

5.1.2 Amendments to NI 21-101 Marketplace Operation

AMENDMENTS TO NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION

PART 1 AMENDMENTS

1.1 Amendments

- (1) This Instrument amends National Instrument 21-101 *Marketplace Operation*.
- (2) Part 1 is amended by repealing the definition of “government debt security” and substituting the following definition:

“government debt security” means

 - (a) a debt security issued or guaranteed by the government of Canada, or any province or territory of Canada,
 - (b) a debt security issued or guaranteed by any municipal corporation in Canada, or secured by or payable out of rates or taxes levied under the law of a jurisdiction of Canada on property in the jurisdiction and to be collected by or through the municipality in which the property is situated,
 - (c) a debt security of a crown corporation,
 - (d) in Ontario, a debt security of any school board in Ontario or of a corporation established under section 248(1) of the *Education Act* (Ontario), or
 - (e) in Québec, a debt security of the Comité de gestion de la taxe scolaire de l’île de Montréal

that is not listed on a recognized exchange or quoted on a recognized quotation and trade reporting system or listed on an exchange or quoted on a quotation and trade reporting system that has been recognized for the purposes of this Instrument and NI 23-101.
- (3) Section 6.2 is repealed and the following substituted:

“Except as provided in this Instrument, the registration exemptions applicable to dealers under securities legislation are not available to an ATS.”
- (4) Part 7 is amended by:
 - a. striking out the reference in section 7.2 to “orders” and substituting “trades”;
 - b. striking out the reference in section 7.4 to “orders” and substituting “trades”;
 - c. repealing section 7.5; and
 - d. adding the following:

7.5 Consolidated Feed – Exchange-Traded Securities – An information processor shall produce an accurate and timely consolidated feed showing the information provided to the information processor under sections 7.1 and 7.2.

7.6 Compliance with Requirements of an Information Processor – A marketplace shall comply with the reasonable requirements of the information processor to which it is required to provide information under this Part.”
- (5) Part 8 is amended by
 - a. repealing subsection 8.2(1) and substituting the following:

A marketplace that displays orders of corporate debt securities to a person or company shall provide accurate and timely information regarding orders for designated corporate debt securities displayed on the marketplace to an information processor, as required by the information processor, or if there

is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider;

- b. repealing subsection 8.2(3) and substituting the following:

A marketplace shall provide accurate and timely information regarding details of trades of designated corporate debt securities executed on the marketplace to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider;

- c. repealing subsection 8.2(4) and substituting the following:

An inter-dealer bond broker shall provide accurate and timely information regarding details of trades of designated corporate debt securities executed through the inter-dealer bond broker to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider;

- d. repealing subsection 8.2(5) and substituting the following:

A dealer executing trades of corporate debt securities outside of a marketplace shall provide accurate and timely information regarding details of trades of designated corporate debt securities traded by or through the dealer to an information processor, as required by the information processor, or if there is no information processor, to an information vendor that meets the standards set by a regulation services provider, as required by the regulation services provider;

- e. repealing section 8.5 and substituting the following:

“8.5 Reporting Requirements for the Information Processor – (1) The information processor shall report, within 30 days after the end of each calendar quarter, the process and criteria for selection of government debt securities, as applicable, and designated corporate debt securities and the list of government debt securities, as applicable, and designated corporate debt securities.

(2) The information processor shall report, within 30 days after the end of each calendar year, the process to communicate the designated securities to the marketplaces, inter-dealer bond brokers and dealers providing the information as required by the Instrument, including where the list of designated securities can be found.”; and

- f. adding the following section:

“8.6 Exemption for Government Debt Securities – Section 8.1 does not apply until January 1, 2012.”

- (6) Part 11 is amended by repealing section 11.2(2) and substituting the following:

“11.2(2) Transmittal of Order Information – A marketplace shall transmit to a securities regulatory authority or a regulation services provider, if it has entered into an agreement with a regulation services provider in accordance with NI 23-101, the information required by the securities regulatory authority or the regulation services provider, within ten business days, in electronic form as required by the securities regulatory authority or regulation services provider.

11.2(3) Electronic Form – The record kept by a marketplace under section 11.1 and subsection 11.2(1) and the transmission of information to a securities regulatory authority or a regulation services provider under subsection 11.2(2) shall be in electronic form as prescribed by a securities regulatory authority or a regulation services provider.”

- (7) Part 12 is amended by adding the following section 12.3:

“12.3 Availability of technology specifications and testing facilities – (1) For at least two months immediately prior to operating, a marketplace shall make available to the public any technology requirements regarding interfacing with or access to the marketplace.

- (2) After the technology requirements set out in subsection (1) have been published, a marketplace shall make available to the public, for at least one month, testing facilities for interfacing with and access to the marketplace.”
- (8) Appendix A to National Instrument 21-101 Marketplace Operation is repealed.

AMENDMENTS TO FORM 21-101 F2 – INITIAL OPERATION REPORT ALTERNATIVE TRADING SYSTEM

PART 1 AMENDMENTS

(1) This Instrument amends Form 21-101F2 *Initial Operation Report Alternative Trading System*.

(2) Exhibit G is amended by adding the following at the end of item 5:

“Where applicable, the description should include, at a minimum: the parties involved in settling the trades; the trades being settled; and the procedures to manage counterparty and settlement risk.”

AMENDMENTS TO FORM 21-101 F5 – INITIAL OPERATION REPORT FOR INFORMATION PROCESSOR

PART 1 AMENDMENTS

- (1) This Instrument amends Form 21-101F5 *Initial Operation Report for Information Processor*.
- (2) Part 1 Corporate Governance is amended by:
 - a. adding “identifying the processes and procedures which promote independence from the marketplaces, inter-dealer bond brokers and dealers that provide data.” after “all subsequent amendments” in the description of Exhibit A;
 - b. adding “identifying those individuals with overall responsibility for the integrity and timeliness of data reported to and displayed by the system (the “System”) of the information processor,” after “the previous year” in the description of Exhibit C; and
 - c. adding “identifying the employees responsible for monitoring the timeliness and integrity of data reported to and displayed by the System.” at the end of the first sentence of the description of Exhibit E.
- (3) Part 2 Systems and Operations is amended by:
 - a. replacing “the system (the “System”) of the information processor” with “the System” in the description of Exhibit G;
 - b. adding “including data validation processes” at the end of subsection 2 of the description of Exhibit G;
 - c. repealing the current description of Exhibit H and replacing it with:

“A description in narrative form of each service or function performed by the information processor. Include a description of all procedures utilized for the collection, processing, distribution, validation and publication of information with respect to orders and trades in securities.”; and
 - d. removing the last sentence of the description of Exhibit J and replacing it with:

“Describe any measures used to verify the timeliness and accuracy of information received and disseminated by the System, including the processes to resolve data integrity issues identified.”
- (4) Part 4 Fees is amended by:
 - a. adding “and Revenue Sharing” after “Fees” to the title; and
 - b. adding “Where arrangements to share revenue from the sale of data disseminated by the information processor with marketplaces, inter-dealer bond brokers and dealers that provide data to the information processor in accordance with National Instrument 21-101 are in place, a complete description of the arrangements and the basis for these arrangements.” at the end of the description of Exhibit O.

- (5) The following section is added after Part 5:

“6. – Selection of Securities Reported to the Information Processor

Exhibit T

Where the information processor is responsible for making a determination of the data which must be reported, including the securities for which information must be reported in accordance with National Instrument 21-101, describe the manner of selection and communication of these securities. This description should include the following:

1. The criteria used to determine which securities should be reported to the information processor.
2. The process for selection of the securities, including a description of the parties consulted in the process and the frequency of the selection process.

3. The process to communicate the securities selected to the marketplaces, inter-dealer bond brokers and dealers providing the information as required by National Instrument 21-101. The description should include where this information is located."

AMENDMENTS TO COMPANION POLICY 21-101 CP – TO NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION

PART 1 AMENDMENTS

1.1 Amendments

- (1) This amends Companion Policy 21-101 CP.
- (2) Section 3.4 is amended by:
 - a. adding a new subsection 3.4(6):

“3.4(6) Any registration exemptions that may otherwise be applicable to a dealer under securities legislation are not available to an ATS, even though it is registered as a dealer (except as provided in the Instrument), because of the fact that it is also a marketplace and different considerations apply.”; and
 - b. renumbering the subsections accordingly.
- (3) Section 9.1 is amended by:
 - a. adding a new subsection 9.1(2):

“9.1(2) To comply with subsections 7.1 and 7.2 of the Instrument, any information provided by a marketplace to an information processor or information vendor must include identification of the marketplace and should contain all relevant information including details as to volume, symbol, price and time of the order or trade.”;
 - b. repealing subsection 9.1(5); and
 - c. renumbering the subsections accordingly.
- (4) Part 10 is amended by
 - a. repealing subsection 10.1(1) and substituting the following:

“10.1(1) The requirement to provide transparency of information regarding orders and trades of government debt securities in section 8.1 of the Instrument does not apply until January 1, 2012. The Canadian securities regulatory authorities will continue to review the transparency requirements, in order to determine if the transparency requirements summarized in subsections (2) and (3) below should be amended.”;
 - b. repealing subsection 10.1(3) and substituting the following:

“10.1(3) The requirements of the information processor for corporate debt securities are as follows:

 - (a) Marketplaces trading corporate debt securities, inter-dealer bond brokers and dealers trading corporate debt securities outside of a marketplace are required to provide details of trades of all corporate debt securities designated by the information processor, including details as to the type of counterparty, issuer, type of security, class, series, coupon and maturity, price and time of the trade and, subject to the caps set out below, the volume traded, no later than one hour from the time of the trade or such shorter period of time determined by the information processor. If the total par value of a trade of an investment grade corporate debt security is greater than \$2 million, the trade details provided to the information processor are to be reported as "\$2 million+". If the total par value of a trade of a non-investment grade corporate debt security is greater than \$200,000, the trade details provided to the information processor are to be reported as "\$200,000+”.
 - (b) Although subsection 8.2(1) of the Instrument requires marketplaces to provide information regarding orders of corporate debt securities, the information processor has not required this information to be provided.

- (c) A marketplace, an inter-dealer bond broker or a dealer will satisfy the requirements in subsections 8.2(1), 8.2(3), 8.2(4) and 8.2(5) of the Instrument by providing accurate and timely information to an information vendor that meets the standards set by the regulation services provider for the fixed income markets.”; and
- c. repealing subsection 10.1(5) and substituting the following:
 - “10.1(5) The information processor is required to use transparent criteria and a transparent process to select government debt securities and designated corporate debt securities. The information processor is also required to make the criteria and the process publicly available.”

AMENDMENTS TO NATIONAL INSTRUMENT 23-101 TRADING RULES

PART 1 AMENDMENTS

1.1 Amendments

- (1) This Instrument amends National Instrument 23-101 *Trading Rules*.
- (2) Part 3 is amended by repealing subsection 3.1(2) and substituting the following:

“In Alberta, British Columbia, Ontario, Québec and Saskatchewan, instead of subsection (1), the provisions of the *Securities Act* (Alberta), the *Securities Act* (British Columbia), the *Securities Act* (Ontario), the *Securities Act* (Québec) and *The Securities Act, 1988* (Saskatchewan), respectively, relating to manipulation and fraud apply.”
- (3) Part 7 is amended by
 - a. striking out “recognized exchange and its members” and substituting “members of a recognized exchange” in subsection 7.2(a); and
 - b. striking out “recognized quotation and trade reporting system and its users” and substituting “users of a recognized quotation and trade reporting system” in subsection 7.4(a).
- (4) Part 11 is amended by
 - a. adding subsection 11.1(2):

A dealer or inter-dealer bond broker is exempt from this Part if the dealer or inter-dealer bond broker complies with similar requirements, for any securities specified, established by a regulation services provider and approved by the applicable securities regulatory authority.
 - b. in subsection 11.2(1), by striking out “Immediately following the receipt or origination of an order for securities” and substituting “Immediately following the receipt or origination of an order for equity, fixed income and other securities identified by a regulation services provider”;
 - c. in subsection 11.2(1)(q), striking out the word “and”;
 - d. in subsection 11.2(1)(r), striking out “an insider marker” and adding “an insider marker; and”;
 - e. adding the following subsection 11.2(1)(s): “any other markers required by a regulation services provider.”;
 - f. deleting subsection 11.2(5) and substituting:

“**Transmittal of Order Information** – A dealer and inter-dealer bond broker shall record and shall transmit within 10 business days to a securities regulatory authority or a regulation services provider the information required by the securities regulatory authority or the regulation services provider, in electronic form, as required by the securities regulatory authority or the regulation services provider.”;
 - g. deleting subsection 11.2(6) and substituting the following:

“**Electronic Form** – The record kept by the dealer and inter-dealer bond broker under subsections (1) through (4) and the transmission of information to a securities regulatory authority or a regulation services provider under subsection (5) shall be in electronic form by January 1, 2010.”; and
 - h. adding subsection 11.2(7):

“**Record preservation requirements** – A dealer and an inter-dealer bond broker shall keep all records for a period of not less than seven years from the creation of the record referred to in this section, and for the first two years in a readily accessible location.”

**AMENDMENTS TO COMPANION POLICY 23-101CP – TO NATIONAL
INSTRUMENT 23-101 TRADING RULES**

PART 1 AMENDMENTS TO COMPANION POLICY 23-101CP TRADING RULES

1.2 Amendments

- (1) This amends Companion Policy 23-101CP.
- (2) Section 2.1 is amended by deleting the last sentence and substituting the following: “The exemption from subsection 3.1(1) does not apply in Alberta, British Columbia, Ontario, Québec and Saskatchewan and the relevant provisions of securities legislation apply.”
- (3) Subsection 3.1(2) is amended by deleting the first sentence and substituting the following: “Subsection 3.1(2) of the Instrument provides that despite subsection 3.1(1) of the Instrument, the provisions of the *Securities Act* (Alberta), the *Securities Act* (British Columbia), the *Securities Act* (Ontario), the *Securities Act* (Québec) and *The Securities Act, 1988* (Saskatchewan), respectively, relating to manipulation and fraud apply in Alberta, British Columbia, Ontario, Québec and Saskatchewan.”
- (4) Part 4 is amended by:
 - a. in subsection 4.1(7), in the second sentence, adding at the end of the sentence “or, if there is no information processor, by an information vendor that meets that standards set out by a regulation services provider.”; and
 - b. adding subsection 4.1(8):

“In order to meet best execution obligations where securities trade on multiple marketplaces in Canada, a dealer should consider information from all marketplaces (not just marketplaces where the dealer is a participant). This does not necessarily mean that a dealer must have access to real-time data feeds from each marketplace but that it should establish reasonable policies and procedures for best execution that include taking into account order and/or trade information from all appropriate marketplaces in the particular circumstances. The policies and procedures should be monitored on a regular basis. A dealer should also take steps, where appropriate, to access orders which may include making arrangements with another dealer who is a participant of a particular marketplace or routing an order to a particular marketplace.”
- (5) Part 8 is amended by:
 - a. in section 8.1 adding the following after the first sentence: “Information to be recorded includes any markers required by a regulation services provider (such as a significant shareholder marker).”;
 - b. in section 8.2 deleting “in the form and at the time required by a securities regulatory authority or the regulation services provider” and substituting “, within 10 business days, in electronic form as required by a securities regulatory authority or the regulation services provider”; and
 - c. deleting section 8.3 and substituting the following:

“**Electronic Audit Trail** - Subsection 11.2(6) of the Instrument requires dealers and inter-dealer bond brokers to transmit certain information to a securities regulatory authority or a regulation services provider in electronic form as prescribed by a securities regulatory authority or the regulation services provider. The Canadian securities regulatory authorities and the self-regulatory entities are working with the industry to develop standards for these requirements.”