

July 22, 2014

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority (Saskatchewan)  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des Marchés Financiers  
Financial and Consumer Services Commission (New Brunswick)  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon  
Superintendent of Securities, Nunavut

**The Secretary**

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**Re: CSA NOTICE AND REQUEST FOR COMMENT  
PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 21-101 *MARKETPLACE OPERATION*  
AND NATIONAL INSTRUMENT 23-101 *TRADING RULES***

CNSX Markets Inc., which operates the Canadian Securities Exchange (hereinafter referred to as the “CSE”), is pleased to offer this submission in response to the CSA’s request for comment on amendments to National Instrument 21-101.

Our comments and questions will be organized according to the relevant headings set out in the request for comment.

## **Marketplace systems and business continuity planning**

While the CSE supports the general direction of the CSA's proposals on business continuity testing, we have some specific concerns about the measures proposed:

- We read the new provisions as requiring the CSE to deploy a dedicated disaster recovery site for the issues listed and traded uniquely on the CSE. Although the CSE currently supports multiple instances of the various trading system components (feeds, order entry gateways and matching engines) at a single site to provide business continuity, the new regulations appear to mandate the implementation of a separate infrastructure at a separate site. Bringing this site on-line will be a material undertaking for the exchange, and for our vendor and dealer customers. Transition provisions and timing in line with the launch protocols for new markets and major changes should be considered reasonable by the regulators in complying with the new regulation.
- We have concerns about the use of test symbols in the production environment. Encouraging third parties to test in the production environment dramatically increases the risk of compromised system performance and outright failure of the trading system. Some testing strategies (load testing, bizarre scenarios) are designed to either “break” the system or to reveal the performance impact of a system under extreme load. There is no practical way to protect the production system from these behaviours if there is a test symbol in the daily stock list. We do not believe that the increased risk of compromised system performance is worth the benefit of offering up the production system as a test bed. We are also aware, over the course of the last number of years, of the inability of data vendors to consistently “scrub” message traffic coming from the test symbol from real time feeds, daily summaries, and historical data sets. The cost to eliminate this data from the official trading records is considerable. We do not believe that this cost, and the enhanced risks to the industry, warrant the use of test symbols in the production trading system environments.
- We support the addition of “security breaches” to the list of events that have to be reported to the responsible securities regulator.
- The CSE would like further clarity on the definition of “auxiliary systems”. Most, or perhaps all, of these systems are under the CSE's control, but it may be that agreements with third party providers would have to be reviewed and amended to provide access for the ISR audit team. On that point, it is not clear that all of our third party providers would be amenable to exposing components of their own security measures (physical, network, encryption, etc.) to third party review from our ISR auditors. The CSE is not in a position to guarantee that the same level of access can be obtained, as if the CSE were providing (for example) its own data centre facility.

### **Use of Marketplace Participants' Trading Information for Research**

Although the CSE supports the goals of facilitating the provision of market data to researchers, the Canadian Securities Administrators should be sensitive to the concerns already expressed from the industry on the dangers inherent in expanding access to proprietary data components. The ability of researchers to reverse engineer particular trading strategies developed by dealers and their clients (often through the investment of considerable time and expense) is clearly a legitimate concern. This issue should be addressed through a specific consultation effort including the dealers, buy-side clients, the marketplaces, and the academic community.

### **Co-location and Other Access Arrangements with a Service Provider**

The CSE is concerned about the ability of the Canadian Securities Administrators to effectively impose terms and conditions on the providers of data centre services. All of the non-TMX Group marketplaces contract with operators of third party data centre operators to host their matching engines and related trading system components. In some cases, the marketplace operator may lease additional space in the data centre and provide rack space and network connectivity to dealers and direct access clients. These services are provided to encourage proximate hosting from important sources of order flow. Under these circumstances, the marketplace is under a clear obligation to provide, to use the US term, "fair access" to these facilities. The CSE does not offer these services. Instead, the provision of rack space (wherever it may be located in the data centre) and network connections are managed by our third party providers, Q9 Networks and Equinix. Although our agreements with these providers establish service level standards for a number of different provisioning services, these service level agreements fall short of meeting the "fair access" requirements that the CSA seeks to impose. The CSE is in no position to guarantee, in the event that the service providers were prepared to re-open agreements negotiated in good faith that the operators would consent to the inclusion of "fair access" requirements in a revised agreement. It appears to us that the CSA members are attempting to indirectly extend their regulatory jurisdiction to include data centre operators. If that is the intent, then the data centre operators should be specifically brought under the regulatory jurisdiction of the CSA members through legislative or regulatory amendments.

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

The proposals call for a substantial increase in the amount and nature of the information provided by the CSE to the Ontario Securities Commission. While we have no particular issue with the information requested, changing our standard reporting formats and collecting the required information is going to take some time. We expect to work with the regulator to ensure that their information needs are met in a reasonable time frame.

### **Provision of Data to an Information Processor**

Marketplaces make their real time market data feeds available to all recipients through a gateway service proximate to their trading system. The TMX Information Processor is different: the rules of the road require the contributing marketplace to provision the requisite network services to deliver the

data to the TMX IP at their two data centre facilities. In other words, the demarcation point for delivery of the data to the TMX IP is considerably upstream from the point that the same data is made available to other consumers. Is it the intent of the CSA to require the contributing marketplaces to delay provision of the data to other consumers? The non-TMX marketplaces could also address this issue by re-locating their trading systems to data centres operated by the TMX Group. We don't believe that the CSA intends either result, but should provide further guidance on the point.

We thank the CSA members for their careful consideration of the issues, and look forward to working with the industry to facilitate the implementation of many of these important proposals.

Yours very truly,



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