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Alberta Securities Commission  
Autorité des marchés financiers  
British Columbia Securities Commission  
Manitoba Securities Commission  
New Brunswick Securities Commission  
Nova Scotia Securities commission  
Superintendent of Securities, Department of Justice  
Government of Northwest Territories  
Superintendent of Securities, Yukon  
Superintendent of Securities, Nunavut  
Superintendent of Securities, Consumer, Corporate and Insurance Services  
Office of the Attorney General, Prince Edward Island  
Saskatchewan Financial Services Commission  
Superintendent of Securities, Government Services of Newfoundland and Labrador  
Ontario Securities Commission

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

M<sup>e</sup> Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria 22e étage  
C.P. 246, tour de la Bourse  
Montréal, Québec H4Z 1G3

**Re:** Notice of Proposed National Instrument 23-103

Dear Mr. Stevenson & M<sup>e</sup> Beaudoin:

GETCO appreciates the opportunity to comment on the Canadian Securities Administrators' (CSA) proposal on Electronic Trading and Direct Electronic Access (DEA) to Marketplaces

(Proposal).<sup>1</sup> We fully support the goal of reducing risks in the Canadian equity markets and believe that the proposed requirements for marketplaces and marketplace participants that electronically access equity markets would be an important mechanism for furthering that goal. We focus our comments on two aspects of the Proposal.

First, we ask the CSA to carefully consider the implications of the proposed requirement that “[a] third party that provides risk management and supervisory controls, policies and procedures to a marketplace participant must be independent from each [DEA] client of that marketplace participant.”<sup>2</sup> This proposed requirement is similar to a limitation under the U.S. Securities and Exchange Commission’s Rule 15c3-5.<sup>3</sup> However, under U.S. securities laws, broker-dealers are not included in the definition of “customer,” whereas under IIROC’s rules, orders from broker-dealers are “client orders.”<sup>4</sup> Accordingly, unlike SEC Rule 15c3-5, the Proposal could be read to prohibit a marketplace participant that provides DEA to an affiliated broker-dealer from using risk management controls, policies or procedures developed by the marketplace participant or an affiliate. As discussed below, we believe this result would be unnecessarily restrictive.

Second, we support the Proposal’s provisions that would allow a participant dealer to reasonably allocate control over specific risk management and supervisory controls to another registered investment dealer.<sup>5</sup> If the responsibility for risk management and supervisory controls is allocated to another registered firm and clearly established in a written agreement, as the Proposal would require, such allocation would permit an order to be subjected to one set of robust, pre-trade risk management controls, rather than multiple, redundant filters. GETCO believes such allocation would reduce the costs and improve the efficiency of implementation without any loss in effectiveness of pre-trade controls.



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- <sup>1</sup> Notice of Proposed National Instrument 23-103, Electronic Trading and Direct Electronic Access to Marketplaces (April 8, 2011) (DMA Proposal).
- <sup>2</sup> Proposed subsection 3(5): Requirements Applicable to Marketplace Participants, Paragraph (5) of Risk Management and Supervisory Controls, Policies and Procedures.
- <sup>3</sup> Rule 15c3-5 under the Securities Exchange Act of 1934 (SEC Rule 15c3-5). Paragraph (d) of SEC Rule 15c3-5 requires that the financial and regulatory risk management controls and supervisory procedures required by the rule be under the direct and exclusive control of the broker-dealer subject to the rule. The SEC stated that this “direct and exclusive control” requirement means that any risk management technology and software be independent of a market access customer or a customer’s affiliate. See Securities Exchange Act of 1934 Release No. 63241 (Nov. 3, 2010) (adopting SEC Rule 15c3-5).
- <sup>4</sup> Under Universal Market Integrity Rules (UMIR), only principal orders and “non-client orders” are excluded from the definition of “client order.” Orders for the proprietary account of a U.S. broker-dealer affiliate of a Canadian investment dealer would be neither principal orders nor non-client orders. Instead, such orders would be considered “client orders.” See UMIR 1.1.
- <sup>5</sup> Proposed subsection 4.

## I. INTRODUCTION

GETCO is a leading electronic market maker, posting two-sided markets to allow investors and other market participants to efficiently transfer risk. From offices in Chicago, New York, London, and Singapore, the firm provides liquidity in cash and futures products across four asset classes – equities, fixed income, currencies, and commodities. We employ advanced technology, real time information, transparent risk management systems, and continuous innovation to provide liquidity on over 50 markets in North and South America, Europe, and Asia.

GETCO is a registered market maker on various equity and options exchanges and a Designated Market Maker and Supplemental Liquidity Provider on the New York Stock Exchange. We also provide investors with access to dedicated liquidity through GET Matched, an SEC-registered alternative trading system in the U.S.



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Since 2008, GETCO has participated in the Canadian markets. Currently, the firm posts two-sided markets on the Chi-X Canada and Alpha ATs, and the Toronto Stock Exchange, on which the firm operates as an Electronic Liquidity Provider. GETCO actively makes markets in more than 500 Canadian stock and ETFs and trades on average over 50 million shares per day on the Canadian markets. Over 90% of the firm's trades are the result of other market participants choosing to trade against GETCO's displayed quotes.

## II. DISCUSSION

The Proposal would create a new national instrument to regulate electronic trading, including the provision of direct market access. Specifically, the Proposal would require marketplace participants that electronically access marketplaces, either as principal or agent, to have policies, procedures, and controls in place to manage the financial, regulatory and other risks associated with such access. The Proposal would also impose certain requirements on marketplaces related to electronic trading.

GETCO fully supports the goals of the Proposal. Similar to SEC Rule 15c3-5, which GETCO supported,<sup>6</sup> the Proposal would establish common expectations for all marketplace participants in Canada about the need for effective pre-trade financial and regulatory risk management and supervisory controls, policies and procedures.

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<sup>6</sup> Letter dated April 1, 2010 from John A. McCarthy, General Counsel, GETCO to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission (comment on Securities Exchange Act Release No. 61379, Risk Management Controls for Brokers or Dealers with Market Access).

**A. Use of an Affiliate’s Risk Management and Supervisory Controls Should be Permitted**

The Proposal would only permit a marketplace participant to use risk management and supervisory controls, policies and procedures of a third party if that third party is independent from each DEA client of the marketplace participant.<sup>7</sup> GETCO requests that the CSA clarify that a marketplace participant may use controls, policies and procedures provided by an affiliate, even if the marketplace participant is providing direct electronic access to clients that are affiliates of the marketplace participant.

Technology tools and software to manage the risks associated with trading are often developed and maintained across companies within a holding company structure. The Proposal would permit a marketplace participant to use controls, policies and procedures provided by an affiliate, if the marketplace participant has direct and exclusive control over them and regularly assesses their effectiveness. However, if a marketplace participant provides DEA to the orders of clients that are affiliates, the Proposal would prohibit the use of those same controls, policies and procedures. Such a limitation would be unnecessary to achieve the CSA’s goals of reducing risks in the market.



Like the Proposal, SEC Rule 15c3-5 requires that the financial and regulatory risk management controls and supervisory procedures required by the rule be under the direct and exclusive control of the broker-dealer subject to the rule. The SEC stated that this “direct and exclusive control” requirement means that any risk management technology and software be independent of a market access customer or a customer’s affiliate. However, because the SEC’s definition of “customer” does not include broker-dealers,<sup>8</sup> this limitation does not apply when a broker-dealer provides market access to an affiliated broker-dealer.

GETCO believes that a marketplace participant should be permitted to use its own risk management and supervisory controls, policies and procedures or to use controls, policies and procedures that are provided by an affiliate of the marketplace participant. Accordingly, we ask the CSA to clarify that a marketplace participant’s affiliates would not be considered third parties for purposes of the requirement that third parties providing risk management and supervisory controls be independent from each DEA client of that marketplace participant. Alternatively, the CSA could exclude DEA clients that are broker-dealer affiliates of the marketplace participant from the independence requirement for third parties providing risk management controls.

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<sup>7</sup> Proposed subsection 3(5).

<sup>8</sup> See Securities Exchange Act Rule 15c3-3(a)(1).

**B. Support Proposal to Allow Allocation of Risk Management and Supervisory Controls to Another Registered Investment Dealer**

The Proposal requires a marketplace participant to maintain direct and exclusive control over its risk management controls, policies and procedures.<sup>9</sup> The Proposal also permits a participating dealer to allocate control over specific controls, policies and procedures to an investment dealer if certain conditions are satisfied.<sup>10</sup> GETCO supports this aspect of the Proposal and urges the CSA to allow such allocation in its final rule.

Under some circumstances, it may be more efficient for a participating dealer to allocate risk controls, policies and procedures to the investment dealer that holds the client account. For example, an investment dealer with a U.S. broker-dealer affiliate as a client would be best placed to establish controls, policies and procedures over that U.S. broker-dealer client's trading and we support the Proposal's provisions that would permit a participating dealer to allocate controls to the investment dealer.



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Such allocation need not undermine the effectiveness of risk management or supervision and GETCO believes that the proposed conditions that a participating dealer would be required to meet to allocate controls, policies or procedures to an investment dealer would ensure that the market integrity and risk management goals of the Proposal are met. Specifically, participating dealers would be required to have a reasonable basis to determine that the investment dealer has better access to information relating to the client than the participant dealer such that the investment dealer can more effectively implement the allocated controls, policies and procedures. Moreover, any allocation would be required to be described in a written agreement between the participating dealer and the investment dealer.

GETCO believes that these and the other conditions a participating dealer would be required to satisfy before allocating any specific controls, policies and procedures would ensure that at least one regulated entity in Canada is responsible for implementing the required risk management and supervisory controls, policies and procedures. In addition, as noted by the CSA, this type of allocation would continue to allow introducing and carrying arrangements or jitney arrangements that involve multiple dealers.

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<sup>9</sup> See Proposed subsection 3(4).

<sup>10</sup> See Proposed subsection 4.

### III. CONCLUSION

GETCO appreciates the opportunity to submit these comments. Please do not hesitate to contact us at (312) 931-2200 if you have questions regarding any of the comments provided in this letter.

Sincerely,



Elizabeth K. King  
Head of Regulatory Affairs



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