



INVESTMENT
TECHNOLOGY
GROUP

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Anne-Marie Beaudoin
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Tour de la Bourse
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January 15, 2009

Dear Sirs/Mesdames:

Re: Proposed Amendments to NI 21-101 *Marketplace Operation* and NI 23-101 *Trading Rules* (collectively, the "Proposed Amendments")

ITG Canada Corp. ("ITG Canada") appreciates the opportunity to comment on the Proposed Amendments, as published on October 17, 2008. The Proposed Amendments provide a much more practical and efficient regulatory framework for a multiple marketplace environment as compared to the existing best price obligation imposed on dealers in the IIROC Universal Market Integrity Rules (UMIRs). We commend the Canadian Securities Administrators ("CSA") and the Investment Industry Regulatory Organization of Canada ("IIROC") for responding to industry concerns expressed in response to previous requests for comments on this issue.

ITG Canada is a specialized agency brokerage and financial technology firm that partners with asset managers and investment dealers to provide innovative solutions spanning the investment continuum. ITG's integrated approach now includes a range of products from portfolio management and pre-trade analysis to trade execution and post-trade evaluation. Asset managers rely on ITG's independence, experience, and agility to help mitigate risk, improve performance, and navigate increasingly complex markets.

ITG Canada participated in and supports the comment letter submitted by the Investment Industry Association of Canada ("IIAC"). The IIAC comment letter represents the views of many IIROC members in addition to our own. The responses to the specific questions are below and are intended to supplement and expand upon comments presented by the IIAC and provide further clarification and discussion on issues where ITG Canada would like to represent our specific views.

CSA Question 1:

Should marketplaces be permitted to pass on the trade-through protection obligation to their marketplace participants? If so, in what circumstances? Please provide comment on the practical implications if this were permitted.

In order to ensure that the regulatory framework operates in an efficient and effective manner, marketplaces should not be able to avoid their obligations by establishing policies and procedures that instead require dealers or other marketplace participants to prevent trade-throughs. Allowing marketplaces to pass the obligation back to dealers would defeat the purpose of the Proposed Amendments. However there are situations where marketplaces should be able to receive instructions from a dealer to ignore the trade through obligation. For inter-market sweep order ("ISO") orders the regulatory responsibility for trade through compliance would be transferred to the dealer. The proposed rules should provide guidance on the use of orders like ISO orders (i.e. who can use them and when), explicitly clarify that the responsibility for trade through prevention is with the dealer and which regulator will be expected to enforce these rules (i.e. if this will be delegated to IROC by the CSA).

CSA Question 2:

What length of time should be considered an "immediate" response by a marketplace to a received order?

We believe that it is inappropriate to enforce by regulation a particular time increment, particularly since the evolution in technology will change what is considered reasonable over time. However dealers should be able to use comparisons and established bench marks to determine if under the particular circumstances a marketplace is not providing "immediate" responses to orders and therefore take pro-active measures to manage routing decisions. Dealers should have the ability to avoid particular markets where they can demonstrate that they have reasonable concerns in relation to performance. CSA should not establish an explicit standards and rely on a principles based approach dependent on disclosures by the Marketplace.

CSA Question 3: Are any additional exceptions necessary?

The proposed exceptions are appropriate; however the exceptions relating to systems issues should require a higher standard on the marketplaces for transparency on the problem and resolution. For instance if a marketplace experiences a systems issue, market data latency or is missing immediate response targets a material percentage of time, this should require a notice by the market in coordination with IROC that the marketplace is no longer a protected market for trade through obligations. This notice should not be rescinded until the marketplace can demonstrate to IROC that the issues have been resolved and there is a reasonable expectation that the remedy is not temporary. It may not be practical for a dealer to completely avoid a marketplace but it should be up to the dealer to adjust routing decisions and priorities for some or all of their business to protect the interests of their clients and stakeholders. The CSA should also clearly exclude any regulatory application of Best Execution for a marketplace that is experiencing system issues.

CSA Question 4: Please comment on the various alternatives available to a marketplace to route orders to another marketplace.

The Marketplaces could simply become members or subscribers of all the protected marketplaces and through a dealer entity execute against the better priced orders and subsequently through a special trade report provide a fill back to the originating dealer. These executions could then be netted out at CDS and then reported to the originating broker. The idea is to eliminate the

requirement to make these trades fall under the definition and obligations associated with “jitney” orders which require Direct Participant¹ reporting which is operationally impractical. Any delays in reporting would be counter balanced by making it easier to monitor and collect trade executions by the dealers without requiring separate reconciliations and invoicing by jitney brokers. This is a complicated enough issue that we do not expect to be resolved before the rest of this proposal is implemented. This should be a priority on the list of issues to be discussed with the OSC working group that is being formed to deal with implementation issues.

CSA Question 5: Should the CSA set an upper limit on fees that can be charged to access an order for trade-through purposes? If so, is it appropriate to reference the minimum price increment described in IIROC Universal Market Integrity Rule 6.1 as this limit?

In order to avoid the introduction of abusive fee structures, even if they are unintentional, marketplace fees should be taken into consideration in some manner. Rather than setting limitations on fees, we believe the better approach is to allow marketplace fees to be taken into consideration in determining routing table priorities. A dealer will only send orders that are necessary to comply with trade through obligations to any marketplaces where the fees for trading become uneconomical. To remain competitive, marketplaces will adjust their fee schedules to ensure that they remain a destination of choice for order flow. In all situations we believe that the dealer has an obligation to notify their clients through disclosure if they exclude a protected marketplace in their routing decisions.

If the CSA requires a more structured limitation on fees, the proposed limitation based on tick increments is acceptable, provided that the language is clarified to indicate that the acceptable increment is a ½ tick per marketplace in case of double billing, and that the total “all in” charge cannot be more than the existing fees.

CSA Question 6: Should there be a prohibition against intentionally creating a “locked market”?

There should be a prohibition against intentionally creating a locked market when the order that created the locked market could have reasonably been routed to the protected quote for immediate execution. The prohibition should equally apply to all market participants including marketplaces to protect the integrity and function of the market as a whole.

In addition we feel that protected markets should be entirely based on time priority allocations and not permitting the practice of “seeking a cross” with the firm before respecting pure time priority.

Reporting Requirements

ITG Canada supports marketplace reporting requirements to allow market participants to assess the performance and relevance of each marketplace. As noted above, factors related to performance and reliability is a consideration in dealers routing decisions. It is critical that the information being reported is based on common definitions and standards to allow for suitable comparisons.

¹ IIROC Member Regulation Notice MR0454, Broker to Broker Trade Matching Rule – Regulation 800.49 and IIROC Rule 800.49.

We however do not see the value and benefits that would come with the requirement for dealers to collect, consolidate and report routing statistics as required by section 4.4 of NI 23-101 in the Proposed Amendments. These statistics are not likely to provide relevant information for the investing public to act on. With smart routers and inter market routing for trade through obligations, the statistics provided may include a significant number of results where the dealer was not directly involved in the routing decisions. It is also not clear how passive orders are to be reported, if at all, especially when they were entered as passive but due to changing conditions became active orders.

The most important aspect of this regulation should focus on ensuring that dealers are not acting in a manner that would conflict with the interests of their clients. This objective can be achieved by requiring firms to develop and publish order handling and execution policies. These policies should be made available to clients on demand and via the firm's website. This could form part of a firm's conflict of interest procedures. Disclosure of a firm's order execution policy will provide investors with transparency in respect of how orders are handled in a clear and understandable manner. This will relieve clients from trying to interpret a bunch of statistics without information on why certain routing decisions were made by a trader, required by regulation or based on decision made by an order management system or smart router.

Question 7: Should the marketplace statistics focus on units of securities traded instead of orders and number of trades?

If the regulatory concern relates primarily to protecting the small investor, it would be appropriate to have information relating to individual orders and the number of trades.

Question 8: Should the marketplace statistics require separate reporting on specific order types that would include market orders, intentional crosses, and prearranged trades?

Order types should be broken out, as each type has different characteristics and reasons for use. For example intentional crosses should not be reported with continuous market trades.

Question 9: Should the focus of the liquidity measures be the number of orders or the cumulative number of shares?

Liquidity is most often equated with the number of shares at a price point, and should be measured that way.

Question 10: Would it be useful to have information about partially or fully hidden liquidity that is available on certain marketplaces? If so, what measures of that liquidity would be most informative?

Liquidity is best measured on the basis of number of shares at the particular price points and is an appropriate measure; while including hidden orders is important for historical measures but has less value when making routing decisions that must be driven by protected orders. For not-held orders and liquidity seeking algorithms these statistics could provide value and therefore should be reported separate from statistics on protected orders. After the introduction of the by-pass marker these statistics may be useful to identify situations where better priced hidden orders were traded through.

Question 11: Would it be useful to include reporting similar to the near-the-quote orders required by the SEC in the United States? What price increment away

from the quote would be appropriate to use for the Canadian market?

Yes, this reporting should be included and could be made more informative with tiers that could be based on percentages, distinct price increments or by standard deviations. The implementation work group should be tasked with evaluating what method provides the most value for statistical analysis.

Question 12: Are statistics regarding average realized and effective spreads useful without a consolidated best bid and offer?

No. For comparison reasons it is essential that all participants are measured to the same consolidated best bid and offer.

Question 13: Are the time frames used to assess speed and certainty of execution on a marketplace in section 11.1.1 of NI 21-101 appropriate? If not, what time frames should be used?

As noted above, although dealers and sophisticated institutional clients may measure execution speed in milliseconds, the important measure is how marketplaces are performing in relation to each other so that one marketplace is not delaying a routing decision to the degree that the participant could be missing an opportunity to execute against a protected order.

Question 14: In addition to the proposed reporting requirements for marketplaces, would other information, such as the following, be useful to dealers or advisors to assess best execution:

(a) a breakdown of the information by order size (i.e. 100-499 shares, 500-1999 shares, 2000-4999 shares, 5000 or more);

Yes, but the intentional crosses, terms orders and special order types (i.e. basis cross or Must-be-filled orders) should be reported separately.

(b) the proportion of time that a marketplace had orders that were at the best bid or the best ask;

Yes, however this information may be misleading if the best bid or ask displayed is only for 1 standard trading unit. We would suggest that a minimum of 5 standard trading units be considered the minimum size for consideration ($1/10^{\text{th}}$ of the order exposure requirement)

(c) the proportion of trades (in number of shares or number of trades based on our decision) executed inside the best bid and ask price?

We would like this to exclude pre-arranged trades, intentional crosses special terms orders and any orders that require specialized order markers or conditions.

Question 15: Do you agree that an information processor should disseminate consolidated trade information along with a feed that contains the best bid and best offer and all orders at all price levels (along with the marketplace identifier/marker)? For practical reasons, should the price levels be limited? If so, to how many levels?

It is imperative that an information processor report all the information, including all price levels in order to provide market participants with the information essential for routing decisions and to

evaluate compliance with trade through obligations. The information provided by the processor would form the benchmark and would assure that all participants and regulators are using and measuring to the same information.

We encourage the CSA to complete their analysis and recommendation of an information processor by their self imposed March 31st, 2009 deadline as the industry is in need of this facility and guidance to govern themselves accordingly.

IIROC Amendments to UMIRs

We have responded to the IIROC request for comments on their proposed amendments to the UMIRs resulting from the creation of a CSA trade-through obligation. We believe that it is not necessary to create a supplemental and prescriptive requirement in UMIR. The proposed CSA anti-avoidance provision should provide sufficient regulatory guidance for all market participants including ones that are not regulated by IIROC. We have attached this comment for your reference as appendix A.

Conclusion

We appreciate the opportunity to comment on this important regulatory instrument and look forward to participating on the working group to assist in identifying and resolving implementation issues. If you have any questions or comments, please do not hesitate to call.

Yours sincerely,



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British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Appendix A

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January 9, 2009

Dear Sirs/Mesdames:

Re: IIROC Notice 08-0163 – Provisions Respecting Implementation of Trade-Through Protection

ITG Canada Corp. ("ITG Canada"), is a specialized agency brokerage and financial technology firm that partners with asset managers and investment dealers to provide innovative solutions spanning the investment continuum. ITG's integrated approach now includes a range of products from portfolio management and pre-trade analysis to trade execution and post-trade evaluation. Asset managers rely on ITG's independence, experience, and agility to help mitigate risk, improve performance, and navigate increasingly complex markets.

ITG Canada participated in and supports the comment letter submitted by the Investment Industry Association of Canada ("IIAC"). The IIAC comment letter represents the views of many IIROC members in addition to our own. The comments below are intended to supplement and expand upon comments presented by the IIAC and provide further clarification and discussion on issues where ITG Canada would like to represent our specific views.

1. Should specific provisions be added to UMIR to protect better-priced orders on marketplaces before permitting trading at an inferior price on a foreign organized regulated market?

We believe the CSA anti-avoidance provision is sufficient to address the concerns raised by IIROC with respect to protecting better priced orders on a Canadian marketplace when a participant is considering a trade on a foreign organized regulated market. The addition of a prescriptive rule that only applies to IIROC members will only weaken the efforts by the application of consistent regulation to all market participants for trade through obligations. We believe that UMIR already has sufficient protections that a new rule in UMIR Policy 6.4(2)² is not required. Notwithstanding the costs and time to develop the monitoring

² Application to Foreign Affiliates and Others

The Market Regulator considers that any use by a Participant of another person that is not subject to Rule 6.4 in order to make a trade off of a marketplace (other than as permitted by one of the exemptions) to be a violation of the requirement to conduct business openly and fairly and in accordance with just and equitable principles of trade.

Although certain affiliated entities of a Participant, including their foreign affiliates, are not directly subject to Requirements, Rule 6.4 means that a Participant may not transfer an order to a foreign affiliate, or book a trade through a foreign affiliate, and execute the order in a manner that does not comply with Rule 6.4. In other words, an order directed to a foreign affiliate by the Participant or any other person subject to Rule 6.4 shall be executed on a marketplace unless one of the exemptions set out in

systems and perform all of the subsequent testing and documentation, we believe that in practice, marketplace participants by default materially enforce trade through obligations when dealers use marketplace routers and comply with their best execution obligations to their clients.

We also have concerns regarding how exchange rates and trading fees would be interpreted in the application or enforcement of this proposed rule. Even as systems are designed to comply with this requirement, the benefits of implementing this provision would be marginal, as arbitrage activity is designed to trade against situations that would result in trade through. This virtually ensures that client orders requiring protection will get filled as prices in the domestic or foreign market have a bid or offer through.

It should also be noted that when an order is sent direct to a foreign market, it is handled by a foreign broker not necessarily under the control of the Canadian Participant, therefore the timing of execution could occur at a price that would violate this proposed rule due to a variety of reasons such as delays or latency in quotes, routing or volatile exchange rates. We are concerned that such a proposal could discourage participants from considering foreign markets as an option in routing decisions to avoid the costs of developing monitoring systems to evidence compliance or be required to rely on arbitrary degrees of non-compliant trades that could be deemed a violation at a later date. We appreciate that IIROC has previously stated that their expectations for dealers is to make reasonable efforts however monitoring systems must be designed with more finite thresholds.

This proposal would also create regulatory inconsistency, as foreign regulators do not have such provisions or prescriptive obligations.

2. **If a requirement to consider better-priced orders on marketplaces before permitting trading at an inferior price on a foreign organized regulated market is added to UMIR, should such the requirement be limited to the handling of:**
- **intentional crosses;**
 - **pre-arranged trades;**
 - **block orders with a market value of \$100,000 or more?**

If this rule is added to UMIR, then it should only be applicable to situations where it was clearly the intent to avoid better priced orders on a Canadian protected marketplace because a trader wanted to avoid displacement obligations. In most cases intentional crosses and pre-arranged trades would be the situations where a participant may want to avoid displacement obligations, however the application of this duty to the markets should not be dependent on how a trade was submitted. UMIR has sufficient guidance in the application or enforcement of intent that should not be necessary to excessively define or create exceptions to such a proposal. In part 2 of UMIR the broad statement of "if the Participant or Access Person knows or ought reasonably to know the nature of the method, act or practice" could equally be applied in trade through regulation.

3. **If a requirement to consider better-priced orders on marketplaces before permitting trading at an inferior price on a foreign organized regulated market is added to UMIR, are there any exemptions or other limitations on the requirement that would be appropriate?**

Rule 6.4 applies. Foreign branch offices of a Participant are not separate from the Participant and as such are subject to Requirements.