

## CSA Staff Notice 21-313

### *Information Processor for Exchange-Traded Securities other than Options*

June 27, 2014

#### 1. Introduction

Canadian Securities Administrators (CSA) staff (CSA staff or we) are publishing this notice to inform the public that TMX Information Processor (TMX IP) will continue to act as an information processor for exchange-traded securities other than options<sup>1</sup> under National Instrument 21-101 *Marketplace Operation* (NI 21-101) for a period of four years from July 1, 2014 to June 30, 2018.

#### 2. Regulatory Requirements and the Need for an Information Processor

In the current environment where multiple marketplaces trade the same exchange-traded securities, it is important to have a consolidated source of data to address issues related to the fragmentation of information that may occur as a result. An information processor collects, consolidates and disseminates the marketplaces' data and thus ensures that investors and market participants have at least one source of consolidated data. An information processor also facilitates compliance by marketplace participants with relevant regulatory requirements that apply in a multiple marketplace environment by ensuring the availability of consolidated data that meets regulatory standards and which users can use to demonstrate or evaluate compliance with these requirements.

NI 21-101 provides for the operation and regulation of an information processor. An information processor is defined as a person or company that receives and provides information under NI 21-101 and has filed Form 21-101F5 *Initial Operation Report for Information Processor* (Form 21-101F5).

Part 7 of NI 21-101 sets out the transparency requirements for marketplaces that trade exchange-traded securities. Subsection 7.1(1) of NI 21-101 requires a marketplace that displays orders of exchange-traded securities to a person or company to provide accurate and timely information regarding orders for the exchange-traded securities displayed by the marketplace to an information processor or, in its absence, to an information vendor. An exception is provided in subsection 7.1(2) for marketplaces that only display orders to their employees or to persons or companies retained by the marketplaces to assist in the operation of the marketplace, if the orders posted on the marketplaces meet the size threshold set by a regulation services provider.

Section 7.2 of NI 21-101 requires marketplaces to provide trade information related to exchange-

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<sup>1</sup> In Québec, options are not "exchange-traded securities", but are derivatives under the *Derivatives Act* (Québec) and are therefore already excluded.

traded securities to an information processor or, in its absence, to an information vendor. The information processor has some flexibility regarding the information to be reported to it by the marketplaces.

The regulatory requirements that apply to the information processor are set out in Part 14 of NI 21-101. They include:

- a requirement to provide prompt and accurate order and trade information and to not unreasonably restrict fair access to such information;
- a requirement to provide timely, accurate, reliable and fair collection, processing, distribution and publication of information for orders for, and trades in, securities;
- an obligation to maintain reasonable books and records; and
- certain system requirements, including an annual independent systems review.

In addition, the information processor is required to establish, in a timely manner, an electronic connection to each marketplace that is required to provide information under NI 21-101, and also to enter into an agreement with each such marketplace. The agreement must set out that the marketplace will provide the information processor information in accordance with Part 7 of NI 21-101 and that it will comply with any other reasonable requirements set by the information processor.

An information processor is designated as a market participant under the *Securities Act* (Ontario) and may be recognized as an information processor under the *Securities Act* (Québec).

### **3. TMX IP**

TMX IP has been an information processor for exchange-traded securities other than options since July 1, 2009. It is operated by a division of TMX Group Limited. As an information processor, it collects data from all the marketplaces that are required to provide it to meet the requirements set out in Part 14 of NI 21-101, and consolidates and disseminates this data.

TMX IP disseminates the following products (together, the Consolidated Products):

- Consolidated Data Feed, which provides access to order and trade market data from each marketplace that contributes its data to the TMX IP (contributing marketplace);
- Consolidated Last Sale, which provides real-time trading data from all contributing marketplaces;
- Canadian Best Bid and Offer, which provides a consolidated best bid and offer for all Canadian exchange-traded securities other than options; and
- Consolidated Depth of Book, which provides a single consolidated view of the order book from the contributing marketplaces.

The TMX IP has a “pass-through” fee model, where the contributing marketplaces enter into contractual agreements with data vendors and subscribers directly, allowing each marketplace’s

fees to be passed along to the end users. A monthly fee is charged by TMX IP for each of the Consolidated Products. The fees are published on the TMX IP's website.<sup>2</sup>

The TMX IP has a Governance Committee (the IP Governance Committee) with representatives from each contributing marketplace. An individual who is independent of all marketplaces and the TMX sits on the IP Governance Committee in a non-voting capacity and acts as Committee Chair. Each marketplace has one voting seat. The IP Governance Committee has decision-making authority with respect to the scope of service, operational priorities and enhancements, bandwidth and capacity planning, criteria and methods for monitoring performance.

CSA Staff Notice 21-309 *Information Processor for Exchange-Traded Securities other than Options* (CSA Staff Notice 21-309)<sup>3</sup> was published in 2009 to inform the public that TMX IP would act as an information processor. CSA Staff Notice 21-309 also outlined a number of undertakings over and above the applicable requirements in Part 14 of NI 21-101 with which TMX IP agreed to comply. A high-level summary of these undertakings is included below:

- TMX IP agreed to establish policies and procedures to address conflicts of interest related to the operation of the information processor by the TMX;
- TMX IP agreed to only distribute the Consolidated Products under the information processor designation and to obtain approval from CSA staff to distribute additional products using the data provided to it by marketplaces;
- TMX IP agreed to conduct an annual self-assessment of its compliance with subsections 14.4(2), (4) and (5) of NI 21-101 and with its performance with respect to the undertakings;
- TMX IP agreed to provide a report of the self-assessment to the IP Governance Committee and file the report and the views of the IP Governance Committee with the CSA;
- TMX IP acknowledged that it does not have exclusive rights to consolidating and disseminating order and trade data; and
- TMX IP agreed to ensure that all data contributors are given access to the IP on fair and reasonable terms.

#### **4. CSA Oversight over TMX IP**

Since July 1, 2009, TMX IP has been subject to ongoing oversight of CSA staff, which consists of:

- Quarterly and ad-hoc meetings or calls with TMX IP staff to discuss issues;
- Staff reviews of changes to the information included in Form 21-101F5 that were filed in accordance with the requirements of NI 21-101;

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<sup>2</sup> [http://www.tmx.com/en/pdf/IP\\_InfomationSheet.pdf](http://www.tmx.com/en/pdf/IP_InfomationSheet.pdf)

<sup>3</sup> [http://www.osc.gov.on.ca/documents/en/Securities-Category2/csa\\_20090605\\_21-309\\_processor-exchange.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20090605_21-309_processor-exchange.pdf).

- Review of the reports related to the independent systems reviews that TMX IP arranged to have completed in accordance with the applicable requirement in NI 21-101;
- Review of minutes of meetings of the IP Governance Committee to understand the issues discussed and how they were resolved;
- Reviews of the reports of self-assessment prepared by TMX IP and of the comments from the IP Governance Committee;
- Review of financial information provided by TMX IP in accordance with the requirements of NI 21-101;
- Review of incident reports, including how the incidents were resolved; and
- An on-site oversight review to look at areas that may not have been fully covered through ongoing oversight, such as conflicts of interest, interaction between the TMX IP and the IP Governance Committee and financial viability.

We found, through our ongoing oversight, that TMX IP was in compliance with the applicable provisions in NI 21-101 and with its undertakings and do not have concerns regarding its performance as an IP.

## **5. Conclusion**

Based on the results of our oversight of the TMX IP, CSA staff believe that it is not contrary to the public interest for TMX IP to continue to act as an information processor for exchange-traded securities other than options for a period of four years from July 1, 2014 to June 30, 2018.

CSA staff note that, on May 15, 2014, the CSA published for comment Proposed Amendments to National Instrument 23-101 *Trading Rules*.<sup>4</sup> A significant part of the Proposed Amendments deals with the order protection rule (OPR). Currently, OPR requires that all better-priced orders be executed before inferior-priced orders, regardless of the marketplace on which the order is displayed. Under the Proposed Amendments, orders would only be protected when displayed on a marketplace that has met certain criteria. The comment period for the Proposed OPR Amendments ends on September 19, 2014, and the CSA will consider whether the Proposed Amendments will proceed in their current form or whether further changes will be needed. In the event that OPR will be amended to require that orders only be protected when displayed on certain marketplaces, staff will discuss the issue with TMX IP and will determine what changes are necessary prior to the implementation of the amendments.

The TMX IP Undertakings have been revised to reflect this fact, and also to acknowledge that some of the undertakings that TMX IP had agreed to meet in 2009 have been completed. The new undertakings are listed at Appendix A of this notice.

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<sup>4</sup> See CSA Notice and Request for Comment Proposed Amendments to National Instrument 23-101 *Trading Rules*, available at (2014), 37 OSCB 4873

6. *Questions*

Please refer your questions to any of the following:

Ruxandra Smith  
Ontario Securities Commission  
(416) 593-8322

Tracey Stern  
Ontario Securities Commission  
(416) 593-8167

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Ontario Securities Commission  
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Manitoba Securities Commission  
(204) 945-5195

Douglas MacKay  
British Columbia Securities Commission  
(604) 899-6609

## APPENDIX A

### UNDERTAKINGS PROVIDED BY TMX IP

**In connection with the extension of its role as the information processor for exchange-traded securities other than options<sup>1</sup>, TMX IP undertakes the following:**

#### **1. Changes to Form 21-101F5**

- a. As required by section 14.2 of National Instrument 21-101 *Marketplace Operation* (NI 21-101), TMX IP will file with the CSA amendments to the information provided in Form 21-101F5. The significant changes referred to in section 14.2(1) of NI 21-101 will be reviewed and approved by CSA staff prior to their implementation. Examples of significant changes are provided in subsection 16.3 of the Companion Policy to NI 21-101 and, for greater certainty, include
- changes to the governance of the TMX IP, including the structure and mandate of its Governance Committee (IP Governance Committee) and the IP Advisory Sub-Committee,
  - significant changes to the fees related to the services provided by the TMX IP, including subscriber access fees and distribution fees,
  - changes to the fee structure and fee / revenue sharing model related to the services provided by the TMX IP,
  - changes to the data products offered by the TMX IP,
  - significant changes to the systems and technology used by the TMX IP, including those affecting capacity, or
  - changes in the technology provider and any changes that would have the effect of increasing the TMX IP's level of dependence on TMX Group Limited proprietary technology.
- b. TMX IP will notify CSA staff of the representatives of the IP Governance Committee and the IP Advisory Sub-Committee, and will provide notice of any changes to those representatives.

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## **2. Governance and Conflicts of Interest**

- a. The Boards of Directors of TMX Group Limited, TMX Group Inc. and TSX will not be involved in IP Governance Committee decisions relating to the scope of service, operational priorities, bandwidth, capacity planning, performance management, including service levels, and the fee and revenue sharing model related to the TMX IP.
- b. TMX IP will maintain and monitor compliance with policies and procedures to separate TSX's marketplace business operations from the TMX IP operations and manage inherent conflicts of interest and provide changes to these policies and procedures to CSA staff for review and approval.
- c. The technology used by the TMX IP will not give the marketplaces affiliated (as defined in NI 21-101) with TMX Group Limited an unfair advantage with respect to their data as compared to other marketplaces.

## **3. IP Products**

- a. TMX IP will only distribute the following products which are described in Form 21-101F5 (together, the Consolidated Data Products):
  - the Consolidated Data Feed (CDF);
  - the Canadian Best Bid and Offer (CBBO);
  - the Consolidated Last Sale (CLS); and
  - the Consolidated Depth of Book Feed.
- b. TMX IP will review the Consolidated Data Products, and consider any new products or changes to the Consolidated Data Products that may be reasonably required in response to amendments to Part 6 of National Instrument 23-101 *Trading Rules* (Order Protection Rule), as such amendments may be adopted by the CSA during the term of this Undertaking.
- c. TMX IP will not distribute any additional products using the data provided to it under Part 7 of NI 21-101 unless it obtains prior approval from CSA staff.
- d. As provided by TMX IP, each data product comprising the Consolidated Data Products is permitted to be bundled for sale to Data Purchasers<sup>2</sup>, but will also be made available as separately permissionable feeds.
- e. If TMX Group Limited or any affiliated entity, (where an affiliated entity has the meaning ascribed to it in section 1.3 of NI 21-101), intends to create and distribute products using the data provided to TMX IP under Part 7 of NI 21-101, through its commercial distribution channels and not through TMX IP:

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<sup>2</sup> For the purposes of this reference and any subsequent reference, the term Data Purchaser includes subscribers, vendors, and any other party that purchases any data product offered by the TMX IP.

- i. the data required to be provided to the TMX IP by Data Contributors<sup>3</sup> will not be used for such other products without the permission of the Data Contributors; and
- ii. the additional products will be made available for purchase separately from, and will not be bundled with, the Consolidated Data Products and any other products approved under paragraph 3a and 3c.

TMX Group Limited will not provide an associate (where an associate has the meaning ascribed to it in subsection 1(1) of the *Securities Act* (Ontario)) with the underlying data which is provided by the Data Contributors to TMX IP for the purposes of creating the Consolidated Data Products without the permission of the Data Contributors.

- f. TMX IP will consolidate, update and provide in real-time the Consolidated Data Products during the hours of operation of any Canadian marketplace required to provide information to an information processor under NI 21-101, provided that TMX IP can perform normal course recycle, batch and maintenance operations. TMX IP will provide customer support between the hours of 7:30 -17:30 and 24/7 technical support for TMX IP.

#### **4. Agreements with Data Contributors**

- a. TMX IP will ensure that all Data Contributors are given access to the TMX IP on fair and reasonable terms.
- b. The standard agreements or contracts to be entered into between TMX IP and Data Contributors in connection with the TMX IP services will be provided to CSA staff for review and approval prior to their execution. In addition, any proposed material changes to these standard agreements or contracts will be provided to CSA staff for review and approval.

#### **5. Fees / Fee structure / Revenue sharing**

- a. TMX IP will make the fee schedule for the Consolidated Data Products available on its website.
- b. If any adjustment or modification is proposed to fees, fee structure, or the fee / revenue sharing model relating to the services of TMX IP, the TMX IP will ask the IP Governance Committee to seek input from the IP Advisory Sub-Committee prior to approving such adjustments or modifications.
- c. TMX IP will report annually to CSA staff, in writing, whether it has fully recovered its costs (including cost of capital and cost to meet the requirements under subsections

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<sup>3</sup> For the purposes of this reference and any subsequent reference, the term Data Contributor includes marketplaces and any other party that provides data to the TMX IP under requirements in NI 21-101 to provide order and trade information to an information processor.

14.4(2), (4), and (5) of NI 21-101) associated with offering the TMX IP services and will review and report on whether the profit margin received from the TMX IP services is in line with industry standards.

- d. If there are excess revenues over costs plus a reasonable profit margin, and that excess is not allocated to operating and/or capacity expansion of the TMX IP, the TMX IP will examine its options for the use of that excess revenue and analyze and recommend an appropriate use to the IP Governance Committee. TMX IP will ask the IP Governance Committee to review the analysis and recommendations and provide its views in writing to TMX IP. The analysis, recommendations and the views of the IP Governance Committee will be provided to CSA staff within 30 days of the IP Governance Committee having received the analysis and recommendations.
- e. TMX IP will conduct a review of the 'pass-through' fee model upon request by CSA staff. Such review will examine the fee models used by data consolidators in other jurisdictions and the cost of data in Canada. It will also consider reports or studies available at the time of the review. A report outlining the conclusions from the review and the basis for those conclusions, along with any recommendations, will be provided to the IP Governance Committee promptly upon completion. TMX IP will ask the IP Governance Committee to review the report and provide its views in writing to the TMX IP. The report and the views of the IP Governance Committee will be provided to CSA staff within 90 days of the Review Initiation Date.

## **6. Non-exclusivity**

TMX IP acknowledges that the selection of an information processor does not grant the information processor exclusive rights to consolidating and disseminating order and trade data. TMX IP will not seek exclusivity through the terms of any contract relating to the Consolidated Data Products, or involving the data underlying the Consolidated Data Products, with a Data Contributor or Data Purchaser.

## **7. Self-assessment**

In addition to arranging for an annual independent system review referred to in section 14.5 of NI 21-101, TMX IP will conduct an annual self-assessment of its compliance with subsections 14.4(2), (4), and (5) of NI 21-101 and with its performance with respect to the undertakings provided to the CSA. A report on the self-assessment will be provided to the IP Governance Committee promptly upon its completion. TMX IP will ask the IP Governance Committee to review the report and provide its views in writing. The report and the views of the IP Governance Committee will be provided to CSA staff within 90 days of the end of the TMX IP's fiscal year.

## **8. Financial Viability**

TMX Group Limited will provide TMX IP with sufficient financial and other resources to ensure its financial viability and the proper performance of its functions.

## **9. Term and Notice**

TMX IP will continue to act as an information processor for exchange traded securities other than options for a period of four years starting from July 1, 2014 to June 30, 2018 subject to the right of the TMX IP to provide CSA staff with at least one year notice should it determine that it does not wish to continue to act as an information processor.