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AMENDMENTS TO NATIONAL INSTRUMENT 21-101 MARKETPLACE OPERATION

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(a) the definition of "IDA" is repealed and replaced by the following " "IROC" means the Investment Industry Regulatory Organization of Canada";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

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

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

(c) the definition of "recognized exchange" by repealing and replacing paragraph (b) and substituting with the following:

"(b) in Québec, an exchange recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or self-regulatory organization"; and

(d) the definition of "recognized quotation and trade reporting system" is amended by

(i) adding "and Québec" between "British Columbia" and ", a quotation and trade reporting system" in paragraph (a);

(ii) striking out "and" at the end of paragraph (a) and adding "and" at the end of paragraph (b); and

(iii) adding the following:

"(c) in Québec, a quotation and trade reporting system recognized by the securities regulatory authority under securities or derivatives legislation as an exchange or a self-regulatory organization";

- (3) The following subsection is added to section 1.4:

"(3) In Québec, the term "security", when used in this Instrument, includes a standardized derivative as this notion is defined in the *Derivatives Act*".

- (4) Part 10 is amended by:

- (a) striking out "Disclosure of" in the title of Part 10; and
(b) adding the following section after section 10.2:

"10.3 Discriminatory Terms – With respect to the execution of an order, a marketplace shall not impose terms that have the effect of discriminating between orders that are routed to that marketplace and orders that are entered on that marketplace.".

- (5) (a) Subsection 11.5(1) is amended by:

- (i) adding "and" between "securities," and "a dealer";
(ii) striking out "and a regulation services provider monitoring the activities of marketplaces trading those securities"; and
(iii) adding "with the clock used by a regulation services provider monitoring the activities of marketplaces and marketplace participants trading those securities." at the end of the sentence; and

- (b) subsection 11.5(2) is amended by:

- (i) adding "and" between "securities," and "an inter-dealer bond broker";
(ii) striking out "and a regulation services provider monitoring the activities of marketplaces, inter- dealer bond brokers or dealers trading those securities"; and
(iii) adding "with the clock used by a regulation services provider monitoring the activities of marketplaces, inter-dealer bond brokers or dealers trading those securities." at the end of the sentence.

(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 information technology general controls, including without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support;
- (b) in accordance 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 failure, malfunction or delay.

12.2 System 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 audit committee, promptly upon the report's completion, and
 - (b) 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 make publicly available 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) if operations have begun, for at least three months before implementing a material change to its technology requirements.

(2) After complying with subsection (1), 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) if operations have begun, 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).

(4) Subsections 12.3(1)(b) and (2)(b) do not apply to a marketplace if the change must be made immediately to address a failure, malfunction or material delay of its systems or equipment if

(a) the marketplace immediately notifies the regulator, or in Québec, the securities regulatory authority, and, if applicable, its regulation services provider of its intention to make the change; and

(b) the marketplace publishes the changed technology requirements as soon as practicable.”.

(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 information technology general controls, including, without limitation, controls relating to information systems operations, information security, change management, problem management, network support, and system software support;
- (b) in accordance with prudent business practice, on a reasonably frequent basis and in any event, at least annually,
 - (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) 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 following of any failure, malfunction or material delay of its systems or equipment
 - (i) the regulator or, in Québec, the securities regulatory authority; and
 - (ii) 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.”.

1.2 **Effective Date** – This Instrument comes into force on January 28, 2010.