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)   The definitions in section 1.1 are amended as follows:

    (a)   the definition of "IDA" is repealed and replaced by the following ""IIROC" means the Investment Industry Regulatory Organization of Canada";

    (b)   the definition of "inter-dealer bond broker" is amended by:

        (i)   striking out "IDA" and substituting "IIROC";

        (ii)   striking out "By-law No. 36" and substituting "Rule 36"; and

        (iii)   striking out "Regulation 2100" and substituting "Rule 2100"; and

    (c)   adding the following definitions:

""effective spread" means,

    (a)   for buy orders, double the amount of the difference between the execution price and the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace at the time of order receipt; or

    (b)   for sell orders, double the amount of the difference between the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace at the time of order receipt and the execution price.

"realized spread" means,

    (a)   for buy orders, double the amount of the difference between the execution price and the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace five minutes after the time of order execution; or

    (b)   for sell orders, double the amount of the difference between the midpoint of the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace five minutes after the time of order execution and the execution price; and

where, for orders that execute within the last five minutes of a marketplace's trading hours, the midpoint referred to in paragraphs (a) and (b) is the midpoint of the final best bid price and best ask price disseminated for the trading day.".

(3)   The following section is added after section 10.1:

"**10.2 Trading Fees for Trade-Through Purposes** – With respect to trading fees charged for the execution of an order to comply with section 6.1 of NI 23-101, a marketplace shall not impose

    (a)   a fee that is equal to or greater than the minimum price increment described in IIROC Universal Market Integrity Rule 6.1, as amended; and

    (b)   terms that have the effect of discriminating between orders that are routed to that marketplace to prevent trade-throughs and orders that originate on that marketplace."

(4)   Section 11.5 is repealed and replaced by the following:

"**11.5 Synchronization of Clocks** – (1) A marketplace trading exchange-traded securities, an information processor

receiving information about those securities and a dealer trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part or NI 23-101 with the clock used by its regulation services provider, or if it has not retained a regulation services provider, any regulation services provider monitoring the trading of those securities.

(2) A marketplace trading corporate debt securities or government debt securities, an information processor receiving information about those securities, a dealer trading those securities and an inter-dealer bond broker trading those securities shall synchronize the clocks used for recording or monitoring the time and date of any event that must be recorded under this Part or NI 23-101 with the clock used by its regulation services provider, or if it has not retained a regulation services provider, any regulation services provider monitoring the trading of those securities.".

(5)   The following Part is added:

"**PART 11.1 REPORTING OF ORDER EXECUTION INFORMATION BY MARKETPLACES**

11.1.1 Reporting of Order Execution Information by Marketplaces – (1) A marketplace shall publish in a meaningful, readily accessible and usable electronic form and make available at no cost for downloading from a website, a monthly report containing the information set out below, but not including information relating to any non-standard order, calculated price order or closing price order:

Liquidity Measures:

(a)   for all orders that, when received by the marketplace, are at or within the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace:

    (i)   the number of orders that the marketplace received;

    (ii)   the number of orders that were cancelled;

    (iii)   the number of orders that were executed on the marketplace;

    (iv)   if applicable, the number of orders routed to another marketplace for execution;

    (v)   the average volume of all orders executed on the marketplace;

    (vi)   the share-weighted average effective spread for order executions; and

    (vii)   the share-weighted average realized spread for order executions.

Trading Statistics:

(b)   the number of trades executed on the marketplace;

(c)   the volume of all trades executed on the marketplace;

(d)   the volume of all trades resulting from the execution of orders that are not displayed on the marketplace;

(e)   the volume of all trades resulting from the execution of orders that are partially displayed on the marketplace;

(f)   the value of all trades executed on the marketplace;

(g)   the arithmetic mean and median size of trades executed on the marketplace;

(h)   the number of trades that were executed on the marketplace with a volume of,

    (i)   for securities other than options,

        (A)   over 5,000 up to and including 10,000 units of securities, and

        (B)   over 10,000 units of securities, and

        (ii)   for options,

               (A)   over 100 up to and including 250 options contracts; and

               (B)   over 250 options contracts.

Speed and Certainty of Execution Measures:

(i)   the number of orders that, when received by the marketplace, are at or within the best bid price and best ask price as identified by an information processor, or if there is no information processor, on a particular marketplace and that are executed:

        (i)   within 1 second after the time of their receipt;

        (ii)   more than 1 second and up to and including 10 seconds after the time of their receipt;

        (iii)   more than 10 seconds and up to and including 60 seconds after the time of their receipt;

        (iv)   more than 1 minute and up to and including 5 minutes after the time of their receipt; and

        (v)   more than 5 minutes and up to and including 30 minutes after the time of their receipt.

(2) The reporting required in paragraphs (1)(a) through (i) shall be categorized by security.

(3) This section is effective on [**insert date six months after Effective Date**].

(6)   Part 12 is repealed and replaced with the following:

"**PART 12 CAPACITY, INTEGRITY AND SECURITY OF MARKETPLACE SYSTEMS**

12.1 System Requirements – For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall,

(a)   develop and maintain

        (i)   reasonable business continuity and disaster recovery plans;

        (ii)   an adequate system of internal control over those systems; and

        (iii)   adequate general computer controls, including controls relating to information systems operations, information security, change management, problem management, network support and system software support;

(b)   consistent with prudent business practice, on a reasonably frequent basis, and in any event, at least annually,

        (i)   make reasonable current and future capacity estimates;

        (ii)   conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner; and

        (iii)   test its business continuity and disaster recovery plans; and

(c)   promptly notify the regulator, or, in Québec, the securities regulatory authority and, if applicable, its regulation services provider of any material systems failures.

12.2 Systems Reviews – (1) For each of its systems that support order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, a marketplace shall annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph 12.1(a).

(2) A marketplace shall provide the report resulting from the review conducted under subsection (1) to

(a)   its board of directors, or the audit committee, promptly upon the report's completion, and

(b)   to the regulator, or, in Québec, the securities regulatory authority, within 30 days of providing the report to its board of directors or the audit committee.

12.3 Availability of Technology Requirements and Testing Facilities – (1) A marketplace shall publish all technology requirements regarding interfacing with or accessing the marketplace in their final form,

(a)   if operations have not begun, for at least three months immediately before operations begin; and

(b)   once it has begun operations, for at least three months before implementing a material change to its technology requirements.

(2) After the technology requirements set out in subsection (1) have been published, a marketplace shall make available testing facilities for interfacing with or accessing the marketplace,

(a)   if operations have not begun, for at least two months immediately before operations begin; and

(b)   once it has begun operations, for at least two months before implementing a material change to its technology requirements.

(3) A marketplace shall not begin operations until it has complied with paragraphs (1)(a) and (2)(a).".

(7)   Section 14.5 is repealed and replaced with the following:

"**14.5 System Requirements** – An information processor shall,

(a)   develop and maintain

      (i)   reasonable business continuity and disaster recovery plans;

      (ii)   an adequate system of internal controls over its critical systems; and

      (iii)   adequate general computer controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

(b)   on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

      (i)   make reasonable current and future capacity estimates for each of its systems;

      (ii)   conduct capacity stress tests of its critical systems to determine the ability of those systems to process information in an accurate, timely and efficient manner; and

      (iii)   test its business continuity and disaster recovery plans;

(c)   annually engage a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards to ensure that it is in compliance with paragraph (a);

(d)   provide the report resulting from the review conducted under paragraph (c) to

      (i)   its board of directors or the audit committee promptly upon the report's completion, and

      (ii)   to the regulator, or, in Québec, the securities regulatory authority, within 30 days of providing it to the board of directors or the audit committee; and

(e)   promptly notify the regulator, or, in Québec, the securities regulatory authority, and any regulation services provider, recognized exchange or recognized quotation and trade reporting system monitoring trading of the securities about which information is provided to the information processor of any material systems failures.

1.2   **Effective Date** – This Instrument comes into force on [**].

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

PART 1   AMENDMENTS

1.1   Amendments

(1)   This amends Companion Policy 21-101CP.

(2)   Part 1 is amended by adding the following section as section 1.4:

"**1.4 Definition of Regulation Services Provider** – The definition of regulation services provider is meant to capture a third party provider that provides regulation services to marketplaces. A recognized exchange or recognized quotation and trade reporting system would not be a regulation services provider if it only conducts these regulatory services for its own marketplace or an affiliated marketplace and does not provide these services to others.".

(3)   Subsection 2.1(7) is amended by:

    (i)   striking out the reference to the "IDA" and substituting "IIROC"; and

    (ii)   striking out "IDA By-law No. 36" and "By-law No. 36" and substituting "Rule 36"; and

    (iii)   striking out "IDA Regulation 2100" and "Regulation 2100" and substituting "Rule 2100".

(4)   Subsection 3.4(5) is amended by striking out the reference to the "IDA" and substituting "IIROC".

(5)   Subsection 6.1(6) is amended by striking out "any change to the operating platform of an ATS, the types of securities traded, or the types of subscribers." and substituting "a change to the information in Exhibits A, B, C, F, G, I, and J of Form 21-101F2.".

(6)   Section 7.1 is amended by:

    (a)   striking out "." at the end of the last sentence; and

    (b)   adding the following at the end of the paragraph:

"and a person or company that obtains access through a member or user. The reference to "services" in paragraph (b) means all services that a marketplace provides including any services that may be offered to a member in the case of an exchange or a user in the case of a quotation and trade reporting system or anyone accessing orders directly or indirectly on the exchange or quotation and trade reporting system for purposes of the trade-through requirements set out in Part 6 of NI 23-101. A recognized exchange or recognized quotation and trade reporting system should permit fair and efficient access for the purposes of complying with the trade-through requirements in section 6.1 of NI 23-101 to (a) a member or user directly, or (b) a person or company that is indirectly accessing the recognized exchange or recognized quotation and trade reporting system through a member or user.".

(7)   Section 8.2 is amended by:

    (a)   striking out "." at the end of the last sentence; and

    (b)   adding the following at the end of the paragraph:

"and a person or company that obtains access through a subscriber that is a dealer. The reference to "services" in paragraph (b) means all services that a marketplace provides including any services that may be offered to a subscriber or anyone accessing orders directly or indirectly on the ATS for purposes of the trade-through requirements set out in Part 6 of NI 23-101. An ATS should permit fair and efficient access for the purposes of complying with the trade-through requirements in section 6.1 of NI 23-101 to (a) a subscriber directly, or (b) a person or company that is indirectly accessing the ATS through a subscriber.".

(8)   Part 9 is amended by:

    (a)   striking out the first two sentences of subsection 9.1(1) and substituting the following:

"(1) Subsection 7.1(1) of the Instrument requires a marketplace that displays orders of exchange-traded securities to any person or company to provide accurate and timely information regarding those orders to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider. Section 7.2 requires the marketplace to provide accurate and timely information regarding trades of exchange-traded securities to an information processor or, if there is no information processor, an information vendor that meets the standards set by a regulation services provider."; and

(b)   repealing and replacing subsection 9.1(2) with the following:

"(2) In complying with sections 7.1 and 7.2 of the Instrument, a marketplace should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor. In addition, 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.".

(9)   Part 10 is amended by:

(a)   striking out "; and" at the end of section 10.1(9); and

(b)   adding the following as section 10.2:

"**10.2 Availability of Information** – In complying with the requirements in sections 8.1 and 8.2 of the Instrument to provide accurate and timely order and trade information to an information processor or an information vendor that meets the standards set by a regulation services provider, a marketplace, an inter-dealer bond broker or dealer should not make the required order and trade information available to any other person or company on a more timely basis than it makes that information available to the information processor or information vendor.".

(10)   The following is added as section 12.2:

"**12.2 Trading Fees for Trade-Through Purposes** – Section 10.2 of the Instrument prohibits a marketplace from imposing fees for the purpose of complying with the trade-through requirements set out in Part 6 of NI 23-101 that (i) is equal to or greater than the minimum price increment that is described in IIROC Universal Market Integrity Rule 6.1, as amended, or (ii) has the effect of discriminating between orders that are routed to that marketplace to prevent trade-throughs and orders that originate on that marketplace. This prohibition would include any fees charged to access an order on a marketplace. Paragraph 10.2(b) of the Instrument is intended to ensure that a marketplace does not charge discriminatory fees to those routing orders to meet their trade-through obligations.".

(11)   Section 13.2 is repealed and replaced with the following:

"**13.2 Synchronization of Clocks** – Subsections 11.5(1) and (2) of the Instrument require the synchronization of clocks with a regulation services provider that monitors the activities of marketplaces, and, as appropriate, inter-dealer bond brokers or dealers trading the relevant securities. The Canadian securities regulatory authorities are of the view that synchronization requires continual synchronization using an appropriate national time standard as chosen by a regulation services provider. Even if a marketplace has not retained a regulation services provider, its clocks should be synchronized with any regulation services provider monitoring trading in the particular securities traded on that marketplace. Each regulation services provider will monitor the information that it receives from all marketplaces, dealers and, if appropriate, inter-dealer bond brokers, to ensure that the clocks are appropriately synchronized. If there is more than one regulation services provider, in meeting their obligation to coordinate monitoring and enforcement under section 7.5 of NI 23-101, regulation services providers are required to agree on one standard against which synchronization will occur. In the event there is no regulation services provider, a recognized exchange or recognized quotation and trade reporting system should coordinate with other recognized exchanges or recognized quotation and trade reporting systems regarding the synchronization of clocks.".

(12)   The Companion Policy is amended by adding the following Part after Part 13:

"**PART 13.1 REPORTING OF ORDER EXECUTION INFORMATION BY MARKETPLACES**

13.1.1 Reporting of Order Execution Information by Marketplaces – (1) Section 11.1.1 of the Instrument requires a marketplace to make available standardized, monthly reports of statistical information concerning the execution of orders. It is expected that this information would provide a starting point to promote visibility and best execution, in particular, relating to the factors of execution price and speed. It is also expected that this information would provide a tool for dealers and advisers to evaluate the quality of executions among marketplaces and aid in fulfilling their duty of best execution.

(2) Orders that are not immediately executable and orders that trade in special terms books, such as all-or-none, minimum fill or cash or delayed delivery are not considered to be orders for the purposes of this Part. As well, order information regarding pre-arranged trades and intentional or internal crosses is not required. In addition, marketplaces reporting trade information should only count each share traded once.".

(13)   Section 14.1 is repealed and replaced with the following:

"**14.1 Systems Requirements** – This section applies to all the systems of a particular marketplace that are identified in the introduction to section 12.1 of the Instrument.

(1) Paragraph 12.1(a) of the Instrument requires the marketplace to develop and maintain an adequate system of internal control over the systems specified. As well, the marketplace is required to develop and maintain adequate general computer controls. These are the controls which are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recognized guides as to what constitutes adequate information technology controls include '*Information Technology Control Guidelines'* from The Canadian Institute of Chartered Accountants (CICA) and '*COBIT'* from the IT Governance Institute.

(2) Paragraph 12.1(b) of the Instrument requires a marketplace to meet certain systems capacity, performance, business continuity and disaster recovery standards. These standards are consistent with prudent business practice. The activities and tests required in this paragraph are to be carried out at least once a year. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.

(3) Subsection 12.2(1) of the Instrument requires a marketplace to engage a qualified party to conduct an annual independent assessment of the internal controls referred to in paragraph 12.1(a). A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment. Before engaging a qualified party, a marketplace should discuss its choice with the regulator, or, in Québec, the securities regulatory authority.".

(14)   The following is added as section 14.2:

"**14.2 Availability of Technology Specifications and Testing Facilities** – (1) Subsection 12.3(1) of the Instrument requires marketplaces to publish their technology requirements regarding interfacing with or accessing the marketplace in their final form for at least three months. If there are material changes to these requirements after they are published and before operations begin, the revised requirements should be published for a new three month period prior to operations. The subsection also requires that an operating marketplace publish its technology specifications for at least three months before implementing a material change to its technology requirements.

(2) Subsection 12.3(2) of the Instrument requires marketplaces to provide testing facilities for interfacing with or accessing the marketplace for at least two months immediately prior to operations once the technology requirements have been published. Should the marketplace publish its specifications for longer than three months, it may make the testing available during that period or thereafter as long as it is at least two months prior to operations. If the marketplace, once it has begun operations, proposes material changes to its technology systems, it is required to make testing facilities available for at least two months before implementing the material systems change.".

(15)   Part 16 is amended by:

(a)   repealing and replacing subsection 16.1(2) with the following:

"(2) An information processor is required under subsection 14.4(2) of the Instrument to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities. The Canadian securities regulatory authorities expect that in meeting this requirement, an information processor will ensure that all marketplaces, inter-dealer bond brokers and dealers that are required to provide information are given access to the information processor on fair and reasonable terms. In addition, it is expected that an information processor will not give preference to the information of any marketplace, inter-dealer bond broker or dealer when collecting, processing, distributing or publishing that information.

(3) An information processor is required under subsection 14.4(5) of the Instrument to provide prompt and accurate order and trade information, and to not unreasonably restrict fair access to the information. As part of the obligation relating to 'fair access', an information processor is expected to make the disseminated and published information available on terms that are reasonable and not discriminatory. For example, an information processor will not provide

order and trade information to any single person or company or group of persons or companies on a more timely basis than is afforded to others, and will not show preference to any single person or company or group of persons or companies in relation to pricing.";

(b)   striking out "which are not unreasonably discriminatory" from paragraph 16.2(1)(b); and

(c)   adding the following as section 16.4:

"**16.4 System Requirements** – Section 14.1 of this Companion Policy contains guidance on the systems requirements as it applies to an information processor.".

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)   The following definitions are added to section 1.1:

"automated functionality" means the ability to:

(a)   permit an incoming order that has been entered on the marketplace electronically to be marked as fill-or-kill;

(b)   immediately and automatically execute an order marked as fill-or-kill against the displayed volume;

(c)   immediately and automatically cancel any unexecuted portion of an order marked as fill-or-kill without routing the order elsewhere;

(d)   immediately and automatically transmit a response to the sender of an order marked as fill-or-kill indicating the action taken with respect to the order; and

(e)   immediately and automatically display information that updates the displayed order to reflect any change to its material terms;

"calculated price order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is entered on a marketplace if the price of that security

(a)   is not known at the time of order entry; and

(b)   is to be calculated based on, but will not necessarily be equal to, the price of that security at the time of execution;

"closing price order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is

(a)   entered on a marketplace on a trading day; and

(b)   subject to the conditions that

(i)   the order be executed at the closing sale price of that security on that marketplace for that trading day; and

(ii)   the order be executed subsequent to the establishment of the closing price;

"inter-market sweep order" means a limit order for the purchase or sale of an exchange-traded security, other than a derivative,

(a)   entered on or routed to a marketplace to be executed against a protected order; and

(b)   identified as an inter-market sweep order; and

at the same time that it is entered or routed, one or more additional limit orders are routed, as necessary, to a marketplace to execute against the displayed volume of any other protected order on that marketplace with a better price than the protected order referred to in paragraph (a);

"non-standard order" means an order for the purchase or sale of an exchange-traded security, other than a derivative, that is entered on a marketplace and is subject to non-standardized terms or conditions related to settlement that have not been set by the marketplace on which the security is listed or quoted;

"protected bid" means a bid for an exchange-traded security, other than a derivative,

(a) that is displayed by a marketplace that has automated functionality; and

(b) about which information is provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

"protected offer" means an offer for an exchange-traded security, other than a derivative,

(a) that is displayed by a marketplace that has automated functionality; and

(b) about which information is provided pursuant to Part 7 of NI 21-101 to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

"protected order" means a protected bid or protected offer; and

"trade-through" means the execution of a trade at a price that is,

(a) in the case of a purchase, higher than any protected offer, or

(b) the case of a sale, lower than any protected bid.

(3) Part 4 is amended by adding the following as section 4.4:

"**4.4 Reporting of Order Routing by Dealer** – (1) A dealer shall publish, in a meaningful, readily accessible and usable electronic form and make available at no cost for downloading from a website, a quarterly report on its routing of orders when acting as agent during that quarter and shall include the following information if securities are traded on more than one marketplace:

(a) the identity of marketplaces where orders are routed for execution, including the percentages of orders routed to each marketplace

(i) at the direction or instruction of the client, and

(ii) otherwise determined by the dealer; and

(b) a discussion of any material aspects of a dealer's relationship with a marketplace including a description of any arrangements.

(2) A dealer shall, within 15 days of receiving a request from a client, disclose to the client the identity of any marketplace where the client's orders were routed for execution in the six months before the request, whether the dealer was specifically instructed to route to a particular marketplace for execution, and the time of the executions, if any, that resulted from such orders.

(3) This section is effective on [**insert date six months after Effective Date**]".

(4) Part 6 is repealed and replaced by:

"**PART 6 – TRADE-THROUGH PROTECTION**

6.1 Trade-through Protection – (1) A marketplace shall establish, maintain and enforce written policies and procedures that are reasonably designed

(a) to prevent trade-throughs on that marketplace other than the trade-throughs listed in section 6.2; and

(b) to ensure that the marketplace, when executing a transaction that constitutes a trade-through listed in section 6.2, is doing so in compliance with this Part.

(2) A marketplace shall regularly review and monitor the effectiveness of the policies and procedures required by subsection (1) and shall take prompt action to remedy any deficiencies in such policies and procedures.

(3) At least 45 days before implementation, a marketplace shall provide to the securities regulatory authority and, if applicable, its regulation services provider the policies and procedures, and any material amendments to those policies and procedures, established under subsection (1).

6.2 List of Trade-throughs – The following are the trade-throughs referred to in paragraph 6.1(1)(a):

(a)   the transaction that constituted the trade-through was executed when there were reasonable grounds to believe that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment;

(b)   the transaction that constituted the trade-through was the execution of an order identified as an inter-market sweep order;

(c)   the transaction that constituted the trade-through was executed by a marketplace that simultaneously routed an inter-market sweep order to execute against the total displayed volume of any protected order that was traded through;

(d)   the marketplace displaying the protected order that was traded through had displayed, immediately before the execution of the transaction that constituted the trade-through, a protected order with a price that was equal or inferior to the price of the trade-through transaction;

(e)   the transaction that constituted the trade-through was the result of the execution of

   (i)   a non-standard order;

   (ii)   a calculated price order; or

   (iii)   a closing price order; and

(f)   the transaction that constituted the trade-through was executed at a time when the best protected bid was higher than the best protected offer.

6.3 Inter-market Sweep Order Requirements – A marketplace or marketplace participant responsible for the routing of an inter-market sweep order must take all reasonable steps to ensure that the order is an inter-market sweep order.

6.4 Systems or Equipment Failure, Malfunction or Material Delay – (1) A marketplace shall immediately notify all regulation services providers, its marketplace participants and other marketplaces if there is a failure, malfunction or material delay of its systems or equipment.

(2) When executing a transaction that falls within paragraph 6.2(a), and a notification has not been sent under subsection (1), a marketplace that routes an order to another marketplace shall immediately notify

(a)   the marketplace that it has reasonable grounds to believe it is experiencing a failure, malfunction or material delay of its systems or equipment;

(b)   all regulation services providers; and

(c)   its marketplace participants.

(3) When a marketplace participant has reasonable grounds to believe that a marketplace is experiencing a failure, malfunction or material delay of its systems or equipment and routes an order to execute against a protected order on another marketplace displaying an inferior price, the marketplace participant must notify

(a)   the marketplace that may be experiencing a failure, malfunction or material delay of its systems or equipment; and

(b)   all regulation services providers.

6.5 Locked or Crossed Orders – A marketplace participant shall not intentionally lock or cross a particular marketplace or the market as a whole by

      (a)   entering on a marketplace a bid at a price that is the same as or higher than the best protected offer; or

      (b)   entering on a marketplace an offer at a price that is the same as or lower than the best protected bid.

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

6.7 Anti-Avoidance – No person or company shall route an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace.".

(5)   Part 7 is amended by:

      (a)   repealing and replacing paragraph 7.2(c) with the following:

"(c) that the recognized exchange will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of marketplace participants, and if applicable, the recognized exchange; and"; and

      (b)   repealing and replacing paragraph 7.4(c) with the following:

"(c) that the recognized quotation and trade reporting system will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of marketplace participants, and if applicable, the recognized quotation and trade reporting system; and"; and

      (c)   amending section 7.5 by striking out "under this Part" and substituting "under Parts 7 and 8".

(6)   Paragraph 8.3(d) is repealed and replaced by:

"(d) that the ATS will transmit to the regulation services provider the information required by Part 11 of NI 21-101 and any other information the regulation services provider considers necessary for the regulation services provider to effectively monitor the conduct of ATSs and marketplace participants; and".

(7)   Section 9.3 is amended by striking out "IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets" and substituting "IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets".

1.2   Effective Date – This Instrument comes into force on [**].

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

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PART 1   AMENDMENTS

1.1   Amendments

(1)   This amends Companion Policy 23-101CP.

(2)   Part 2 is amended by:

   (a)   striking out the title of Part 2 and substituting "APPLICATION AND DEFINITIONS"; and

   (b)   adding the following after section 2.1:

"**2.2 Definition of Automated Functionality** – Section 1.1 of the Instrument includes a definition of "automated functionality" which is the ability to: (1) act on an incoming order; (2) respond to the sender of an order; and (3) update the order by disseminating information to an information processor or information vendor. Automated functionality allows for an incoming order to execute immediately and automatically up to the displayed size and for any unexecuted portion of such incoming order to be cancelled immediately and automatically without being booked or routed elsewhere. Automated functionality involves no human discretion in determining the action taken with respect to an order after the time the order is received. A marketplace with this functionality should have appropriate systems and policies and procedures relating to the handling of fill-or-kill orders.

2.3 Definition of Calculated Price Order – The definition of "calculated price order" refers to any order where the price is not known at the time of order entry and is based on, but not necessarily equal to, the price of an exchange-traded security at the time of execution. This includes the following orders:

   (a)   a call market order – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace;

   (b)   an opening order – where each marketplace may establish its own formula for the determination of opening prices;

   (c)   a closing order – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known;

   (d)   a volume-weighted average price order – where the price of a trade is determined by a formula that measures average price on one or more marketplaces; and

   (e)   a basis order – where the price is based on prices achieved in one or more derivative transactions on a marketplace. To qualify as a basis order, this order must be approved by a regulation services provider.

2.4 Definition of Inter-Market Sweep Order – An inter-market sweep order must be marked to inform the receiving marketplace that it can be immediately executed without reference to better-priced orders displayed by other marketplaces. It may be marked "ISO" by a marketplace or a marketplace participant. The definition allows for simultaneous routing of more than one inter-market sweep order in order to execute against the best protected bid or best protected offer and any inferior-priced orders. In addition, marketplace participants may send a single inter-market sweep order to execute against the best protected bid or best protected offer.

2.5 Definition of Non-Standard Order – The definition of "non-standard order" refers to an order for the purchase or sale of a security that is subject to terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted. A marketplace participant, however, may not add a special settlement term or condition to an order solely for the purpose that the order becomes a non-standard order under the definition.

2.6 Definition of Protected Order – (1) A protected order is defined to be a "protected bid or protected offer". A "protected bid" or "protected offer" is an order to buy or sell an exchange-traded security, other than a derivative, that is displayed on a marketplace with automated functionality and about which information is provided to an information processor or an information vendor, as applicable, pursuant to Part 7 of NI 21-101. The term "displayed on a marketplace" refers to the information about total disclosed volume on a marketplace. Volumes that are not disclosed or that are "reserve" or hidden volumes are not considered to be "displayed on a marketplace". The order must be provided in a way that enables other marketplaces and marketplace participants to readily access the information and integrate it into their systems or order routers.

(2) Subsection 5.1(3) of 21-101CP does not consider orders that are not immediately executable or that have special terms as "orders" that are required to be provided to an information processor or information vendor under Part 7 of NI 21-101. As a result, these orders are not considered to be "protected orders" under the definition in the Instrument and do not receive trade-through protection. However, those executing against these types of orders are required to execute against all better-priced orders first. In addition, when entering a "special terms order" on a marketplace, if it can be executed against existing orders despite the special term, then the trade-through obligation applies.".

(3)   Part 4 is amended by adding the following as section 4.2:

4.2 Reporting Requirements Applicable to Dealers – (1) Section 4.4 of the Instrument requires disclosure of the order routing practices of dealers that route orders for clients. As dealers owe a duty of best execution to their clients, dealers should review their order routing practices periodically to assure they are meeting this responsibility. It is expected that the information required by section 4.4 of the Instrument will bring transparency to this process and provide clients with the opportunity to monitor a dealer's order routing activity. On request by a client, a dealer is required to disclose where an individual client's orders were routed.".

(4)   Part 6 is repealed and replaced with the following:

"**PART 6 – TRADE-THROUGH PROTECTION**

6.1 Trade-through Protection – (1) Subsection 6.1(1) of the Instrument requires a marketplace to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs by orders entered on that marketplace. A marketplace may implement this requirement in various ways. For example, the policies and procedures of a marketplace may reasonably prevent trade-throughs via the design of the marketplace's trade execution algorithms (by not allowing a trade-through to occur), or by establishing direct linkages to other marketplaces. Marketplaces are not able to avoid their obligations by establishing policies and procedures that instead require marketplace participants to take steps to reasonably prevent trade-throughs.

(2) It is the responsibility of marketplaces to regularly review and monitor the effectiveness of their policies and procedures and take prompt steps to remedy any deficiencies in reasonably preventing trade-throughs and complying with subsection 6.1(2) of the Instrument. In general, it is expected that marketplaces maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities.

(3) In certain circumstances, a marketplace participant should create policies and procedures and should maintain relevant information to track routing decisions. For example, if a marketplace participant regularly uses an inter-market sweep order or has a process for routing orders if a marketplace experiences a systems failure, it should maintain policies and procedures outlining when it is appropriate to use that order type or outlining its routing choices, respectively. If a marketplace participant regularly uses inter-market sweep orders or is sending an order to a marketplace that may be experiencing systems issues, it may also be appropriate for the marketplace participant to maintain relevant information so that compliance with Part 6 of NI 23-101 can be adequately evaluated by regulatory authorities.

(4) As part of the policies and procedures required in subsection 6.1(1) of the Instrument, a marketplace is expected to include a discussion of their automated functionality and how they will handle potential delayed responses as a result of an equipment or systems failure or malfunction experienced by another marketplace.

(5) Trade-through protection applies whenever two or more marketplaces with displayed protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.2(e), a marketplace would not be required to take steps to reasonably prevent trade-throughs of orders on another marketplace.

6.2 List of Trade-throughs – Section 6.2 of the Instrument sets forth a list of "permitted" trade-throughs that are primarily designed to achieve workable trade-through protection and to facilitate certain trading strategies and order types that are useful to investors.

(a)   (i)   Paragraph 6.2(a) of the Instrument would apply where there are reasonable grounds to believe that a marketplace is experiencing a failure or malfunction of its systems or equipment as well as any material delay (systems issues). If a marketplace repeatedly fails to respond immediately after receipt of an order, this would constitute a material delay. This is intended to provide marketplaces with flexibility when dealing with another marketplace that is experiencing systems problems (either of a temporary nature or a longer term systems issue).

(ii) The marketplace that is experiencing systems issues is responsible for informing all other marketplaces, its marketplace participants and regulation services providers when the failure, malfunction or delay occurs. However, if a marketplace fails repeatedly to provide an immediate response to orders received and no notification has been issued by that marketplace that it is experiencing systems issues, the routing marketplace or a marketplace participant that has reasonable grounds to believe that the marketplace is having systems issues may nevertheless rely on paragraph 6.2(a) . This reliance must be done in accordance with policies and procedures that outline processes for dealing with potential delays in responses by a marketplace and documenting the basis of its belief. If, in response to the notification by the routing marketplace or a marketplace participant, the marketplace confirms that it is not actually experiencing systems issues, the routing marketplace or marketplace participant may no longer rely on paragraph 6.2(a).

(b) Paragraphs 6.2(b) and 6.2(c) of the Instrument contemplate that a marketplace would immediately execute any order identified as an inter-market sweep order. A marketplace that receives an inter-market sweep order would not need to delay its execution to ensure the execution of better-priced orders at other marketplaces. A marketplace participant may send an inter-market sweep order to a marketplace for execution.

(c) Paragraph 6.2(d) of the Instrument allows for a transaction if the marketplace displaying the best price that was traded through had displayed, immediately prior to execution of the trade-through, an order with a price that was equal or inferior to the price of the trade-through transaction. The inclusion of "flickering orders" in paragraph 6.2(d) provides some relief due to rapidly moving markets.

(d) The basis for the inclusion of calculated price orders, non-standard orders and closing price orders in paragraph 6.2(e) of the Instrument is that these orders have certain unique characteristics that distinguish them from other orders. The characteristics of the orders relate to price (calculated price orders and closing price orders) and non-standard settlement terms (non-standard orders) that are not set by an exchange or a quotation and trade reporting system.

(e) Paragraph 6.2(f) of the Instrument includes a transaction that occurred when there is a crossed market in the exchange-traded security. Without this allowance, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. With trade-through protection only applying to displayed orders or parts of orders, hidden or reserve orders will remain in the book after all displayed orders are executed. Consequently, crossed markets may occur. Intentionally crossing the market to take advantage of this paragraph would be a violation of section 6.5 of the Instrument.

6.3 Locked and Crossed Markets – Section 6.5 of the Instrument provides that a marketplace participant cannot intentionally lock or cross a market by entering a bid at a price that is the same as or higher than the best protected offer or entering an offer at a price that is the same as or lower than the best protected bid. This section is meant to capture the situation where a marketplace participant enters an order to lock or cross a marketplace or the market as a whole (for example, to take advantage of rebates offered by a particular marketplace instead of executing against already existing orders). It is not intended to prohibit the use of marketable limit orders. Paragraph 6.2(f) allows for the resolution of crossed markets that occur unintentionally.

6.4 Anti-Avoidance Provision – Section 6.7 of the Instrument prohibits a person or company from routing an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace in Canada. The intention of this section is to prevent the routing of orders to foreign marketplaces only for the purpose of avoiding the trade-through regime in Canada.".

(5) Part 7 is amended by:

(a) striking out "IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets" and substituting "IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets" in section 7.3; and

(b) adding the following as section 7.5:

"**7.5 Coordination of Monitoring and Enforcement** – (1) Section 7.5 of the Instrument requires regulation services providers, recognized exchanges and recognized quotation and trade reporting systems to enter into a written agreement whereby they coordinate the enforcement of the requirements set under Parts 7 and 8. This coordination may include having regulation services providers monitor trading on all marketplaces that have retained them and reporting to a recognized exchange, recognized quotation and trade reporting system

or securities regulatory authority if a marketplace is not meeting the terms of its own rules or policies and procedures. This monitoring includes monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, and audit trail requirements. If a recognized exchange or recognized quotation and trade reporting system has retained a regulation services provider, the agreement to coordinate required in section 7.5 of the Instrument should be reflected in the agreement referred to in section 7.2 or section 7.4 respectively. If a recognized exchange or recognized quotation and trade reporting system has not retained a regulation services provider, it is still required to coordinate with any regulation services provider and other exchanges or quotation and trade reporting systems that trade the same securities.

(2) Currently, only IIROC is the regulation services provider for both exchange-traded and unlisted debt securities. If more than one regulation services provider regulates marketplaces trading a particular type of security, these regulation services providers must coordinate monitoring and enforcement of the requirements set.".