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September 28, 2000

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Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, North West Territories
Registrar of Securities, Yukon Territories
Registrar of Securities, Nunavut
C/o John Stevenson
Secretary, Ontario Securities Commission
20 Queen Street West
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And To:

Claude St. Pierre
Secretary
Commission des valeurs mobilières
du Québec
800 Victoria Square
Stock Exchange Tower
P.O. Box 246
22nd Floor
Montreal, Québec
H4Z 1G3

Dear Sirs/Mesdames:

Re: Proposed National Instrument 21-101 Market Place Operation, National Instrument 23-101 Trading Rules, Ontario Securities Commission Rule 23-501, Designation as Market Participant and Discussion Paper entitled “Consolidation Plan for a Consolidated Canadian Market” and related companion policies and forms (the “New Proposal”)

I Introduction

Toronto Dominion Securities Inc. (“TDSI”) welcomes the opportunity in this letter to respond to the issues and questions concerning Alternative Trading Systems (“ATS”) in the New Proposal published on July 28, 2000 by the Ontario Securities Commission (the “OSC”) or the (“Commission”) and by the Canadian Securities Administrations (“CSA”) at (2000) 23 OSCB (Supp).

TDSI’s comments include (i) general comments on the New Proposal, (ii) specific comments on the New Proposal including answers to the questions raised in the New Proposal and (iii) concluding remarks.

II General Comments on the New Proposal

TDSI is generally supportive of the New Proposal as it relates to the proposed regulation of the equities markets. As to the equities-related aspects, TDSI’s principal reservation concerns the decision by the CSA not to take a position on how market regulation should be organized for the equity market. TDSI believes that equity market regulation should be the function of a truly independent SRO. This might best be achieved by spinning off the TSE’s market regulation unit into a independent SRO or otherwise addressing on a basis that it satisfies the conflicts of interest created by ownership of control by the TSE.

As an interim measure, TDSI would be prepared to support the TSE proposal to regulate the market through a separate TSE sponsored market regulation entity provided that appropriate measures are put in place to address conflicts of interest and ensure a level playing field for the stock exchange and ATSS. To be appropriate, such measures would have to be endorsed by the Investment Dealers Association of Canada (“IDA”).

TDSI's other major comment concerns the handling of the fixed income market. TDSI appreciates that in response to comments received in 1999 from the IDA Capital Markets Committee and also from the Bank of Canada, the CSA has introduced a number of amendments and innovations to its original 1999 proposal. Nonetheless, as TDSI reads the New Proposal, the CSA continues to want to regulate the fixed income market on a basis that closely resembles the way equity markets are regulated. For example, interdealer brokers ("IDBs") have been excluded from the definition of "marketplace" while both IDBs and fixed income market-makers have been singled out for inclusion in pre-trade and post-trade transparency requirements. This approach fails to recognize the difference between the agency auction equity market and the quote driven fixed income markets where dealers purchase and sell debt on a principal basis and put their own capital at risk in each purchase transaction. If these proposals are adopted, dealers in fixed income instruments will no longer have the ability, as they do now, to trade either with customers or other dealers on a basis where price and order size are generally not communicated.

Market transparency is currently provided in the brokered debt market by CanPX. A considerable amount of time and effort was expended in developing and implementing the CanPX model and it is broadly understood and accepted. TDSI believes that the changes proposed in the New Proposal for the non-brokered fixed income market are unnecessary and that the implications of implementing them would be significant. These implications need to be fully considered before new rules applicable to fixed income markets are introduced.

TDSI also believes that there should be restrictions on the uses that a data consolidator or information processor can make of the information provided to it by market participants. TDSI thinks that the information processor should be viewed as being in the nature of a "public utility" and that, accordingly, an information processor should be prohibited from taking information and repackaging it into a "value added" products which it would then sell for a profit. The market should be a "level playing field" for information and to permit data collectors or information processors to sell value added products would put this principal at risk.

TDSI is also concerned with the degree to which regulatory filings made under the system will be publicized or generally accessible and believes the New Proposal should more closely follow the current regime. The forms contemplated by the New Proposal require the provision of extensive information to regulators which is now normally provided on a confidential basis. For example, registration-related information is currently treated confidentially and the only publicly available information concerning a registrant is its name and category of registration.

*III Comments on Specific Questions***Question 1:**

**Should broker ID numbers be collected and disseminated by the data consolidator?
If yes, should the customer decide whether the broker ID is disseminated?**

TDSI agrees with the comments received from other parties¹ in relation to the original proposal that any omission of broker designations on trades could lead to misinformation, decreased information transparency and reduced competition among market participants. TDSI believes, as others do, that broker numbers promote competition in the marketplace and play an important marketing and business-enhancing role in the Canadian brokerage community.

Question 2:

Who should provide market regulation for ATs? Please provide reasons for your answer.

TDSI endorses the position previously expressed by the IDA Equity Trading Committee in its October, 1999 submission to the CSA. It is common ground for all non-exchange commenters that stock exchanges have conflicts of interest precluding them from carrying out market regulation of competing trading systems. Moreover, attempting to address the conflict of interest problem through “process-driven” solutions such as a separate board of directors is not a substitute for genuine independence. TDSI agrees with the suggestion that more industry discussion is necessary and intends to participate in such a process without prejudging or even anticipating the outcome of discussion on this matter, TDSI believes that an acceptable solution would see the transfer to an independent SRO such as the IDA of all regulatory functions currently slated to be carried out by the TSE’s independent regulation services unit.

Pending the outcome of such discussions and the implementation of a permanent solution, TDSI is prepared to support the TSE’s independent regulation services unit performing the regulatory function provided that appropriate measures, including corporate governance protections, are put in place to address conflicts of interest and prevent the TSE from improperly influencing the market regulator. The CSA still has an important role to play in dealing with disagreements that may arise in the future if ATs perceive that market regulation is not sufficiently neutral.

¹ See summary of “Comments and CSA Responses” at page 330 of the New Proposal.

Question 3:

Is it appropriate for the IDA to assume the role of market regulator for all participants in the debt market?

The IDA is a natural self-regulatory organization for debt market and has effectively played this role for many years. But, in TDSI's respectful submission, it may be premature to give excessive consideration to the selection of a market regulator for all participants in the debt market until the full implications for the debt market of the New Proposal have been worked out. In particular, the fact is that fixed income markets in Canada are currently multiple-dealer, debt markets with sophisticated participants. These markets are inherently decentralized and there does not exist a primary or central market place for fixed income trading. The model reflected in the New Proposal and the original 1999 Proposal is based on an approach to the regulation of equity markets first developed in the United States that has as its objective the creation of a more centralized, less fragmented market. This approach was not designed with fixed income markets in mind. The decision by the CSA to exclude IDBs from "marketplace" regulation may not be enough to address the uniqueness of fixed income markets. While the New Proposal would undoubtedly increase the transparency of the fixed income markets by requiring both market-makers and IDBs alike to satisfy requirements for pre-trade and post-trade transparency, the resulting environment may significantly reduce the willingness of dealers to play their market-making role by lowering bid-ask spreads to the point where the risk for a market maker associated with supplying continuity to a market is simply not adequately rewarded.

Question 4:

Should there be an exemption from the display requirement for debt securities based on the value of the order or some other criteria? If so what should the criteria be?

Question 5:

Is the definition of market maker appropriate?

Question 6:

Should requirements imposed on market makers to provide pre-trade information for the debt market be implemented on a gradual basis? What information should be provided? When should this information be provided initially? If information is provided on an end of the day basis, what time is appropriate? Is it appropriate to require this information be provided in real time in one year?

Question 7:

Should information only be required on a pre-trade basis for the most liquid debt securities or based on some other criteria? How should “most liquid” debt securities be defined? What information should be provided?

Question 8:

Should requirements imposed on market makers to provide post-trade information for the debt market be implemented on a gradual basis? If so, when should this information be provided initially? If information is provided on an end of the day basis, what time is appropriate? Is it appropriate to require this information be provided in real time in one year?

Question 9:

Should information only be required on a post-trade basis for the “most liquid” debt securities? How would “most liquid” debt securities be defined?

TDSI believes these questions are related.

In approaching any question as to the scope of display requirements for debt securities, TDSI believes that the CanPX approach should be used. Accordingly, TDSI does not recommend an exemption from the display requirement based on the value of the order. Rather, in keeping with the CanPX model, the display requirement should be left at the discretion of the dealer who is providing continuity in the market. The justification for this approach is that under the current fixed income market structure, the dealer is the “customer” and the dealer’s display preferences should be respected. The dealer can trade without a display obligation in the non-brokered sphere of the wholesale market or subject to a display obligation through CanPX in the brokered sphere. The CanPX approach has been to make transparent on a real time basis all orders in relation to “designated issues” that are either displayed or completed through IDB screens. Historically, however, bilateral trading activity between dealers away from the IDB environment has not been the subject of display obligation and this historical line of demarcation should continue to be respected because it achieves the right balance between the customer’s need to access the inside market’s bid/ask spread and the dealer’s need to manage its position risk.

With respect to question 5, TDSI found confusing the fact that both National Instrument 21-101 and National Instrument 23-101 impose duplicative display requirements. NI 23-101 is the only instrument that explicitly uses the “market maker” definition and there is no language in the definition “marketplace” in NI 21-101 that excludes market makers. In the explicit way that IDBs are excluded. This leads to the probably unintended consequence that paragraph (c) of the definition of marketplace captures market makers. The problem should be addressed by adding “market maker” to the definitions in NI 21-101 and excluding the concept of “market maker” from the reach of “marketplace” NI 21-101.

With respect to questions 6, 7, 8, and 9 TDSI believes that the CanPX model should be followed with the result that real-time rather than delayed time data should be used and that information should be supplied in relation all debt securities that are thought to have importance. This result is achieved in the CanPX model by using the concept of “Designated Issues”, i.e., preselected securities including benchmark issues for information display and dissemination. TDSI submits that the only circumstance in which departures from real time dissemination requirements should be allowed is where there are compelling technological reasons for going in that direction.

Question 10:

Should the CSA follow a similar approach?

The question asks whether the CSA should follow an approach similar to that followed by the National Association for Securities Dealers in proposing that a corporate bond trade reporting and transaction disseminating facility be established. The market for corporate bonds has traditionally represented a relatively insignificant portion of fixed income trading in Canada and the economic argument for providing a special reporting and transaction dissemination facility would have to be made convincingly to justify such a facility. TDSI has no objection in principle to this innovation provided it is economically viable.

Question 11:

Are there any other requirements that should apply to the information processor?

TDSI notes that a decision has been made to proceed with the appointment of an information processor without resorting to a request for proposals. This approach has presumably been taken on the theory that either CanPX or the data consolidator will be able to perform the function. It therefore seems that form 21-101F5 is supposed to do the work of a request for proposal or at least provide the information that the Ontario Securities Commission would need to analyze to make a public interest determination.

Some possible requirements that do not appear directly to be addressed by the form but nonetheless might be material to the CSA review include: (i) a business plan with pro forma financial statements and estimates of revenue; (ii) a statement of whether the information processor will employ its own people or rely on third parties for outsourcing (Exhibit J only partially does this); and (iii) provisions for the communication to the CSA of material changes in operations including commencement of new businesses, the completion of, or proposal to effect, a change of control transaction and the like. Proposed Exhibit K should deal explicitly with procedures for safeguarding the confidentiality of information received. It is not clear whether “procedures implemented by the filer to provide for the security of any system” as contemplated by Exhibit K is the same as this.

Question 12:

Is Regulation 2100 of the IDA still appropriate?

The answer to this question really depends on the answer to the more fundamental issues presented by the way the debt market is being regulated under the New Proposal. At present, Regulation 2100 indirectly regulates IDBs by controlling IDA member access to IDBs. Though the current IDBs will not be regulated as marketplaces under the New Proposal, it will still be possible for new ATSS to operate in fixed income markets. If the ATSS are configured so that the current customers of dealers can interact with other customers of dealers, the structure of the current fixed income market will be so radically changed that regulation 2100 may be too narrow and “IDB-specific” to be of much continued utility. In particular, it seems possible that a variety of parties not currently eligible to participate in Regulation 2100-compliant IDB systems would have an incentive to form ATSS which would put IDA members subject to Regulation 2100 at a competitive disadvantage. Also, if the IDA regulated the entire debt market, IDBs would be simply one of a number of possible players in it. In this scenario, a more far-reaching set of ATSS-specific rules might well be necessary.

Question 13:

Should there also be an exception based on number of shares traded (in addition to value of shares trades)? Are there any exceptions to the display requirements that should be included?

The decision to abandon the cross-interference rule and substitute broader display requirements need not carry with it an exception from the display requirement based on the number of shares traded. Order display requirements linked to order size tend to be specific to each particular market and it is hard to develop rules of general application that are fair or appropriate. The TSE’s experience in this area with the 1200 share exposure rule is an example of the market specificity of these order display rules.

Question 14:

Should the requirement regarding customer limit orders apply to the fixed income market?

The fixed income market is a dealer market in which customer limit orders are not displayed with the results that the display requirement should not apply.

Question 15:

Should there be an exemption based on the value of the order or some other criteria for fixed income securities?

With respect to order display in general, TDSI recommends adherence to the “CanPX style” methodology discussed above.

Question 16:

Should special order audit trail requirements be adopted? Under what circumstances should the requirements be imposed? To whom should the requirements apply? What additional information should be collected?

Question 17:

Should the audit trail requirements be established by the CSA or should the requirements be determined by the exchange, approved agent or the IDA?

TDSI believes these questions are related and should be considered together. TDSI is in general agreement with the approach proposed in Part XI of the instrument. We believe that dealers participating in marketplaces should be required to record details of every order received, the time of receipt and the time the order was conveyed to the market for execution. On the other hand, the audit trails of marketplaces should be sufficiently detailed to allow the reconstruction of the trading environment which a particular order faced when it was sent for execution by a market participant. The approved agent could set up the audit trail working to a specification satisfactory to the CSA.

Question 18:

Should the display requirements for over-the counter orders or trades be expanded from market makers to all dealers?

Question 19:

Should the information be sent to the data consolidator or another party?

TDSI considers these to be related questions. The display requirements for over-the-counter orders for equity securities (other than options) should in principle be the same as those for orders executed in organized marketplaces. The information should be sent to the data consolidator as there does not appear to be any justification for sending it to another party.

Question 20:

TD Securities Inc.

Should the short selling provision be limited to trades facilitated on a marketplace or should they apply to dealers trading outside of a marketplace?

There does not appear to be a basis for distinguishing between short selling in over-the-counter equity securities and marketplace-traded securities.

IV Concluding Remarks

As indicated above, TDSI is generally supportive of the New Proposal as it relates to the regulation of equities markets but has serious concerns with the proposed approach to the regulation of fixed income markets. This approach would require dealers to significantly change the way they carry on their fixed income trading business, particularly in the non-brokered wholesale sphere. TDSI strongly believes that the changes contemplated by the New Proposal for fixed income markets should not be implemented until the implications of the changes are clearly understood and have been fully considered.

TDSI wishes to encourage the CSA to complete its deliberations at the earliest opportunity.

We would be pleased to discuss any of the comments of this letter with Commission or its staff. If we can be of further of assistance to the Commission in this regard, please do not hesitate to contact Andrea S. Rosen at (416) 982-4159.

Yours very truly,

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Vice Chair
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Mark E. Faircloth
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