effectively monitor the conduct of marketplace participants, and if applicable, the recognized exchange…".

procedures. This monitoring includes monitoring clock synchronization, the inclusion of specific designations, symbols and identifies, and audit trail requirements."[11]

We don't understand the construct of proposed section7.5 of 23-101CP, for the reasons outlined below.

First, marketplaces set out rules governing the conduct of their participants. In the case of TSX and TSXV, the conduct of Participating Organizations and Members is monitored, and the requirements governing such participants are enforced, indirectly by IIROC as a regulation services provider.[12] These are requirements that the exchanges have imposed on their participants. These are not requirements that the exchanges have imposed on themselves.

Second, the monitoring functions listed in proposed section 7.5 of 23-101CP are Universal Market Integrity Rule (UMIR) requirements. UMIR sets out the market integrity rules that apply to participants – not exchanges. TSX and TSXV have agreed to coordinate with IIROC many of the above-listed functions as necessary for IIROC to perform its UMIR services to TSX and TSXV. We do not agree that TSX and TSXV are subject to the provisions of UMIR, and we do not believe that IIROC has been granted the power by the exchanges or otherwise to monitor the exchanges themselves. We strongly urge the CSA to re-examine the construct that it has created between exchanges and regulation services providers. If there are provisions in UMIR that the CSA intends to have apply to, and be enforceable against, marketplaces (particularly exchanges), these provisions should be removed from UMIR and incorporated into the ATS Rules.

Closing

A number of policy issues about exchange jurisdiction generally have been discussed over the past years. TMX Group urges each CSA member to review its securities legislation to ensure that each province has confirmed through its legislation, appropriate powers to all recognized exchanges and other recognized entities, including an exchange's powers to: (i) delegate its disciplinary powers; (ii) impose fines and penalties, and (iii) discipline current and former members of current and predecessor exchanges or recognized entities.

Thank you for providing us the opportunity to comment on the Proposal. We would be pleased to discuss our comments with you at your convenience.

Sincerely,

Kevan Cowan
President, TSX Markets and TMX Group Head of Equities
President, TSX Venture Exchange

[11] (2008) 31 OSCB 10135.
[12] As permitted by subsection 7.1(2)(b) of NI 23-101.

Appendix I

1. *Should marketplaces be permitted to pass on the trade-through protection obligation to their marketplace participants? If so, in what circumstances? Please provide comment on the practical implications if this were permitted.*

   No. Within the context of the trade-through regime as set out in the Proposal, we believe that a marketplace should not be permitted to pass on the trade-through protection obligation to its participants. We note that, although the trade-through obligation lies with the marketplace, the Proposal permits marketplaces to accept participant orders marked ISO that do not need to be routed away if a better-priced order exists on another marketplace. We agree that this trade-through exception should be permitted.

2. *What length of time should be considered an "immediate" response by a marketplace to a received order?*

   Given the constant evolution of execution speeds and marketplace technology enterprises, we don't believe that it would be wise to imbed a definition of immediate response in the ATS Rules. Imbedding even a relative response time in the ATS Rules could be resource intensive on the marketplaces and not particularly useful. We believe that each marketplace should have its own policies and procedures that would assist in making a determination about when a marketplace could cease to route to another marketplace. In practice, the term "immediate" could be applied differently for each marketplace, as each marketplace would have a unique typical response time. We understand that in the U.S., marketplaces do not operate under one hard and fast rule, but rather they take into account typical response times for each marketplace, and act upon any significant deviations from those typical response times.

3. *Are any additional exceptions necessary?*

   No.

4. *Please comment on the various alternatives available to a marketplace to route orders to another marketplace.*

   No comment.

5. *Should the CSA set an upper limit on fees that can be charged to access an order for trade-through purposes? If so, is it appropriate to reference the minimum price increment described in IIROC Universal Market Integrity Rule 6.1 as this limit?*

   As discussed in our submission, we do not believe that the CSA should cap fees that can be charged by a marketplace, including placing an upper limit on fees that can be charged for trade-through purposes.

6. *Should there be a prohibition against intentionally creating a "locked market"?*

   Yes.

7. *Should the marketplace statistics focus on units of securities traded instead of orders and number of trades?*

We do not believe that the ATS Rules should mandate monthly marketplace reporting requirements. Each marketplace should use its discretion in providing its statistics to the public. Despite our view, if the CSA mandates such monthly reporting, we believe that useful statistics include volume and number of orders and trades.

8. *Should the marketplace statistics require separate reporting on specific order types that would include market orders, intentional crosses, and pre-arranged trades?*

We do not believe that the ATS Rules should mandate monthly marketplace reporting requirements. Despite our view, if the CSA mandates such monthly reporting, we do not believe that providing information on specific orders types would provide value to market participants.

9. *Should the focus of the liquidity measures be the number of orders or the cumulative number of shares?*

We do not believe that the ATS Rules should mandate monthly marketplace reporting requirements. Despite our view, if the CSA mandates such monthly reporting, we believe that number of shares is a better indicator of liquidity.

10. *Would it be useful to have information about partially or fully hidden liquidity that is available on certain marketplaces? If so, what measures of that liquidity would be most informative?*

We do not believe that information about partially or fully hidden liquidity would be particularly useful to any market participant.

11. *Would it be useful to include reporting similar to the near-the-quote orders required by the SEC in the United States? What price increment away from the quote would be appropriate to use for the Canadian market?*

We do not believe that the ATS Rules should mandate monthly marketplace reporting requirements. Despite our view, if the CSA mandates such monthly reporting, we believe that this could be a useful measure of liquidity if contained to visible (protected) orders. Price increments would need to be based on the price of the security.

12. *Are statistics regarding average realized and effective spreads useful without a consolidated best bid and offer?*

We do not believe that the ATS Rules should mandate monthly marketplace reporting requirements. Further, as discussed in our submission, it does not seem logical to require the production of spread data that gives reference to an nbbo unless there is a common nbbo to measure against. In addition, we do not understand how realized and effective spreads are to be measured and displayed. The ATS Rules would need to be revised to clearly articulate how such spreads are to be measured, in the event that the CSA determines that such a measure must be reported monthly by marketplaces.

13. *Are the time frames used to assess speed and certainty of execution on a marketplace in section 11.1.1 of NI 21-101 appropriate? If not, what time frames should be used?*

We do not believe that the ATS Rules should mandate monthly marketplace reporting requirements. Each marketplace should use its discretion in providing its statistics to the public. We do not believe that marketplace reporting based on the proposed time frames will be useful to dealers and advisers in assisting with their best execution decision making.

14. *In addition to the proposed reporting requirements for marketplaces, would other information, such as the following, be useful to dealers or advisors to assess best execution:*

(a) a breakdown of the information by order size (i.e. 100-499 shares, 500-1999 shares, 2000-4999 shares, 5000 or more);

(b) the proportion of time that a marketplace had orders that were at the best bid or the best ask;

(c) the proportion of trades (in number of shares or number of trades based on our decision) executed inside the best bid and ask price?

We do not believe that the ATS Rules should mandate monthly marketplace reporting requirements. Each marketplace should use its discretion in providing its statistics to the public.

15. *Do you agree that an information processor should disseminate consolidated trade information along with a feed that contains the best bid and best offer and all orders at all price levels (along with the marketplace identifier/marker)? For practical reasons, should the price levels be limited? If so, to how many levels?*

We agree that an IP should disseminate a consolidated last sale feed with marketplace identifiers. We also agree that an IP should disseminate a consolidated best bid and best offer feed with marketplace identifiers, but not for all price levels. Based on our discussions with a variety of TSX and TSXV participants, we believe that five price levels (with marketplace identifiers) is sufficient, and ten price levels would be the absolute maximum that a participant might expect for regulatory purposes such as trade-through or best execution. The purpose of the IP's best bid and best offer feeds is to make real-time information available that is required by a participant to fulfill its best execution and UMIR price-related requirements (which will become marketplace trade-through obligations). Depth of book beyond five to ten price levels can be used by market participants for analytical and strategic purposes such as determining market impact and creating fees/rebates matrices. Although this information can contribute to a participant's routing decision-making process, it is not required for pure regulatory purposes such as best price/trade-through.

We believe that the IP should be permitted to offer a consolidated full depth of book, but that disseminating at all price levels should not be mandatory. We have been advised by a number of participants that disseminating a consolidated depth of book of more than five price levels does not add value and in fact will create difficulties by adding a

voluminous product to “screen real estate” that is already very crowded. We note that for a number of symbols traded on TSX, a consolidated full depth of book would be very long – more than 2 or 3 screens in length.

Appendix II

Proposed Amended Section 7.2 of NI 23-101

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 to the extent necessary in order to monitor the recognized exchange's requirements that have been delegated to the regulation services provider;

(b) that the regulation services provider will enforce the requirements set under subsection 7.1(1) to the extent necessary in order to enforce the recognized exchange's requirements that have been delegated to the regulation services provider;

(c) that, to the extent requested by the regulation services provider, the recognized exchange will transmit to the regulation services provider the information required by section 11.2 of NI 21-101 and any other information the regulation services provider reasonably requires for the regulation services provider to effectively monitor the conduct of marketplace participants on the recognized exchange; and

(d) that the recognized exchange will comply with all orders or directions made by the regulation services provider related to the recognized exchange's members and/or to regulatory halts imposed by the regulation services provider pursuant to its provision of services under subsection 7.1(2)(b).