

BY EMAIL TO jstevenson@osc.gov.on.ca

October 19, 2000

British Columbia Securities Commission
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, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario
M5H 3S8

Dear Sirs/ Mesdames:

Re: Alternative Trading Systems Proposal Published in (2000) 23 OSCB (Supp)

We would like to offer the following comments on revised National Policy 21-101 and its Companion Policy. We apologize for submitting these comments after the formal deadline for submissions and we appreciate your patience in this regard.

(1) *National Instrument 21-101 – Marketplace Operation*

(a) Part 1 – Definitions and Interpretation

It is our understanding that the definition of “information processor” is not intended to encompass the “data consolidator” role as well. Indeed, section 18.1(1) of the Companion Policy states that the term “information processor” does not include the data consolidator. However, this is not clear from the drafting.

The definitions do not reflect the distinction between the equities market and the fixed income securities market that is alluded to elsewhere (for example, in the notice (23 OSCB (Supp)) at page 303). We suggest that the definitions be revised to make it clear that the “information processor” role pertains only to the fixed income securities market. Otherwise, it is not clear that requirements pertaining to information processors (such as the requirement for filling out and submitting Form 21-101F5) do not apply to data consolidators.

(b) Part 13 - Clearing and Settlement

Section 13.1 requires that trades made through or by an ATS be “reported, confirmed and settled through a clearing agency listed in Appendix B.” “Confirmation” is a term generally used to indicate agreement to a trade done outside an exchange. Trades done on an exchange, on the other hand, do not require confirmation because they have already been matched as part of the operation of the exchange. As we understand it, the same will be true of ATSS. Thus, we would expect that the output of an ATS will be pre-matched trades, to be reported to the clearing agency. Since those trades will not require confirmation, we recommend deleting the text “, confirmed” from section 13.1.

Appendix B lists the clearing agencies eligible for reporting and settling trades made through or by an ATS. We would ask that the Appendix set out CDS’s full legal name; to that end, please insert a “The” before “Canadian Depository for Securities Limited”.

(2) *Companion Policy 21-101CP to National Instrument 21-101*

(a) Part 16 – Clearing and Settlement

If our recommendation for amending section 13.1 of the National Instrument is accepted, corresponding amendments will need to be made to section 16.1 of the Companion Policy. We also note that in the Companion Policy CDS’s full name is shown as being “Canadian Depository for Securities”. We would ask that that be changed to “The Canadian Depository for Securities Limited”.

Section 16.1(2) states that either an ATS or a subscriber may report an executed trade to a clearing agency, assuming that the subscriber has a settlement account with the clearing agency. This raises two issues which we believe merit attention: (i) the risk of duplicate trade reporting; and (ii) the fact that an ATS subscriber may use a settling broker that could report the subscriber’s trades to the clearing agency.

If both the ATS and its subscribers (or some of its subscribers) report trades to the clearing agency, confusion will likely ensue. We realize that the CSA wants to maintain flexibility but this should not be at the cost of duplicate reporting of trades. We would suggest that the ATS and its subscriber agree between themselves on who will report that subscriber’s trades, and then ensure that the appropriate feed(s) are sent to the clearing agency (i.e. if the subscriber is reporting its own trades then any feed from the ATS to the clearing agency would not include those particular trades).

As alluded to in section 16.1(2), an ATS subscriber may or may not be a participant in the clearing agency. Section 16.1(2) presumes that if the ATS subscriber is not itself a clearing agency participant, then it necessarily follows that the ATS would be reporting that subscriber's trades to the clearing agency. That may not be the case however. The ATS subscriber (i.e. the executing broker for a particular trade) may use a settling broker (also referred to a correspondent broker), that is a participant in the clearing agency, to settle its trades for it. In that case, the choice of who reports the subscriber's trades to the clearing agency will be between the ATS and the subscriber's settling broker. We recommend revising section 16.1(2) as follows:

“... may be done either by an ATS, or by a subscriber **or an agent of the subscriber** where the subscriber **or its agent** has a settlement account with a clearing agency.”

Lastly, we would like to comment on the terminology employed in the RFP for selecting a data consolidator. While that document is not part of the Proposal on which the CSA is soliciting comments, it is referenced in the Proposal. The RFP uses the term “Data Consolidation System” which it abbreviates as “DCS”. We think that there is some potential for confusion given that the same acronym, “DCS”, is already in use in the financial markets, referring to CDS's Debt Clearing Service.

We appreciate having had this opportunity to comment on the revised Alternative Trading System Proposal. If you would like to discuss these points further, please contact Susan Cantlie (by telephone at 416-365-8395, or by email to scantlie@cds.ca) at your convenience.