BY EMAIL

June 15, 2011

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission
Saskatchewan Financial Services Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut
Superintendent of Securities, Prince Edward Island
Superintendent of Securities, Yukon

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

- and -

M^{e} Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
C.P. 246, tour de la Bourse
Montréal, QC H4Z 1G3

Dear Mesdames/Sirs:

RE: PROPOSED AMENDMENTS TO NI 21-101 AND NI 23-101

We are pleased to respond to the CSA's request for comments in the Notice of Proposed Amendments to National Instrument 21-101 *Marketplace Operation* ("NI 21-101") and National Instrument 23-101 *Trading Rules* ("NI 23-101") (the "Notice"). CNSX Markets operates the Canadian National Stock Exchange (CNSX) and the Pure Trading facility, which currently trades securities listed on TSX and the TSX Venture Exchange. As a recognized stock exchange we have experience dealing with a variety of reporting and

transparency obligations and have attempted to respond on both a policy and a practical basis, where applicable. For ease of reference, we have attempted to follow the numbering set out in the Notice.

General Comments

We are supportive of the approach taken in the proposed amendments to review the obligations of all marketplaces and, where exchanges, QTRSs and ATSs operate in a similar manner with a similar effect, treat them in a consistent manner. We are also supportive of the stated intention of providing CSA staff with up-to-date, useful data and to ensure that information about marketplaces' operations is publicly available. We have provided our views below on specific proposals.

1. Reporting Requirements

i. Marketplace reporting requirements

The proposed amendments regarding reporting of changes to marketplaces' operations update the requirements in several positive ways (mainly relating to reducing the time line in relation to fees and clarifying the process for periodic filings). We have the following comments:

- It would be helpful if CSA staff added a discussion in the Companion Policy (the "CP") about views on appropriate use of discretion in determining whether a change is "significant". There is some indication that marketplaces should default to those things listed in the CP but there appears to be room for an assessment - for example, the note on page 3 of the Notice states: "While we generally consider fee changes to be significant changes (the exception being, for example, minor modifications to the fee charged)…".
- Other (non-significant) changes that are proposed to be filed immediately prior may not be easily known in advance. While we think it is an improvement that the CP amendments list types of issues to be reported on instead of identifying significant exhibits, changes to means of access, securities listed, marketplace participants, systems and tech that support trading and governance are very broad and some changes may be hard to file in advance (e.g. change in ownership of over 5%).
- Some duplicative and/or outdated requirements remain in the Form 21-101F1 ("F1"):
    - **Governance**: length of time the position is held is unnecessary since the start date is supplied; and the type of business in which primarily engaged assumes dealer-related directors, and should be broadened;
    - **Rules:** copy of rules, policies, etc., duplicates filing requirements in each exchange's rule protocol – perhaps the process for rule reviews should be

better reflected in the exhibit, as well as acceptability of posting the rules on the website;

- **Systems:** please consider areas of duplication with the independent systems reviews ("ISRs") and automation review programs ("ARPs") generally;
- **Securities**: please confirm this is intended to be different than other non-significant reporting, as quarterly change reports are requested as part of the new Form 21-101F3 ("F3") – for both securities listed and posted for trading; and
- **Exhibit J (previously K?)**: criteria for participation, etc., duplicate an exchange's rules.

Please note that we did not attempt to include every item with a potential for duplication – our intention was only to raise the issue with some examples, and we would be happy to discuss further details with CSA staff.

ii. Proposed amendments to Forms

The general restructuring and the revised approach are improvements. However, it is somewhat unclear as to what the expectations are regarding how certain non-significant changes will be filed prior to their occurrence and how the F1/F2 and F3 would work together (see notes above).

When considering the overall cost-benefit of the new reporting in the F3, we encourage you to include a review of the costs and benefits of obtaining the data on a consolidated basis from IIROC versus directly from the different marketplaces. We make this suggestion because it would be a more efficient method of obtaining consistent data, as noted below.

iii. Financial reporting

It is a positive change that the financial statements would not be required to be included in the F1, but the duplication still exists with the requirement to file in exchange recognition orders and NI 21-101. We hope that a part of the follow-up to the amendment process would be to streamline the orders.

iv. Other requirements currently applicable only to ATSs

We question the purpose of adding the risk disclosure requirement for foreign exchange-listed securities to all marketplaces. If an exchange lists a security, the issuer becomes a reporting issuer in Canada. Therefore, the disclosure is not correct and potentially misleading.

If the intention is to capture the possibility of an exchange posting, but not listing, securities of foreign exchange-listed issuers, we question the practical application

of the requirement. Would an exchange that began trading such securities be expected to obtain acknowledgement in writing from all existing participants? Would the exchange be obligated to obtain acknowledgment from participants that access the exchange indirectly?

v. Requirements applicable to all marketplaces

We have no comments on this section.

vi. Marketplace rules

The inclusion of a fair and orderly markets obligation on ATSs can be interpreted very broadly. It may be helpful to include more discussion in the CP about what the CSA's intention is, such as to clarify that it is not intended to impose an oversight role but, instead, a broad responsibility for not introducing or promoting anything contrary to the public interest.

2. Information transparency requirements

i. Transparency requirements – exchange-traded securities

The clarification regarding pre-trade transparency appears to be a good way to re-establish the foundation for further policy development. We are disappointed that such further development has not occurred, however, on the minimum size for dark orders front. As we noted in our comment letter to the CSA/IIROC dark liquidity position paper, we believe the decision should be based on policy, not a "wait and see" assessment of the level of dark trading. History has demonstrated that transparency is integral to investor confidence and fairness and that retail investors do not participate if they do not feel they are on a level playing field (one need only compare equity markets versus bond markets or European versus North American markets to see evidence of that). It appears that the working theory is that retail-sized orders that suffer no disadvantage in lit markets may be sent to dark pools, based on the two-part theory that (a) those clients' interests are protected due to price improvement rules and (b) diversion of non-blocks from public markets is considered to be innovation until a line (thus far unidentifiable) is crossed and price discovery is harmed. We ask two corresponding questions: (a) which retail orders should <u>not</u> receive price improvement under best execution principles, and (b) what happens when the line is crossed?

ii. Use of IOIs

We agree with description of what makes an IOI "actionable" and that IOIs sent to SORs create a fairness issue. If information on a non-transparent order is sent

to anything or anyone that makes a trading decision, in preference to others, it should be viewed as unfair access.

3. Transparency of marketplace operations

We agree with the comment in the Notice that the information required under the amended transparency provisions is generally available today. We ask that the CSA provide as much clarification as possible on the amount of detail required on a website – especially where the information – such as for fees – varies widely.

4. Other requirements

i. Conflicts of interest, ii. Outsourcing, and iii. Notification of Threshold by ATSs

We have no comments on these proposals.

iv. Recordkeeping requirements

The rationale for the directed-action order ("DAO") marking reporting requirement makes sense, but it is currently worded in a way that will not provide desired information. A high percentage of DAOs are being marked by marketplaces whose users are defaulting to DAOs, and as such it is a choice by the market participant that is effected by the marketplace. In responding to the question "who marked the order DAO", the technical answer would be the marketplace, but it was on behalf of its participant. This will muddy the waters regarding tracking responsibility to meet the order protection rule. Please consider a drafting change to reflect the concept of "initiator" or "decision-maker" in relation to marking as opposed to simply where the marking occurs.

v. BCP

We agree with the separation of BCPs from system requirements, but it is unclear what other impact the changes have (e.g. regarding reporting on BCP testing, etc.). Please consider and clarify the interaction between similar requirements in recognition orders and procedures under ARPs.

vi. Independent Systems Review

The proposed amendments would allowing more (needed) flexibility to staff; our only comment is that the same issue exists as above regarding duplication with recognition orders and other reporting under ARPs.

5. Definition of a marketplace

The only issue we would raise here is the need to proceed with caution due to the law of unintended consequences. Dealers creating efficiencies in their processes should not be a concern, but dealers and marketplaces attempting to do indirectly what they cannot do directly should be caught.

6. Transparency requirement applicable to debt

We have no comments on this section.

7. Locked or crossed markets

Since the ban on intentionally locking markets was first proposed, we have raised questions about the purpose of such a requirement. There have since been a number of practices allowed via dark pools and dark orders that arguably have a greater impact on the perception (or lack thereof) that transparent limit orders have priority, and yet the current proposal aims to strengthen the ban on intentional locks. It is not stated whether the CSA and IIROC looked at the trading data to see if any remaining locking in fact created market integrity issues and missed fills before proposing further provisions. Moreover, there are best execution implications that should be carefully considered before stretching the meaning of "intentional" to the point where it includes virtually every incidence of a locked market. For example, at least two marketplaces offer a feature to manage an un-priced short sale order to avoid locking or crossing while complying with short sale price restrictions. Rather than route the order to a market where it will trade, this feature will book the unfilled balance of an order at a price one trading increment higher than a price that would cause a lock with another market. If an un-priced short sale that is entered on behalf of a client is booked at a higher price when it is immediately tradeable, we would argue that this would not represent the best execution of that order.

8. Requirements for information processors

We have no comments on this section.

Costs

As a general observation, we reiterate the comment mentioned above that the required information is duplicative in that it is sent to IIROC and resident in STEP, which we understand to have the benefit of being programmable for reports of different types. If marketplaces are required to provide data separately, in a form defined by the CSA, it is unclear what the cost will be, but it *is* clear that part of the benefit – consistency in reporting – will be absent. Different marketplaces may report the same information

differently, and CSA will have to consolidate and check against IIROC's information to see that all numbers match. All of this impacts the efficiency of the collection and interpretation of the data. Please consider the alternative of sourcing from aggregate information held at IIROC.

Regarding programming to avoid intentional locked or crossed markets, we suggest that the costs will be inappropriate only if the interpretation of the definition of "intentional" continues to trend toward "if it could be, in any way – no matter how remotely – anticipated".

Summary

In summary, we appreciate the many improvements put forward in the proposals to help streamline our reporting and transparency obligations. We ask that further thought be given to the most efficient way to collect the new information that would be part of the F3 filings. We also ask that consideration be given to a more timely definition of minimum size for dark orders; to revising the DAO marker reporting to reflect where the decision is made, not who marks it; and to the issue of what the true harm of locked markets is, at the very least by ensuring that the requirement remains focused on intentionality.

Yours truly,

Cindy Petlock
General Counsel & Corporate Secretary

cc: Ian Bandeen, CEO
Richard Carleton, Vice-President – Corporate Development
Rob Cook, President
Mark Faulkner, Director – Listings & Regulation