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July 24, 2014

VIA EMAIL

The Secretary
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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comments – Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*

TMX Group Limited ("**TMX Group**" or "**we**") welcomes the opportunity to comment on behalf of its subsidiaries TSX Inc. ("**TSX**"); TSX Venture Exchange Inc. ("**TSXV**"); Alpha Exchange Inc. ("**Alpha**"); Montreal Exchange Inc. ("**MX**"); TMX Select Inc. ("**TMX Select**"), an alternative trading system; and The Canadian Depository for Securities Limited ("**CDS**"), a registered clearing agency, on the request for comments published by the Canadian Securities Administrators ("**CSA**") on April 24, 2014 entitled "CSA Notice and Request for Comment – Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*" (the "**Request for Comments**").

TMX Group is supportive of the CSA's efforts to update the Marketplace Rules to reflect the developments that have occurred since these rules were last updated. We are deeply committed to supporting an efficient trading market in Canada and believe that public comment is valuable and supports the integrity of the CSA's process.

We are however concerned that broad language in certain of the Proposed Amendments to National Instrument 21-101 *Marketplace Operation* ("**NI21-101**") and National Instrument 23-101 *Trading Rules* ("**NI23-101**") could be interpreted differently by marketplaces and marketplace participants and create unintended or duplicative regulatory obligations, costs, burdens and complexities. In support of the CSA's mandate to foster fair and efficient capital markets, we believe that the CSA must remain mindful of balancing the overall costs and benefits of the regulatory burden on marketplaces and marketplace participants. A number of the Proposed Amendments increase the regulatory burden through additional filings, notices, certification and other requirements. This increases industry wide costs, which may have a negative impact on the Canadian capital markets as a whole.

We are also concerned that the CSA continues to alter the regulation services provider model to provide for oversight of a recognized exchange by its regulation services provider. TMX Group believes that these alterations distort an exchange's relationship with its regulation services provider and imply an authority to the regulation services provider that is not appropriate, desirable or necessary.

Finally, while we are committed to the efficient and competitive operation of marketplaces, we are of the view that the Proposed Amendments do not account for the operational complexity of a requirement that marketplaces permit participants to select any clearing agency of their choice. We have set out a number of our specific concerns that we believe must be considered and addressed by regulators before these amendments become effective to ensure that once in effect, such amendments are in the public interest, fulfill their intended purpose and are commercially and operationally feasible. We have also proposed that ensuring that participants may only select recognized or exempt clearing agencies will address certain of those concerns. Greater clarity will be needed to address some of the other concerns.

For purposes of this letter, all capitalized terms have the same meaning as defined in the Request for Comments, unless otherwise defined in this letter. Our specific comments on the Request for Comments are provided in **Appendix A** of this letter. For ease of reference, where applicable, our comments are organized under the main headings used in the Request for Comments.

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 and Group Head of Equities, TMX Group

APPENDIX A
TMX GROUP COMMENTS

1. **Marketplace Systems and Business Continuity Planning**

(a) *Business Continuity Testing*

TMX Group is supportive of participating in industry wide business continuity planning ("**BCP**") testing, provided the BCP tests:

- are conducted with sufficient advance notice to the industry at large, consistent with current TMX Group's best practices of announcing BCP test dates to the industry a minimum eight months in advance, which allows participants the necessary time to manage the required schedules and resources appropriately;

- are planned with participant consultation and coordination in scheduling and planning the BCP tests, including scope, test details, dates and times. The construction of the test must include input from participants to ensure that it maximizes the effectiveness of the BCP test, including the efficient use of resources. For example, BCP test dates should not be selected which conflict with dates on which a marketplace systems and resources have already been assigned, or on dates which conflict with other industry initiatives or testing; and

- seek to leverage existing marketplace BCP best practices and processes that have been established in conducting their external BCP testing as much as possible. TMX Group has been conducting external BCP testing with the industry, including other marketplaces and IIROC, for many years, and best practices have been adopted that are both effective and familiar.

We do, however, question whether the 10% threshold in Section 12.4 (2) is appropriate given the 5% threshold recently proposed in the "CSA Notice and Request for Comment – Proposed Amendments to National Instrument 23-101 *Trading Rules*" published on May 15, 2014. Both of these requirements are indicative of whether a marketplace has reached a certain level of market participation which warrants a different treatment of that marketplace by regulators and other capital marketplace participants. In our view, if 5% is appropriate under the proposed OPR rule then it would seem to make sense that such marketplaces should also be subject to system resumption requirements.

TMX Group supports that business continuity planning, including disaster recovery planning, should follow sound and prudent business practices. However, business continuity management practices are constantly evolving. We propose that the drafting be clarified to achieve the intent of the Section. For example, consider, "Marketplaces are to remain current with leading business continuity practices and to adopt them to the extent that they address their critical business needs and are demonstrated through business continuity and disaster recovery testing."

The term "must ensure" is used throughout Section 12.4 of NI21-101.[1] This term implies absolute assurance is to be given and may suggest liability even for inadvertent or unavoidable breaches of this Section. For example, although marketplaces may plan and test for resuming operations within two hours of declaration of a disaster that does not necessarily ensure that will be possible in the event of an actual disaster. There are too many variables to have absolute certainty about such unknown situations. We therefore submit that the drafting related to the resumption of marketplace systems throughout the amendments should reflect a reasonable assurance standard, including policies and procedures that provide for planning and testing that contemplate a two-hour recovery from declaration of a disaster. We suggest that the phrase "must ensure that" in Section 12.4 be replaced, in each case, with the phrase: "must ensure that policies and procedures have been established and implemented that are reasonably designed to allow for [each system]…"

(b) *Uniform Test Symbols in Production Environment*

We commend the CSA's proposal to discuss implementation matters with industry groups and suggest the formation of an industry working committee to ensure that any changes to marketplace operations are implemented in a way that promotes efficiency, effective risk management, and the health of end-to-end systems across all marketplaces. An industry working committee would also provide a good forum to address marketplace specific technology issues, constraints and concerns that may arise – for example, to what extent restrictions can be imposed on message levels for test symbols to minimize risk to the efficient operation of marketplace systems.

TMX Group supports the use of uniform test symbols across marketplaces for the purpose of testing to be performed in the marketplace's production environment. We suggest that it would be beneficial for CSA staff to confer with TMX Group staff who administer symbol allocation regarding the assignment of test symbols prior to finalizing the rule, since, for instance, some symbols may be reserved or already in use.

We also note that the rule could be interpreted to mean that a market must only use the uniform test symbols set by the regulator for the purpose of performing testing in the production environment. TMX Group marketplaces currently use a number of test symbols to facilitate periodic testing in its production environment (e.g., pre-official rollout weekend testing). We expect that the rule amendments do not preclude a marketplace to use and make available to participants non-uniform test symbols for the purposes of performing testing in the production environment where appropriate.

(c) *Security Breaches*

While TMX Group understands the growing concern with system security, the Proposed Amendments in relation to notification of material security breaches are extremely broad. In CP21-101 Section 14.1(2.1), the guidance provides that virtually any security breach will be a material security breach and therefore reportable. In our view, not all security breaches are

[1] NI21-101, Sections 12.4 (2), (3), and (4).

material. Reporting virtually any security breach presents a security risk in itself, as such information will expose confidential and sensitive system information to unnecessary leakage. We submit that the objective of the requirement to report material security breaches could be achieved by assessing materiality based on the potential impact of the breach, for example, where client data could be compromised, as suggested in the criteria for public disclosure, and similar to the Proposed Amendment in CP21-101 Section 6.1(4).

(d) *Launch of New Marketplaces and Material Changes to Marketplace Technology Requirements*

The new requirements under Section 12.3(3) in NI21-101 go further than the current guidance in OSC Staff Notice 21-706 –Marketplaces' Initial Operations and Material System Changes (the "**Staff Notice**"). The Staff Notice permits an assessment of the time and effort required to introduce a material system change, considering the materiality and complexity of the change and its impact, and therefore provides for and takes into consideration the commercial realities of the change. The Proposed Amendments do not permit any flexibility in assessment other than what constitutes a material change. This may limit and restrict marketplaces from implementing beneficial technology changes in a timely manner and may have a negative impact on marketplace advancement and competitiveness. The requirements currently in Section 12.3(1) already impact the timing of marketplace projects. As marketplaces' often implement several technological changes a year, additional delays may have a cascading effect on the ability to launch new products and services. We therefore submit that the more flexible approach in the Staff Notice is more useful and appropriate. Unnecessarily long delays for implementing beneficial market changes may be detrimental to the Canadian market as a whole.

We further suggest that guidance be provided as to what would constitute a "material system change" and whether there is any intended relationship between the terms "significant change" and "significant impact" under Section 6.1(4) of the CP21-101 to ensure clear and uniform understanding and application by marketplaces.

We submit that the proposed requirements in Sections 12.3(5)(c) and 12.3(6)(b), for a marketplace's chief information officer to certify to the regulator that all information technology systems have been tested according to prudent business practices and are operating as designed prior to a marketplace beginning operations or implementing material changes to its technology requirements, will impose unnecessary costs and unduly delay beneficial market changes from being implemented. Certifications require advance planning and controls to be put in place, creating costs and delays that do not improve the technology or its implementation. We submit that the intent of this provision could be met by requiring marketplace policies and procedures that support appropriate testing and internal sign offs prior to implementation of material systems' changes, rather than a formal certification. In addition we note the independent systems review requirement which ensures marketplaces have an adequate system of internal control and adequate information technology general controls, including change management, as set forth in Sections 12.1(a) and 12.2 of NI21-101.

(e) *Other System Related Amendments*

The Proposed Amendments to Exhibit G of Forms 21-101F1 and 21-101F2 are of significant concern. While the Request for Comments indicated that the amendments are designed to "ensure [the CSA] receive[s] relevant and consistent information from marketplaces regarding systems, contingency planning, system capacity and IT risk management"[2], they are broad and onerous and would introduce systemic risk, as well as create an unacceptable and unnecessary security risk for confidential marketplace information.

For example, the requirement to provide a network diagram that covers order entry, real-time market data and transmission has serious risk implications, as well as cyber-security and confidentiality concerns. This information is highly sensitive and is not appropriate information to be transmitted electronically in an unsecure regulatory filing on a monthly basis. Business continuity plans, including disaster recovery plans, and the addresses of primary and secondary processing sites, are also highly confidential and sensitive information. Such plans also contain private information subject to privacy laws.

The introduction of such filing requirements would introduce systemic risk the Canadian capital markets. The dissemination of this information in broad unsecure electronic filings also raises security and privacy concerns. This information is already available to securities regulators upon request and for oversight purposes. We therefore submit that these additional systems related filings should be deleted from the Forms 21-101F1 and 21-101F2.

Further, the new requirement to provide an organizational chart of the marketplace's IT group is very onerous and of negligible benefit. Marketplaces already have the obligation in Exhibit C to notify the CSA in the event of senior level management changes. IT charts may change on a regular basis and there seems to be no reason for the CSA to know every IT role and staff member on an ongoing basis. If it is necessary for the CSA to know any further organizational details about IT groups, we propose that it be clearly limited to certain senior roles.

2. **Co-Location and Other Access Arrangements with a Service Provider**

The current drafting of the proposed requirement in Section 5.13 of NI21-101 is very broad. For example, the Section could be interpreted to apply to access services provided in the normal course by a third party access vendor, and absent any commercial agreement or arrangement between the marketplace and "third party service provider" under which the access services are being performed or facilitated for or on behalf of the marketplace. It could also be read to apply to services relating to access that extend well beyond the immediate proximity of the marketplace's network boundary (e.g., to telcos and cross-connect services needed to reach the physical location of the marketplace's network).

We do not believe that this potential broad application is necessary or what is intended and therefore submit that the drafting should be clarified. It is our understanding that it is intended to apply to key marketplace access services, such as the permissioning and enabling a connection at

[2] (2014), 37 OSCB 4206

the marketplace network boundary, as well as co-location services which provide access to a marketplace. We also expect that the requirement is only intended to apply when those services are being performed or facilitated for or on behalf of the marketplace by a third party under a service contract.

With respect to the associated disclosure requirement in proposed Section 10.1(i) of NI21-101, our comments regarding clarity around the intended scope of application similarly apply.

3. **Information in Forms 21-101F1, 21-101F2 and 21-101F3**

(a) *Guidance Regarding Significant Changes to Form 21-101F1 and Form 21-101F2*

By introducing fee changes at CP21-101 Section 6.1(4)(c), fee changes will be swept into the definition of "significant change subject to public comment" in the *Process for the Review and Approval of Exchange Rules and of the Information Contained in Forms 21-101F1 and 21-101F2* (the "**Rule Protocol**"). We understand from discussions with the OSC that this is not the intention. Please confirm that the Rule Protocol will be amended in tandem with the Proposed Amendments or that another solution will be made so that fee changes are not subject to public comment.

In addition, we submit that there should be a materiality threshold in the new paragraph in Section 6.1(4) of CP21-101 regarding significant impact on marketplaces. We submit that not all changes that may give rise to potential conflicts of interest, limit access to the services, introduce changes to the structure of the marketplace, or that may result in costs are necessarily significant or have a significant impact. For example, a minor change might result in implementation costs, but they could be insignificant and yet trigger a classification as a "significant change" under this guidance. This Section should be revised to include a materiality threshold to ensure resources are allocated effectively and efficiently when managing marketplace changes and their associated filings.

(b) *Annual Certification of Form 21-101F1 and Form 21-101F2*

All Form 21-101F1 and Form 21-101F2 submissions are already certified by a director, officer or partner at the time of submission. The proposed annual filing and certification under Section 3.2(4) of NI21-101 is therefore duplicative and places an undue regulatory burden on marketplaces without added benefit. As each filing is certified, it is unclear how filing the same material a second time helps ensure that the information submitted is complete and up to date. These submissions are already onerous. As they are filed electronically, there should not be an issue for the CSA to review and track submissions that are received from marketplaces. Efforts to reduce regulatory burden and focus on efficiency, as well as electronic filing requirements, negate any possible additional benefit of certifying and filing the same materials more than once.

The experience of TMX Group's filing new F1s and F2s after the Maple transaction highlights the burden of such a requirement – we filed 825 pages for TSX, 781 pages for TSXV, 478 pages for TMX Select, 468 pages for Alpha and 508 pages for MX, all of which duplicated filings previously made. We submit that such resource intensive efforts to re-file duplicative electronic filings provide no benefit to the Canadian capital markets while increasing the regulatory burden and cost to all participants and should therefore be deleted from the Proposed Amendments.

Further, we submit that the requirement to certify that the marketplace's operations have been "implemented" as described may be warranted for a new marketplace but does not make sense for an existing marketplace. Each filing is already certified. We submit that this requirement is therefore a redundant regulatory burden and should be removed.

4. **Changes to Form 21-101F3**

The CSA's proposal to receive information in Form 21-101F3 regarding significant systems and technology changes that were planned, under development or implemented during the quarter is duplicative of filings made under the Rule Protocol, the 21-101F1 and 21-101F2 filing process and the Automation Review Program for Market Infrastructure Entities in the Canadian Capital Markets. Requiring these duplicative filings is inefficient for marketplaces and for regulators. We reiterate that as all filings are made electronically, there should not be an issue for the CSA to review and track submissions that are received from marketplaces under monthly 21-101 filings. Efforts to reduce regulatory burden and focus on efficiency, as well as electronic filing requirements, negate any possible additional benefit of filing the same materials more than once.

5. **Obligations of a Recognized Exchange to a Regulation Service Provider**

We submit that the new provision proposed as Section 7.2(b) of NI23-101 is unnecessary and should be deleted. As we have previously submitted, and the OSC has previously advised us, IIROC has not been granted the power to monitor exchange conduct. We do not disagree that the interrelated nature of the operations of an exchange with the operations of its regulation services provider may require coordination of certain activities between those parties, and that this coordination may include the exchange setting requirements that are necessary for the regulation services provider to be able to provide its regulation services. But this coordination does not require that the regulation services provider monitor the conduct of the exchange. TMX Group strongly believes that to provide otherwise improperly distorts the regulation services provider model.

With respect to the new provisions proposed for Section 7.2.1(a)(ii) of NI23-101, and consistent with our submission regarding Section 7.2(b) above, we reiterate our longstanding position that IIROC has not been granted, and should not be granted, the power to monitor exchange conduct. To provide otherwise distorts the relationship of the exchange with its regulation services provider, and implies an authority to the regulation services provider that is not appropriate, desirable or necessary. TMX Group submits that the new language proposed for Section 7.2.1(a)(ii) of NI23-101 should be deleted. TMX Group further submits that Section 7.2.1(a)(ii) should be deleted in its entirety, and TMX Group submits, in the alternative, if Section 7.2.1(a)(ii) is not deleted in its entirety, that the phrase "as applicable" should be reinserted into Section 7.2.1(a)(ii).

We submit that the new provision proposed as Section 7.2.1(a) of NI23-101 should be redrafted to reflect the arrangements currently in place between IIROC and TMX Group's exchanges. Under these arrangements, IIROC can mandate the form and manner for delivery of data stipulated by Part 11 of NI21-101, but other data in the possession of the exchanges required by IIROC for its regulation services is provided in the form possessed by the exchanges. We submit that this is both the appropriate and currently accepted arrangement.

Proposed Amendments to CP23-101 would clarify that Section 7.2.1(b) of NI23-101 is intended to apply to "orders or directions of its regulation services provider that are in connection with the conduct and trading by the recognized exchange's members on the recognized exchange and with regulation services provider's oversight of the compliance of the recognized exchange with the requirements set under Section 7.1(3)". TMX Group agrees the language in Section 7.2.1(b) should be clarified and submits the clarification should be added directly to the language of the NI23-101, rather than as guidance under the companion policy, but we submit the regulation services provider's authority should be restricted to "orders or directions of its regulation services provider that are in connection with the conduct and trading by the recognized exchange's members on the recognized exchange." We submit that this is both the appropriate and currently accepted arrangement. As noted above, TMX Group reiterates its longstanding position that IIROC has not been granted, and should not be granted, any oversight of exchange conduct.

With respect to the new provisions proposed for Section 7.1 of CP23-101, TMX Group does not agree that "[t]he regulation services provider is also required to monitor the compliance of the recognized exchange or recognized quotation and trade reporting system with the adopted rules [i.e. – UMIR]." As previously submitted, the coordination of exchange and regulation services provider operations does not necessitate the extension of this authority to the regulation services provider. In fact, the exchange is responsible for IIROC's services under the outsourcing arrangements with IIROC. TMX Group noted the following in its submissions to the CSA in January 2009 regarding Proposed Amendments to NI21-101 and NI23-101:

> "UMIR sets out the market integrity rules that apply to participants – not exchanges. TSX and TSXV have agreed to coordinate with IIROC many … 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 in the ATS Rules."

6. **Clearing and Settlement**

With respect to the proposed amendments to Section 13, we reiterate that while we are fully supportive of efforts to improve the efficiency and ensure the fairness of the Canadian capital markets, it is also critically important that solutions, including competition in the clearing space, be implementable in a commercially reasonable manner. The Proposed Amendments do not adequately address the complexities of clearing agencies, including those relating to their multifaceted functions, foreign regulatory and commercial differences, and CCP interoperability. We have set out these issues in further detail below, together with requests for additional clarity in certain areas and a suggestion that addresses some concerns.

(a) *Issues*

While we acknowledge that the CSA has specified in CP21-101 that equal access applies only to entities offering clearing services (rather than clearing, settlement, and depository services), the Proposed Amendments do not, in our view, adequately address the complexity of introducing multiple clearing agencies into a marketplace and raise more questions than the Proposed Amendments address. We respectfully request that the CSA further consider, for example, the question of the regulation of foreign versus domestically-based clearing agencies: How will the issues of risk management, bankruptcy and insolvency, asset protection and segregation, among others, be resolved in a multi-agency market, and how will the Proposed Amendments ensure that foreign 'clearing-services-only' agencies are safe, reliable and efficient from the perspective of the cross-border operation of markets and infrastructure? Consideration in some other jurisdictions has been given, for example, to management of these issues through direct regulation of foreign CCPs, requirements respecting the situs of collateral accounts, and attornment to laws of local jurisdictions in default management, insolvency and bankruptcy scenarios. Have these or other approaches been considered as part of implementation of the Proposed Amendments?

More fundamentally, the Proposed Amendments do not appear to account for, or address, the impact that a choice of clearing agency will have on an existing clearing agency's other central functions and roles. At what point in time will marketplace participants specify their choice of clearing agency? If these designations do not match, will interoperability be required or mandated? If multiple clearing agencies (foreign or domestic) may be designated, are the CSA prepared to assist with the management of foreign risk through agreements with foreign regulators or some other means information sharing? All of these questions are, in our view, of critical importance.

We understand that Section 13.2 is intended to ensure that marketplace participants have access to the clearing agency of their choice, and we are supportive of any objective that contributes to a fair, efficient, low cost market. The Proposed Amendment in Section 13.2, however, raises the possibility that marketplace participants could opt to designate a clearing agency, domestic or otherwise, to clear their transactions that may not be subject to appropriate regulatory oversight. The existing provincial recognition process is well established and ensures that recognized clearing agencies carrying on business in a province are subject to substantially similar scrutiny and oversight in respect of their operations. If a participant could choose a clearing agency that is neither recognized nor exempt, this creates the potential to inject undue or unintended risk into the operation of the Canadian financial markets.

(b) *Proposed Further Amendments*

In Section 13 of the Proposed Amendments, we submit that the term "clearing agency" should be defined for purposes of NI21-101 as "a clearing agency that is either recognized or exempt from recognition by a Canadian securities regulator." As the securities legislation of most provinces requires that clearing agencies be recognized, or be granted an exemption from recognition, in order to carry on business, and that it is likely that clearing for a marketplace would be considered carrying on business, clarifying the definition further will ensure that only recognized or exempt clearing agencies provide this service. This proposed provision is consistent with

provincial securities laws or upcoming amendments to securities laws, reduces the possibility of confusion and last minute scrambling for recognition by a clearing agency in the future, and reduces the risk that marketplace participants could designate a clearing agency that is not appropriately regulated. This definition would also be consistent with proposed Section 15.2 of CP21-101. We believe that this is a significant point which should appear clearly in the national instrument itself and not just in guidance in the companion policy.

Numerous clearing agencies have been recognized or exempt from recognition in Canada. The definition we propose for "clearing agency" will, in our view, achieve the CSA's objectives of preventing impediments to competition in clearing and settlement and ensuring that the markets are fair and efficient, while simultaneously offering better protection for investors by ensuring that marketplace participants only send transactions to clearing agencies over which Canadian regulators have oversight. It should also at least partly address some concerns relating to foreign regulated clearing agencies as this will ensure some oversight and understanding of such entities. The CSA has noted that part of its motivation for putting section 13.2 in place is to be consistent with the Committee for Payment and Settlement Systems (CPSS) of the Bank for International Settlements and the Technical Committee of the International Organization of Securities Commissions (IOSCO) Principles for financial market infrastructures (PFMIs). Requiring that a marketplace participant's chosen clearing agency be a recognized or exempt clearing agency would also achieve greater consistency with the PFMIs as, in most cases, recognized or exempt clearing agencies will be required to comply with the PFMIs while other clearing agencies may not be subject to these requirements.

We further request that the CSA also make other appropriate amendments to ensure the market protection and operational concerns raised above are adequately addressed.

7. Requirements Applicable to an Information Processor

Section 6.1 proposes that the Information Processor submit on an annual basis an income statement and a statement of cash flow. While we appreciate that the CSA may like more transparency into the operating costs and revenues of the Information Processor, the statement of cash flow is duplicative of the income statement and does not provide any further meaningful information in assessing the financial health of the Information Processor. The nature of the Information Processor does not lend itself to being impacted in any meaningful way by asset depreciation, credit transactions or inventory, items that would normally be tracked in a statement of cash flow. We therefore believe that the statement of cash flow will be extremely similar if not the same as the income statement for the information processor. As such, we submit that the requirement for a statement of cash flow should be removed as it will divert resources to creating something that is not useful.

With respect to proposed Section 14.6(3) requiring that the Information Processor resume operations within one hour in a disaster recovery event, we note that the Information Processor currently runs in a hot-hot environment where two sites (Primary and Secondary) are running in parallel, each operating independently of the other to ensure that if one site is down, the other can remain fully functional with minimal impact to subscribers. While we take great and careful measures to ensure optimal performance and full availability of the Information Processor at all

times, should an unforeseen event occur where both production sites are affected, we may not be able to control the total downtime.

In this regard the situation is similar to our comments raised above under “Marketplace Systems and Business Continuity Planning - *Business Continuity Testing*”. There are too many variables to have absolute certainty about such unknown situations. We therefore submit that the drafting should be clarified to reflect that the policies and procedures that provide for the information processor to resume operations following the declaration of a disaster should contemplate a 1 hour recovery. We suggest that the phrase “must […] ensure that” in Section 14.6(3) be replaced with the phrase: “must ensure that policies and procedures have been established and implemented that are reasonably designed so [that its critical systems]…”

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