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Re: Notice of Proposed Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules

TMX Group Inc. ("**TMX Group**") welcomes the opportunity to comment on the Notice of Proposed Amendments to National Instrument 21-101 Marketplace Operation ("**NI 21-101**") and National Instrument 23-101 ("**NI 23-101**") Trading Rules published by the Canadian Securities

Administrators ("**CSA**") on March 18, 2011 (the "**Notice**"). We believe that public comment is valuable and supports the integrity of the CSA's process.

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 have also recently received regulatory approval to operate an ATS, TMX Select, which is set to launch in Q3 of this year.

We endorse many of the ideas that are captured in the Notice, 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.

We applaud the work done by the CSA in particular in two main areas: increasing the transparency of operations across marketplaces; and confirming that internalization, order matching and crossing facilities can be regulated as marketplaces. With respect to the first topic, TMX Group has advocated consistently for a level regulatory playing field for ATSs and exchanges. By addressing inconsistencies in transparency requirements between ATSs and exchanges, the CSA is acknowledging that industry participants deserve full and consistent disclosure from their trading venues. This is necessary given that participants are required to access all lit marketplaces in Canada. The OSC in particular has made great strides in this area with Staff Notice 21-703 that requires all marketplaces to propose certain operational changes within a public publication process. Unfortunately, this requirement has not been formalized in the Notice's proposals. We urge the CSA to codify this public comment requirement in order to ensure that all marketplaces are subject to the same transparency processes, regardless of the province in which they are registered. TMX Group also strongly endorses including additional transparency requirements in NI 21-101. Specifically, marketplaces should be required to publish financial statements and corporate governance practices, including details about board of directors independence. As well, a description of the ownership of the marketplace should be publicly available where the marketplace's ownership could be perceived to raise conflicts of interest.

With respect to the second topic, TMX Group continues to believe that dealer internalization models can lead to the deterioration of price discovery on visible marketplaces to the detriment of all investors through weakened price transparency and decreased liquidity. This is particularly true in the Canadian market where retail order flow is concentrated among few dealers, thereby enabling internalization practices that can have a disproportionately large and negative impact on the market. We believe that the CSA's clarification in the Notice regarding dealer matching systems is a positive step in acknowledging that although internalization can benefit a specific segment of intermediaries, it does not benefit the investing community as a whole. We continue to believe that it is vital for all investors to be provided with true fair access to Canadian liquidity venues. Confirmation that dealer matching systems are in fact marketplaces is, in our view, a clear step forward.

Additionally, we request that the CSA formally review its policy of treating all visible marketplaces as protected marketplaces. This policy imparts considerable costs on participants who are required to access newly established, unproven marketplaces. We submit that a marketplace should be required to achieve a minimum threshold of market-wide trading volume such as 5% before becoming a protected marketplace.

For purposes of this letter, all capitalized terms have the same meanings as defined in the Notice or the attachments, unless otherwise defined in this letter. For ease of reference, our comments are organized under the main headings used in the Notice.

1. Regulatory and Reporting Requirements of Marketplaces

Marketplace Reporting Requirements

Significant Changes

With respect to significant changes to be filed 45 days prior to implementation, the proposed list of significant changes in subsection 6.1(4) of 21-101CP is too broad. The category "changes to the services provided by the marketplace" is very broad and could easily capture non-significant changes as well as changes that are not inherent to the operating of a marketplace. For example, Toronto Stock Exchange offers a number of products and services to its listed issuers that are ancillary to the exchange's operations and would not typically be considered regulated activities. TSX Infosuite™ and the S&P Market Access Program are examples of services that are not regulatory and compete with other commercial solutions. It would not be appropriate or necessary for TSX to file information about these services with the CSA. Instead, this filing requirement should specify significant changes to regulated or key services provided by the marketplace, or it should use the language from 21-101F1 Exhibit E4, which provides a reference to the services ("…co-location, trading execution, routing and data"). The language in the companion policy should be narrower to provide additional guidance, rather than broader which results in a confusing construct. In our view, the exclusion of "housekeeping or administrative" changes is not a sufficient carve-out for these ancillary services.

Similarly the reference in 21-101CP subsection 6.1(4)(h) is too broad as it simply refers to "changes to the systems and technology…" rather than "significant changes to the systems and technology." We agree that significant changes to systems architecture, for example, should be covered by an advance regulatory filing. Problematically, the current language goes far beyond this type of change. The final paragraph of this subsection is not helpful in narrowing the categories as it advises that this section does not include housekeeping or administrative changes. We note that there is a large gap between a significant change and a housekeeping/administrative change. TSX performs many changes to its systems and technology annually that are neither significant enough to warrant regulatory notification pre-implementation, nor menial enough to be described accurately as housekeeping. For example, maintenance releases that bundle functionality upgrades would fall within this middle ground between housekeeping and substantive. It would add a very heavy burden on the TMX marketplaces to file these types of systems changes with the regulators in advance, with no corresponding benefit. Similarly, systems changes to effect new order types and order features could be viewed as more than housekeeping, but should not require prior filing as they are not significant from a technology perspective. Also, the fact that disclosure of the order types/features would have been made publicly through a feedback notice diminishes the relevance of a related technology change filing.

As well, we submit that any change in affiliates (subsection 6.1(4)(k)) should not be considered a significant change. In an organization such as TMX Group, there are numerous companies, many of which are not regulated, that perform various functions. Restructuring these organizations occurs from time to time, and the requirement to provide notice 45 days prior to effecting the reorganization would mean that notice of a pending change is provided, without

certainty that the change will occur. Given that the CSA has distinguished in Forms 21-101F1 and 21-101F2 between those affiliates that perform key services or provide systems to the marketplace and those affiliates that do not perform such a significant role, we submit that the only affiliate changes that should be considered a significant change for purposes of subsection 3.2(1) are changes to the affiliates that perform key services/provide systems. All other changes to affiliates should be filed as ordinary course filings. We also note that certain filings under Exhibit D cannot be provided in advance of "implementation". For example, material contracts and constating documents will not exist 45 days before an agreement is entered into, or a new affiliate is created. A filing requirement that requires these documents to be filed only after implementation would be appropriate.

Finally with respect to significant changes, it is not clear how the list in subsection 6.1(4) of 21-101CP maps to the Forms F1 and F2. We submit that additional drafting should be provided adjacent to each item in 6.1(4) to clarify under which Exhibit of F1/F2 the filing would be made.

Non-significant Changes

We strongly disagree with the proposed change to move from quarterly filings of non-significant matters to a requirement to file non-significant changes immediately before implementing a change. We understand that the CSA would like to obtain notice of these changes on a more timely basis, as opposed to the current regime which provides for a filing 30 days after each quarter end. However, the pre-implementation filing requirement will be very difficult to comply with and puts marketplaces under a continuous disclosure regime for non-significant changes. We submit that the CSA should instead select a shorter period, such as a monthly filing requirement, submitted within 10 days after month end, to enable the marketplaces to continue to file non-significant changes with some regularity. This discipline is easier to manage from an administrative perspective than a continuous disclosure regime. As described above, there are certain areas where filings prior to implementation by definition do not allow the marketplaces to make complete filings. The affiliates category is one such area, and importantly officers and board members is another such area. For example, we could advise the CSA in advance of individuals who are proposed to become officers or board directors, but until those individuals have been approved, the notice provided would be incomplete. We submit that the CSA's intention of being apprised of such a change would be better fulfilled by receiving notice after the new officer or director has been appointed.

We strongly urge the CSA to reconsider the pre-implementation filing requirement, and the continuous disclosure regime that is being imposed on marketplaces, as we believe this is a considerable change to current practice that will impose an additional burden on our resources without providing a commensurate improved information exchange with the CSA.

We are also strongly against the filing requirements identified as items 1A(6) and 1A(7) in Form 21-101F3 which appear to require marketplaces to provide a quarterly list of all of the amendments that have already been filed with the regulators during the period, further adding cost without apparent benefit. This requirement seems to acknowledge the difficulties associated with the continuous disclosure regime that the CSA is proposing. To propose new obligations on the marketplaces that amount to both a continuous disclosure regime plus a quarterly summary regime as per Form 21-101F3 is extremely resource intensive, duplicative, and with respect to the duplication, provides no apparent benefit given that no new information is being supplied to the CSA. We strongly urge the CSA to rethink this proposal.

Fee Changes

We support the exception for proposed fee changes that will require a seven day notification period prior to implementation.

Proposed Amendments to the Forms

Please see our detailed comments on Forms 21-101F1 and 21-101F2 at Appendix A and on Form 21-101F3 at Appendix B.

Generally, we are not opposed to the concept of standardized reporting by marketplaces as proposed in the revised Form 21-101F3. However, given that IIROC receives all of the prescribed Form 21-101F3 data from the marketplaces, we query whether it would be more efficient for the CSA to obtain this information quarterly from one source – IIROC. This would save the cost associated with having multiple marketplaces produce data that can be produced once by IIROC.

Another reason for having IIROC provide this data is that there would be one entity sourcing the data elements from each marketplace in a consistent manner. The data produced by marketplaces for the Form 21-101F3 must present content that has been derived using identical methodology across marketplaces in order to be useful. In order to compare data, marketplaces must use standard measuring metrics. There are a number of elements captured in the Form 21-101F3 that can be interpreted in different ways. For example, Chart 3 requests information on pegged orders. Would this capture only visible pegged orders? Would it exclude traditional marketplace re-pricing features that price by reference to other orders or trades, such as repriced short sale orders or on-stop orders? Should the participant data in Chart 5 capture all trading activity including dark orders? Can active/passive volume of participants be reasonably compared across venues that offer differing opening and closing trade allocation methodology (in particular, where the active/passive distinction is not applicable under a market-on-open or market-on-close framework)? Are the percentages in Chart 6 only in relation to those orders received from a marketplace's SOR/affiliated SOR, or in relation to the total number of orders received by a marketplace?

There are two mechanisms that we submit could guarantee standardized monthly marketplace reporting: use of a centralized aggregator/consolidator for monthly reporting, or use of a centralized auditor to ensure that marketplace reporting is indeed standardized. We submit that the use of IIROC to provide this consolidation function would be appropriate in order to guarantee standardized data.

We understand that the CSA is in the process of developing a filing system that would allow the marketplaces to submit their forms online. We would appreciate clarification on whether this applies to all of the Forms 21-101F1, F2, and F3. For any of these, we believe that it would be effective for the CSA to engage directly with the marketplaces while this system is developed. In particular, the F3 will require the TMX exchanges to file a significant amount of data. Automating the generation of such a report will take months to effect. If our data will need to be filed in a standardized format, it would be prudent for the marketplaces to understand these format requirements well in advance of implementation. Further, we would be pleased to work with the CSA to develop these standardized formats in order to make the exercise as efficient as possible.

With respect to Form 21-101F3, it should be clear that these filing requirements will apply to any marketplace that trades equities options. As currently drafted, the form F3 is confusing as it refers to “Derivatives Marketplaces in Quebec”. We understand that the definition of derivatives is not consistent across provincial securities legislation. Despite this fact, the requirement must be that any marketplace that competes with MX will be subject to the same reporting requirements where the same products are traded, regardless of the jurisdiction in which the marketplace is regulated.

Confidentiality and Forms

We note the addition of subsection 6.1(3) in 21-101CP which permits the Canadian Securities Regulatory Authorities to publish summary information from confidential filings of forms by marketplaces. We submit that there should be a clear process, which involves the affected marketplace, prior to publication of any summary of proprietary financial, commercial or technical information from the confidential filings. There may be a serious risk of harm in the publication of highly confidential information which could be better mitigated by the prior involvement of the marketplace and the existence of a clear process before such publications are made.

Financial Reporting

We agree with the change that will require ATSs to file their financial statements with the CSA. However, given the interconnectedness of marketplaces in Canada which requires participants to access all lit marketplaces, and to consider dark marketplaces as execution venues as well, we submit that all marketplaces should be required to publish financial statements as evidence of their financial viability prior to operating as a marketplace. The market participants and the public as a whole should be entitled to confirm the financial viability of a marketplace before it is permitted to operate. All marketplaces should also be required to publish their financial statements on an annual basis to ensure ongoing public scrutiny of the exchange’s viability. Finally, we submit that capital requirements for ATSs should be higher than the IIROC capital requirements for its dealer members. Exchanges have financial viability requirements embedded in their recognition orders. ATSs should meet significant financial viability requirements as well given that market participants are required to access these lit venues, at considerable expense and effort to the participants.

Marketplace Rules

At TMX Group, we understand very well the regulatory distinction between exchanges and ATSs whereby ATSs do not have the power to set conduct rules other than trading requirements on their marketplaces. Unfortunately, this regulatory distinction has been addressed in NI 21-101 in a manner that has resulted in years of inadequate disclosure of ATS trading requirements and inconsistent ATS disclosure requirements across CSA member jurisdictions. TMX Group strongly believes that details that describe the method of trading on an ATS’s system must be publicly disclosed and subject to a public comment process before they come into effect. This public disclosure of trading policies should be a requirement for ATSs and exchanges alike and this requirement should be included in NI 21-101. It is not sufficient that ATSs may publish information about their trading activities on their website. It is not sufficient that one jurisdiction – Ontario – requires certain ATS trading information to be published for feedback pursuant to a staff notice. It is not sufficient that the ATS trading provisions covered by the new proposed disclosure requirements in NI 21-101 section 10.1 do not include a public comment requirement.

The Canadian market is small, and can be heavily impacted by the introduction of ATSs. This is particularly true under our structure that requires better priced orders be executed against, regardless of venue. A lit ATS in Canada therefore obtains immediate relevancy upon its launch as its quotes must be regarded by all market participants. The trading policies and procedures of these ATSs therefore must be published for public review prior to implementation.

2. Information Transparency Requirements for Marketplaces dealing in Exchange-Traded Securities

Transparency Requirements Applicable to Marketplaces Dealing in Exchange-Traded Securities

Size Threshold for Dark Orders

TMX Group continues to support the position of CSA staff and IIROC expressed in Position Paper 23-405 Dark Liquidity in the Canadian Marketplace which restricts passive dark orders to those of larger size. We believe that this size threshold should be set at a meaningful level. We disagree with the approach taken in the Notice that delays the determination of the size threshold to a later date. TMX continues to be concerned that certain forms of dark order flow and dark facilities can have the effect of detracting from the central limit order book of a visible marketplace. In our view, a size threshold would assist in addressing some of the negative outcomes associated with dark trading strategies.

We continue to regard the U.S. example of multiple dark pools as contributing to fragmented liquidity which imposes increasing costs on the industry. Although Canada currently has few dark venues in comparison to the U.S., we believe that a clear rule regarding minimum size thresholds for dark orders would provide certainty to the market on the manner in which dark trading will occur in Canada.

Transparency Requirements and SORs

TMX Group supports the amendments that clarify that the Part 7 transparency requirements apply to all orders displayed by a marketplace, including to SORs.

Use of IOIs

TMX Group agrees with the CSA's proposed guidance on when an IOI is considered to be an order. This clarification assists in bringing certainty to the market and clarifies which practices are acceptable, including with respect to IOIs that are made accessible to SORs. We suggest revising the proposed language in subsection 7.1(4) of 21-101CP to clarify that fair access requirements should be considered by a marketplace whenever a SOR might have access to an IOI on a marketplace.

3. Transparency of Marketplace Operations

Levelling the Playing Field

We applaud the CSA for requiring all marketplaces, including ATSs, to publish certain information as provided in section 10.1 of NI 21-101. TMX Group had been advocating for this

requirement for some time, including with specific reference to section 10.1 in our January 2011 comment letter on position paper 23-405. However, a fundamental aspect of our proposal was the requirement that trading policies of ATSs, and changes thereto, should be made available for public comment. This would allow market participants to participate in a public dialogue on matters that can impact market structure. Currently, a public comment process on ATS trading structures exists only by virtue of an OSC staff notice. This OSC staff notice has established a framework that has already fostered meaningful public debate, most notably by the required publication for comment of the Alpha IntraSpread proposal which spawned public discussion on such topics as dark orders, internalization, and meaningful price improvement. This requirement for feedback on ATS trading structures should be codified in NI 21-101 so that a future ATS cannot engage in regulatory arbitrage by registering in a jurisdiction outside of Ontario, thereby circumventing the requirement to obtain public feedback on its trading operations prior to implementation.

We also submit that these transparency requirements are a first step to levelling the disclosure requirements between ATSs and exchanges; however, as raised in our comment under "Marketplace Rules" above, the CSA should ensure that the complete trading requirements of an ATS, whether described in trading rules or policies, subscriber agreements, or other policies and procedures, should be publicly available and subject to public review in the same manner that exchange trading rules are public and subject to public review. The fact that ATSs are not required to have a centralized rulebook should not relieve them from the requirement to obtain feedback on such things as order types and allocation methodology.

Disclosure of Non-technical Information

We agree with the non-technical information that the CSA will require all marketplaces to make publicly available on their website under proposed section 10.1 of NI 21-101. Specifically, the inclusion of conflicts of interest policies and referral arrangements in this list is suitable. We question the drafting in section 12.1(5) of 21-101CP in that it seems to be qualified by a determination of whether there is a potential for conflict of interest. We would assume that de facto a referral arrangement creates the possibility of a conflict of interest and therefore the companion policy should confirm that the disclosure requirement regarding referral arrangements exists whenever the marketplace can receive any benefit for referring its customers to the third party provider.

We also strongly urge the CSA to require all marketplaces to publish corporate governance practices as well as their financial statements on an annual basis. As stated under the heading "Financial Reporting" above, the requirement for all marketplaces to publish their financial statements on an annual basis would ensure ongoing public scrutiny of the exchange's viability and support investor confidence.

Disclosure of Fees

We agree with the additional clarity that the CSA has provided in connection with the fee transparency requirements set out in proposed subsection 10.1(a) of NI 21-101. We strongly agree that any traditional or key marketplace services that are outsourced to, or otherwise provided by, a third party (affiliates and arms-length parties) should be treated as a marketplace function and therefore fee disclosure requirements should apply. This will ensure that certain marketplace organizational structure or business models will not allow a marketplace to circumvent basic transparency requirements. The CSA should ensure that the precise language used in subsection 10.1(a) captures all of the relevant relationships. We query whether it may

be too narrow to limit the third party reference to "to which services have been outsourced". We suggest that this be expanded to "…or by which these services are provided".

We are requesting clarity from the CSA on whether subsection 10.1(a) includes fees charged for co-location services. We believe that from the perspective of many market participants, co-location is not considered to be a core or key marketplace service. Therefore, clarification in subsection 10.1(a) or subsection 12.1(2) of 21-101CP on this point would be beneficial. If the CSA considers subsection 10.1(a) to apply to co-location fees, then we agree with the application of the CSA's principle that an outsourced arrangement would also be captured by this disclosure requirement. For example, if a facility houses marketplace servers and also offers servers for users who will be sending order flow to, and receiving data from, the marketplace, this is equivalent to marketplace-offered co-location and the fees charged by the facility provider should be disclosed publicly by the marketplace as its co-location fees. This requirement will ensure that any co-location costs related to all Canadian marketplaces will be disclosed to the public, which is a fair result. To relieve a marketplace from this disclosure obligation simply because it does not own the data centre itself would produce an unfair result and would leave the public with asymmetric information.

Disclosure of Routing Decisions

We support the new requirement in proposed subsection 10.1(g) of NI 21-101 that requires disclosure of how routing decisions are made where the marketplace offers routing. It is our understanding that the intention of this provision is not to require publication of specifications or technical routing logic, but merely a general description of how routing decisions are made. We submit that this subsection, like the fee disclosure requirement in subsection 10.1(a), should include a description of routing decisions where the router is operated by an affiliate or by a third party to which the regulatory routing service has been outsourced by the marketplace. A marketplace should not be able to circumvent this disclosure requirement merely because it uses a third party to perform its regulatory routing services.

4. Other Requirements applicable to Marketplaces

Notification of Threshold by ATSs

We agree that lowering the notification threshold for ATSs from 20% to 10% is a reasonable shift. However, we also believe that the CSA should undertake an overall review of the Canadian market structure to determine whether the market could be stronger and more efficient for participants if only those lit markets with a minimum market share, such as 5%, were considered as protected marketplaces. This threshold would remove the costs imposed on participants in today's marketplace to ensure access to all lit marketplaces. We suggest that the CSA formally survey market participants to determine whether they believe that this threshold could have a positive impact on their efficiencies while retaining a healthy level of competition among Canadian marketplaces. We believe that this threshold would address much of the cost concerns raised by market participants that are directly related to market fragmentation.

Recordkeeping Requirements

Retention Period

As the CSA is introducing new data elements to be included in the NI 21-101 Part 11 recordkeeping requirements, we believe that this is a good opportunity to review the relevancy of retaining certain data as well as a marketplace's ability to retain such data. First we note that, with vastly increased messaging over the past years, the resources and costs associated with storing data for seven years is becoming significant and is an increasing challenge for marketplaces to manage. We suggest that the CSA review the rationale behind the seven year retention period.

As a practical point, requests for data that TMX Group receives from IIROC are usually for data from a very recent period. Information requests that we receive from third parties with respect to private litigation matters, or from law enforcement entities such as the RCMP, typically arrive within four years of the order/trade data. Importantly, the information requests that we receive in connection with litigation matters are exclusively related to basic data points such as orders and trade executions that include the dealer of record and the price of the security. For these types of historical data requests, no further information is required. We submit that the CSA should review which data elements may be of value to be retained for a long period, such as four to seven years, and which data elements could be retained for shorter periods. This would assist marketplaces in managing data storage requirements more efficiently, which would also lead to a more effective data retrieval process when requests are made.

Current Requirements

With respect to existing data elements, we note that data elements that form an inherent part of an order and trade record can be readily retained. Thus, information that is contained in required fields in an order message can readily be retained as part of the data associated with that order. However, marketplaces can only retain information that is provided to them by the participants. We note that proposed subsection 11.2(c)(xii) of NI 21-101 which is currently subsection 11.2(c)(xi) requires that the record for each order that is retained by the marketplace must include "whether the account is a retail, wholesale, employee, proprietary or any other type of account". Order messaging received by the marketplace would include the information that populates the account type field, and this information would be retained and stored as part of the order. The language used in current subsection 11.2(c)(xi) does not reflect the account type identifiers available to populate this field. For example, currently the account type field would include identifiers such as: client, inventory, and non-client. The account type field does not permit for markers that are more specialized that represent retail vs wholesale vs proprietary. We submit that this subsection should be revised to more generally state the requirement to include the "account type" given that categories such as "retail, wholesale, employee" do not currently exist.

Routing Data

The new requirement in subsection 11.2(1)(c)(xvii) to retain details for seven years on whether the order is routed to another marketplace for execution, and the date, time and name of the marketplace to which the order is routed, is a very onerous requirement, and we do not understand the value associated with retaining such data for seven years. The relevant data associated with the order will be retained by the marketplace that ultimately receives the order through its gateway into its engine. To have another marketplace retain that order's information

is duplicative. If the purpose is instead for regulators to track the routing decisions that a marketplace is making in order to confirm compliance with order protection obligations under NI 23-101, we submit that this information would need to be retained for a far shorter period of time. The regulators would use this information to perform reviews on compliance with NI 23-101 provisions, and these reviews would happen either in real time when an investigation seems to be warranted, or upon a periodic oversight review. In either case, there would be no need for a marketplace to keep this information for a seven year period. We submit that the CSA should consider precisely the reasons why it needs a marketplace to retain this data, and then shorten the time period appropriately. As stated above, data storage is a significant cost to marketplaces, and the requirement to retain data for extended and unnecessary periods of time is imposing a cost on marketplaces with no commensurate benefit to the industry.

Directed-Action Orders

The new requirements in subsections 11.2(1)(c)(xviii) and (xix) to retain details regarding directed-action orders (DAOs) and whether a marketplace or a participant has marked those orders is not reflective of the current manner in which most marketplaces are receiving these orders. As the CSA is aware, certain marketplaces (including the TMX equity marketplaces) can treat orders as DAO whether or not they are specifically marked as such, based on the order protection options that a participant has chosen. If our marketplaces are required to retain a distinct designation on every DAO trade, then we would be required to introduce a new tag into our system to account for implicit DAO orders, which would require considerable time and cost to implement and would not provide any additional value to the industry as this practice would not change the public markers on the orders. Based on current practice, for a selected segment of order data, our marketplaces are in a position to make a determination upon analysis of the data about whether the order was a DAO. If the purpose is for the regulators to be in a position to determine, upon investigation, whether a specific order or groups of orders were DAO, then we are in a position to achieve that result. If this is the purpose of the record retention provision, then we propose that the wording be changed such that the requirement is for a marketplace to have the ability to determine whether the order was DAO.

With respect to which party has marked the order DAO (participant vs marketplace), this is not information that is currently stored with the order data, but as per the discussion above, could possibly be determined on an order record sampling basis if required by the regulators. However, it should be clarified that a receiving marketplace cannot know and cannot keep records regarding which orders arrive from a marketplace's SOR vs a commercial SOR vs another order execution or routing platform. We suggest that the CSA meet directly with the marketplaces to understand specifically the information that is passed through to receiving marketplaces under current practices, in order to ensure that the data retention requirements do not impose obligations to add designations or markers to trade execution records that are not naturally applied through a marketplace's trade execution process.

Direct Electronic Access Orders

We would also like to clarify our understanding of the new requirement in subsection 11.2(1)(d)(x) that requires that execution report details of orders includes each unique client identifier assigned to a client accessing the marketplace using direct electronic access (DEA). Our understanding of proposed National Instrument 23-101 Electronic Trading and Direct Electronic Access to Marketplaces (ETR Proposal) is that participants must advise marketplaces about which of the participant's trader IDs represent DEA clients. However, the identity of the DEA client itself does not need to be provided to the marketplace but rather can

be provided to IIROC where the marketplace uses IIROC as a regulation services provider (RSP). Marketplaces would therefore have knowledge of which trader IDs represent a DEA client; however, this information is not, and is not required to be, populated in an account field on every order. To require each applicable order to be marked as DEA would require systems changes across all marketplaces, vendors, and dealer systems to introduce a new tag, as well as creating functional obligations on participants to ensure that common practices are used at the order entry level to mark the order DEA. We did not interpret the ETR Proposal to require this level of technological change across the industry. Rather, we interpreted the purpose of the ETR Proposal to be to enable an RSP, upon investigation, to be in a position to associate a specific trader ID with a DEA client where necessary and for marketplaces to be able to monitor trading done through DEA accounts.

If our understanding is correct that the purpose of the ETR Proposal and the related proposed retention requirements in NI 21-101 is to enable the regulators to be in a position to identify DEA trading and clients behind the DEA trading when performing analysis on a specific set of order data, then we believe that this can be achieved without forcing a new system of tags upon participants, marketplaces and technology vendors. To this end, we propose that the language in subsection 11.2(1)(d)(x) be changed to clarify that the requirement is for a marketplace to have the ability to confirm that an order was a DEA order if requested by a regulator.

Business Continuity Planning

We agree that business continuity and disaster recovery planning extend beyond systems requirements. The proposed change is sensible.

Independent Systems Review

Although we agree with previous amendments to NI 21-101 that now require ATSs to undertake independent systems reviews (ISR), we continue to be dismayed with the relative ease in which marketplaces appear to be able to receive exemptions from this requirement. Most recently, in January 2011 CNSX Markets, which operates the PURE facility that trades all Toronto Stock Exchange and TSX Venture Exchange-listed securities, was granted exemptive relief from this requirement. The stated rationale in support of the exemption was that: (i) an ISR is a lengthy and expensive process; and (ii) CNSX had planned a significant systems change for 2010-2011, including to accommodate the new order protection rule and migration of the regulatory feed from STAMP to FIX. We submit that based on this rationale, all Canadian marketplaces should have received an exemption from the ISR for the year 2010. This is not acceptable.

The Canadian market structure requires participants to access each lit marketplace regardless of the marketplace's market share. These participants deserve to know that the CSA is requiring all such marketplaces to undergo an ISR that is reviewed by the CSA to ensure that the marketplace has policies, procedures and controls that support viable trading systems. We submit that the CSA should very seriously consider whether granting exemptions from this requirement is a benefit to the participants in the Canadian market. One possible solution is to require that marketplaces that request an exemption from this requirement be treated as a non-protected marketplace for purposes of the order protection rule in NI 23-101.

5. Definition of a Marketplace

We agree with the confirming language proposed in subsection 2.1(8) of 21-101CP that concludes that a dealer using a system that brings together multiple buyers and sellers using established, non-discretionary methods to match orders with contra-side orders outside of a marketplace and which generates trade execution through the routing of both sides of a match to a marketplace as a cross would be considered to be operating a marketplace as per the existing definition of "marketplace" in subsection 1.1, at part (c) of that definition.

We applaud the CSA's recognition that certain internalization, crossing and order matching facilities that essentially act as marketplaces must be treated as marketplaces. TMX Group has advocated this position for some time, as we believe that internalization at the dealer level is essentially a form of dark trading that can cause significant harm to the quality of our capital markets if not adequately overseen by the regulators. As we have stated many times, this potential harm is particularly relevant in Canada where retail order flow is concentrated among a few dealers. When a participant matches two orders away from the marketplace, this act of internalization prevents one or both of those orders from potentially contributing to central price discovery. If a dealer chooses to undertake this matching function using non-discretionary methods, it should be subject to the same regulatory requirements as any other ATS. Unregulated matching networks should not be permitted to operate as marketplaces, particularly as the lack of regulatory structure enables these networks to support and enable selective participation which is contrary to the principles of fair and equal access that are a basic tenet of regulated marketplaces.

6. Transparency Requirements Applicable to Marketplaces, Inter-dealer Bond Brokers and Dealers dealing in Government Debt Securities

We have no comments on this section of the Notice.

7. Locked or Crossed Markets

We agree with the proposed change in section 6.5 of NI 23-101 that provides that a marketplace that routes or reprices orders shall not intentionally lock or cross a market.

8. Requirements for Information Processors

We agree with the CSA's approach to codify requirements that are currently contained in undertakings or other documentation of the current operating information processors.

With respect to the proposed amendments to subsection 14.4(7) of NI 21-101, we wish to clarify that the requirement to file an annual financial budget for the current equities information processor is not a requirement in the existing undertakings to the CSA from TSX Inc. ("Undertakings") as set out in CSA Staff Notice 21-309. In our view, subsection 14.4(6) in NI 21-101, in conjunction with subsection 8(a) of the Undertakings (Financial Viability), is sufficient to ensure the obligation to provide an adequate operating budget for the proper performance of the information processor's functions. The requirement for TSX Inc. to prepare and file an annual financial budget for the information processor in addition to the requirements

noted above will result in additional administrative effort and cost for TSX which already underwrites the full cost of the equities information processor's operations.

Thank you for the opportunity to comment on the proposed amendments. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Yours truly,

Kevan Cowan
President, TSX Markets
TMX Group Head, Equities

APPENDIX A
COMMENTS ON FORMS 21-101F1 AND 21-101F2

Form 21-101F1

1. The paragraph above Exhibit A incorrectly references section 2.2 of NI 21-101. The reference should be to section 3.2.

2. Exhibit D. We agree with the change that requires filing additional information only for affiliates that provide key services or systems to the marketplace.

3. Exhibit E. The citation to section 14.3 in the final paragraph is incorrect. We expect that this was intended to refer to section 5.3.

4. Exhibit F. We agree that information should be provided in the filing where the exchange has outsourced its key marketplace services or systems.

5. Exhibit G. It should be clarified that for G1 the filing requirement is for processes and procedures regarding current and future capacity estimates. As systems capacity estimates can change in real time, it would be reasonable for the CSA to want to understand a marketplace's processes in this area, but not for a recurring filing of the actual capacity estimates.

6. Exhibit K. For item K3, the exchanges are being asked for client information that we do not have. Neither Toronto Stock Exchange nor TSX Venture Exchange obtain or retain information that details the type of trading activities of our participating organizations and members. We would anticipate that this is information that IIROC collects as part of its membership registration process. As such, we advise the CSA to obtain this information directly from IIROC. To require the exchanges to obtain this information when it already exists at IIROC is burdensome and duplicative and provides no value to the exchanges.

7. Exhibit L. We agree that fees charged by third parties who are performing exchange-type services for an exchange should be filed under this exhibit. For example, if co-location is available adjacent to an exchange but is provided by a third party that owns the data centre, the fees charged by the third party to the clients benefiting from the co-location should be filed under the F1.

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Form 21-101F2

1. The paragraph above Exhibit A incorrectly references section 2.2 of NI 21-101. The reference should be to section 3.2.

2. Exhibit F. We agree that information should be provided in the filing where the ATS has outsourced its key marketplace services or systems.

3. Exhibit G. It should be clarified that for G1 the filing requirement is for processes and procedures regarding current and future capacity estimates. As systems capacity estimates can change in real time, it would be reasonable for the CSA to want to

understand a marketplace's processes in this area, but not for a recurring filing of the actual capacity estimates.

4. Exhibit K. See our comments above. We similarly believe that ATSs whose subscribers are IIROC members should not be required to collect and provide this information to the CSA. However, this information could be provided with respect to ATS customers that are not IIROC members given that this information would not already exist in one source, as it currently does for investment dealers who are IIROC members.

5. Exhibit N. Subsection 6.10(2) appears to be deleted from NI 21-101, in which case the reference in Exhibit N is incorrect.

APPENDIX B
COMMENTS ON FORM 21-101F3

Form 21-101F3

Part A – General Marketplace Information

Items A(6) and A(7) are duplicative. Marketplaces should not be required to summarize information that has already been filed with the regulators. This work is resource intensive and therefore costly, with no commensurate benefit.

Part B –Marketplace Activity Information

The information to be submitted with respect to marketplace participants is of a particularly confidential nature. It is our view that the language in subsection 6.1(2) of 21-101CP will ensure that the CSA protects the confidentiality of such proprietary commercial information.

For both section 1(7) and section 4(6), we note that TMX Group is not in a position to indicate definitively the percentage of marketplace participants that are using our co-location services. This is because it is not simply participants that contract for co-location services, but vendors as well. TMX Group does not know each vendor's client base, and therefore cannot provide data with respect to participants that send data through a vendor's co-location server. We are only in a position to provide data with respect to participants that contract directly for co-location servers. In addition, we note that in order to compare co-location use across marketplaces, this requirement should apply not only to a marketplace's co-location services, but also to a third party's facility that offers co-location to a marketplace.

Section 4 – Derivatives Marketplaces in Quebec

1. **Chart 14 - General Trading Activity**

   (a) The categories for reporting under general trading activity are modelled on a template for equity markets which is not applicable for derivatives markets. As a general rule, it is simpler, and we submit clearer, to report volume, number of trades, and open interest (OI) by product, rather than under general rubrics such as Interest Rate – Short term. For example, if data is by contract, the data may be distorted because most of the activity would be attributable to one contract. We submit the data will provide more useful information to the Commissions if reported by product.

   (b) In the Options category of contract in the Chart, we recommend the data be provided on a product basis and list all of the product groups. For example, rather than the category of interest rate – short term the category would be OBX. Also, we would recommend grouping ETF and Equity together as one group. It would be difficult, and without any benefit to the Commissions, to divide the categories in the way that is currently contemplated.

   (c) In the Futures category of contracts in the chart, we recommend the data be provided on a product basis in ascending order of duration.

   (d) Please see the suggested format for Chart 14 below.

Proposed Chart 14 – General trading activity			
Category	**Volume**	**Number of Trades**	**End of Quarter OI**
Futures			
1. ONX			
2. BAX	2,060,278	90,787	505,672
3. CGZ			
4. CGF			
5. CGB			
6. LGB			
7. SXA			
8. SXB			
9. SXH			
10. SXY			
11. SCF			
12. SXM			
13. SXF			
Options			
14. OBX	56,287	118	85,837
15. OGB			
16. SXO			
17. Equity & ETF			
18. Currency			

2. **Crosses**

(a) Chart 15

(i) A cross transaction is defined in the MX rules as a trade where two orders of opposite sides originating from the same Approved Participant (AP) are intentionally executed against each other in whole or in part as a result of pre-negotiation discussions. The MX Procedures for the Execution of Cross Transactions and the Execution of Prearranged Transactions provide for two methods of executing a cross: electronically, by entering both sides of the trade in the central limit order book (CLOB), or in some cases manually by telephoning the Market Operations Department (MOD). The trading system does not mark electronically executed cross trades as such. However, the system can generate a report which captures all trades done in the CLOB where the same AP is on both sides and the second order is entered within a predetermined delay (i.e., 30 seconds) of the first, and all cross trades that are executed manually by the MOD. In some cases, two clients of the same AP may trade against

each other without intending to cross, and therefore the number of cross trades reported may be slightly inflated.

(ii) The Rules and Procedures of the MX also provide for prearranged transactions between one or more APs, subject to the same thresholds and time delays as cross transactions. These trades are not identified as such in the trading system, and will therefore not be reflected in the reports.

(b) Block, Exchange for Physical (EFP) and Exchange for Risk (EFR) are already reported on a quarterly basis to the AMF. We assume that this report would replace those reports in order to avoid duplication.

(c) The list of types under Options is for futures only and do not apply to options. Further, and as described under (a) above, the system does not mark crosses.

(d) Crosses are described as trades resulting from pre-negotiation discussions in the MX Rules so we would propose amending the title of the Chart accordingly as well as replacing the % Number of Trades heading with % of Volume.

(e) Please see the suggested revised format for Chart 15 below.

Chart 15 – Trades Resulting from Pre-negotiation Discussions		
Types	**Volume**	**% of Volume**
Futures		
A. Cross		
B. Block		
C. Exchange for physical		
D. Exchange for risk		
F. Riskless basis cross		
Options		
A. Cross		

3. **Order Information**

Chart 16. All MX trading is anonymous. No other order types apply for derivatives except for icebergs.

4. **Trading by Category of Contracts**

(a) Consider renaming Chart 17 “Most active groups” which would be more reflective of the information actually provided in the Chart. The information provided will be for trades executed in the early session, during the regular session and the extended session.

(b) Also consider:

(i) For Futures, data would be provided for the three closest expiries.

(ii) Rename ETF/Equity options. Data would be for the three classes with the most volume for the quarter.

(iii) Note that we do not currently list any equity futures

(iv) Note that we do not currently list any currency futures. For options on currency, the information for the class is already provided in Chart 14.

(v) Note that we do not currently list any energy contracts.

(c) Please see the suggested revised format for Chart 17 below.

Chart 17 – Most active groups			
Category	**Volume**	**Number of Trades**	**Open Interest**
1(a). 3 closest quarterly BAX expiries			
BAXM11			
BAXU11			
BAXZ11			
1(b). 3 closest quarterly ONX expiries			
ONXM11			
ONXU11			
ONXZ11			
1(c). 3 closest quarterly CGZ expiries			
CGZM11			
CGZU11			
CGZZ11			
1(d). 3 closest quarterly CGF expiries			
CGFM11			
CGFU11			
CGFZ11			
1(e). 3 closest quarterly CGB expiries			
CGBM11			
CGBU11			
CGBZ11			
1(f). 3 closest quarterly LGB expiries			
LGBM11			

Chart 17 – Most active groups			
Category	**Volume**	**Number of Trades**	**Open Interest**
LGBU11			
LGBZ11			
2(a) 3 closest quarterly SXF expiries			
SXFM11			
SXFU11			
SXFZ11			
2(b) 3 closest quarterly SXM expiries			
SXMM11			
SXMU11			
SXMZ11			
2(c) 3 closest quarterly SCF expiries			
SCFM11			
SCFU11			
SCFZ11			
2(d) 3 closest quarterly SXA expiries			
SXAM11			
SXAU11			
SXAZ11			
2(e) 3 closest quarterly SXB expiries			
SXBM11			
SXBU11			
SXBZ11			
2(f) 3 closest quarterly SXH expiries			
SXHM11			
SXHU11			
SXHZ11			
2(g) 3 closest quarterly SXY expiries			
SXYM11			
SXYU11			
SXYZ11			

Chart 17 – Most active groups			
Category	**Volume**	**Number of Trades**	**Open Interest**
3. Equity & ETF Options *(Example for the month of March 2011)*	*Data would be for the 3 classes with the most volume for the quarter*	***This example uses monthly data*	
XIU	157,038	1,222	244,651
SU	80,385	4,939	69,608
BNS	73,553	3,687	49,566

5. **Trading by marketplace participant**

(a) Chart 18. The information will be provided for trades executed in the early session, during the regular session and the extended session.

(b) Also consider:

(i) All of our products would be listed in the futures category.

(ii) In the options category:

(A) We would group ETF & Equity together; data would be for the three most important participants in this category.

(B) Data would be for the three most important participants in the USX.

(c) Please see the suggested revised format for Chart 18 below.

Chart 18 – Concentration of trading per marketplace participant	
Marketplace Participant Name	**Volume**
Futures	
1(a). BAX	
1.	
2.	
3.	
1(b) ONX	
1.	
2.	
3.	
1(c). CGZ	

Chart 18 – Concentration of trading per marketplace participant	
Marketplace Participant Name	**Volume**
1.	
2.	
3.	
1(d). CGF	
1.	
2.	
3.	
1(e). CGB	
1.	
2.	
3.	
1(f). LGB	
1.	
2.	
3.	
2(a). SXF	
1.	
2.	
3.	
2(b). SXM	
1.	
2.	
3.	
2(c). SCF	
1.	
2.	
3.	
2(d). SXA	
1.	
2.	
3.	
2(e). SXB	
1.	
2.	

Chart 18 – Concentration of trading per marketplace participant	
Marketplace Participant Name	**Volume**
3.	
2(f). SXH	
1.	
2.	
3.	
2(g). SXY	
1.	
2.	
3.	
Options	
1(a). OBX	
1.	
2.	
3.	
1(b). OGB	
1.	
2.	
3.	
2. SXO	
1.	
2.	
3.	
3. Equity & ETF	
1.	
2.	
3.	
4. Currency	
1.	
2.	
3.	