

CSA STAFF NOTICE 21-308 UPDATE ON APPLICATIONS TO BECOME AN INFORMATION PROCESSOR

The purpose of this notice is to provide an update on:

- (i) the status of the remaining applications for information processor for both corporate debt and equity securities, which are currently being considered by staff of the Canadian Securities Administrators (CSA or we); and
- (ii) CanPX Inc. (CanPX), and the extension of its status as the information processor for corporate debt securities until June 30, 2009.

1. *Transparency requirements*

Part 8 of National Instrument 21-101 *Marketplace Operation* (NI 21-101) (which, together with National Instrument 23-101 *Trading Rules* are referred to as the ATS Rules) sets out the pre-trade and post-trade transparency requirements for marketplaces, inter-dealer bond brokers (IDBs) and dealers that trade government and corporate debt securities.¹ Generally, these transparency requirements involve the provision of certain data to an information processor² or, in the absence of an information processor, to an information vendor.

2. *Status of the information processor*

At this time, CanPX is the information processor for corporate debt securities. There is currently no information processor for equity securities.

On July 14, 2006, we published CSA Notice 21-304 *Request for Filing of Form 21-101F5 Initial Operation Report for Information Processor by Interested Information Processors* (CSA Staff Notice 21-304) which stated that CanPX was the information processor for corporate debt securities until December 31, 2006, and which invited interested parties to apply for the role of the information processor for the corporate debt, equity securities, or both. We received applications, in the form of Form 21-101F5 filings, from the following entities:

- Bourse de Montréal (MX) for corporate debt and equity securities;
- CDS Inc. for corporate debt and equity securities;
- CanPX for corporate debt securities;
- Gmarkets Inc. for corporate debt securities;
- TSX Inc. (TSX) in conjunction with CanDeal.ca Inc. (CanDeal) for corporate debt securities; and
- TSX for equity securities.

¹ NI 21-101, Parts 7 and 8. For government debt securities, the requirements for marketplaces and IDBs to provide order and trade information have been postponed until January 1, 2012.

² An information processor is defined as a company that receives and provides information under NI 21-101 and has filed Form 21-101F5.

On October 25, 2006, we published CSA Staff Notice 21-305 *Extension of Approval of Information Processor for Corporate Fixed Income Securities* to indicate that CanPX would continue as the information processor for corporate debt securities until December 31, 2007.

On April 20, 2007, we issued CSA Staff Notice 21-306 *Notice of Filing of Forms 21-101F5 Initial Operation Report for Information Processor* (CSA Staff Notice 21-306). Its purpose was to seek comments from market participants on a summary of the applications received for designation as the information processor and to solicit feedback on some specific issues, including whether an information processor is required, and whether one or multiple information processors would be preferable. We received three comment letters in response to this notice.³ Two commenters supported having an information processor to create standardized consolidated data. One of these commenters was of the view that, in the fixed income market, having multiple information processors would risk increasing costs to the industry as a whole and may lead to the fragmentation of data. The other commenter thought that there may be a cost advantage to having multiple competing information processors, as long as each provides complete standardized reporting. The third commenter was of the view that an information processor was not needed for equity securities, but did not comment on whether an information processor for the fixed income securities was required.

On April 20, 2007, we also issued, together with then Market Regulation Services Inc. (now the Investment Industry Regulatory Organization of Canada) a joint notice on trade-through protection, best execution and access to marketplaces⁴ in conjunction with proposed amendments to the ATS Rules (Joint Notice). We received 19 comment letters in response to the request for comments in the Joint Notice, some of which included various general comments on data consolidation, mainly in the context of the equity markets. 13 of these commenters suggested that consolidated data is needed, and six of them made reference to the provision of such data by an information processor. A summary of the relevant public comments received to the Joint Notice was published on October 17, 2008 with proposed amendments to the ATS Rules.

The public comments received, as well as our own research, helped us identify certain issues that had to be resolved with the applicants prior to the selection of an information processor. To give us time to work through the issues, we extended CanPX's status as the information processor for corporate debt securities until December 31, 2008, and published CSA Staff Notice 21-307 *Extension of Approval of Information Processor for Corporate Fixed Income Securities* on November 9, 2007 to inform the public of the extension.

On May 1, 2008, TSX Group Inc. and MX completed a business combination to create TMX Group and, in July 2008, notified us that MX would withdraw its application. As a result, only the following information processor applicants remain:

- CanPX for corporate debt securities;
- CDS Inc. for corporate debt and equity securities;
- Gmarkets Inc. for corporate debt securities;

³ The comments received were from: the Canadian National Stock Exchange (then the Canadian Trading and Quotation System Inc.); TD Asset Management Inc; and TSX.

⁴ Joint Canadian Securities Administrators/Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to Marketplaces.

- TSX in conjunction with CanDeal for corporate debt securities; and
- TSX for equity securities.

In addition, in early 2008, CanPX informed us that it was discussing with other participants in the fixed income market, including applicants for the information processor, the possibility of a partnership that would result in a revised application for an information processor for corporate debt securities.

3. *Extension of CanPX's status as the information processor for corporate debt securities*

As a result of our discussions with CanPX, and in order to have time to evaluate any revised application that it and any other applicants may submit, CanPX will continue its status as the information processor for corporate debt securities until June 30, 2009. We communicated to CanPX our expectation that it will submit its revised Form 21-101F5 by January 31, 2009. Existing applicants, if they have not already done so, may revise and update their applications if necessary, and submit their revised Form 21-101F5 by the same date. Applicants that no longer wish to participate in the process should inform us of this fact.

4. *Conditions that would apply to an information processor for corporate debt securities*

In CSA Staff Notices 21-304 and 21-306, we discussed the factors and criteria we will use to evaluate filings from entities interested in becoming the information processor. We expect that an entity selected as the information processor for corporate debt securities would also meet a number of baseline conditions, as set out below. We ask that the applicants for the information processor for corporate debt securities, if they have not already done so, advise us if they are prepared to meet these conditions.

(a) *Advisory committee*

The information processor would establish an advisory committee to provide it with views and recommendations on issues of concern to contributors of data (Data Contributors), subscribers and/or vendors (Data Purchasers). We anticipate that such issues would include issues related to: the fee structure or fees charged by the information processor; the method of revenue allocation between the information processor and Data Contributors; the quality and timeliness of data provided by the information processor; new products or changes to existing products offered by the information processor; and any conflict of interest matters. The information processor should consider the views and recommendations of the advisory committee and, where it rejects such views, it should inform the committee of the reasons and should keep adequate records.

The advisory committee should have adequate representation of Data Contributors and Data Purchasers. Its mandate should make reference to its ability to contact the Director of the Market Regulation Branch of the Ontario Securities Commission and the Directrice de la supervision des Organismes d'autoréglementation (OAR) at the Autorité des marchés financiers with any concerns that it may have regarding the governance or operations of the information processor.

The approved minutes of advisory committee meetings should be provided by the information

processor to the Director of the Market Regulation Branch of the Ontario Securities Commission and to the Directrice de la supervision des OAR at the Autorité des marchés financiers.

(b) Fees and revenue sharing

We expect that the information processor would have a method for sharing revenues or profits with the Data Contributors. If this method is based on a model where the information processor passes through to the Data Purchasers the Data Contributors' own charges, the maximum amount charged by the Information Processor should be the amount that would be charged if the Data Purchaser were to purchase the data directly from the Data Contributor. For other revenue allocation methods, including models where the information processor shares the excess of revenues over expenses with the Data Contributors, we expect that the information processor would report annually to the advisory committee the methodology for allocation of revenues, expenses and the amount of excess of revenue over expenses to the Data Contributors.

The information processor should not charge the Data Contributors for providing the required data, including connection charges, or for modifying or converting the data to conform with the data protocol utilized by the information processor.

The fee schedule for Data Purchasers should be posted on the website of the information processor.

(c) Data distributed under the information processor designation

Generally, we expect that the information processor would limit the data distributed under the information processor designation to a consolidated feed (Consolidated Data) of the following information related to corporate debt securities provided to it in accordance with the requirements set out in Part 8 of NI 21-101 and Part 10 of the Companion Policy to NI 21-101 (NI 21-101 CP): the type of counterparty; the issuer name; the type of trade (buy or sell); the type and class of security; the coupon rate; yield; maturity; price; time of trade; and volume, subject to the volume caps specified in subsection 10.1(3) of NI 21-101CP.

However, the information processor may decide to distribute data products under the information processor designation in addition to the Consolidated Data (Additional Data Products). In this case, we expect it to file a revised Form 21-101F5 with the CSA. The information processor should not use the data provided by the Data Contributors for Additional Data Products without their permission and, if the information processor offers the Additional Data Products bundled with any or all of the Consolidated Data, the different products should be available for purchase individually and at a price that is reasonable relative to the bundled price.

(d) Data distributed outside of the information processor designation

If the information processor, or any of its associates or affiliates, decides to create and distribute other data products separate and apart from the information processor designation (Supplementary Data Products), the information processor should not use the data provided by the Data Contributors without their permission. In addition, the Supplementary Data Products

should be available for purchase separately from the Consolidated Data and should not be bundled with any or all of the Consolidated Data.

(e) Time to implementation

The information processor should have the necessary systems or processes to offer the Consolidated Data and should be in a position to make the Consolidated Data available to Data Purchasers within three months from the date the CSA communicates its determination regarding the information processor for the corporate debt securities.

(f) Non-exclusivity

We would expect that the information processor would not seek to obtain exclusive rights to consolidating and/or disseminating data through the terms of any contract with a Data Contributor or Data Purchaser.

5. *Process and next steps*

As set out above, we expect that applicants that wish to amend or update their Form 21-101F5 do so by **January 31, 2009**. We anticipate finalizing our review of the filings received by **March 31, 2009**. We also expect to finalize our review of the applications for the information processor for equity securities by the same date.

We would also like to note that in Québec, section 169 of the Québec Securities Act will soon be amended to require recognition of an information processor operating in Québec. As a result of this amendment, any successful applicant will have to formally apply under section 169 of the Québec Securities Act to be recognized as an information processor in order to carry on their activities in Québec.

Questions may be referred to any of:

Ruxandra Smith
Ontario Securities Commission
(416) 593-2317

Tracey Stern
Ontario Securities Commission
(416) 593-8167

Lorenz Berner
Alberta Securities Commission
(403) 355-3889

Serge Boisvert
Autorité des marchés financiers
(514) 395-0337 ext. 4358

Mark Wang
British Columbia Securities Commission
(604) 899-6658

Doug Brown
Manitoba Securities Commission
(204) 945-0605

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