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

c/o John Stevenson, Secretary
Ontario Securities Commission
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- and -

Me Anne-Marie Beaudoin
Corporate Secretary
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**Re: PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 21-101 *MARKETPLACE*
OPERATION AND NATIONAL INSTRUMENT 23-101 *TRADING RULES***

Dear Sirs / Mesdames:

CIBC World Markets Inc. ("CIBC WM") appreciates this opportunity to comment on the above noted proposed amendments. As illustrated in the proposal, the key objective is to update and streamline the regulatory and reporting requirements for all marketplaces. We would like to take this opportunity to express our frustration with the lack of coordination regarding marketplace initiatives, both technical and business driven. Further to this, we would like to re-state our views on the introduction of minimum size requirements for dark liquidity as well as provide comment on the definition of a marketplace.

Comments on the Proposed Amendments

Marketplace Operation - Notice Periods

There is both significant cost and insufficient time to integrate marketplace changes into existing technologies within the required regulatory / exchange posted deadlines.

Under current guidelines, marketplaces are mandated to provide all technology requirements regarding interfacing with or accessing the marketplace at least 90 days prior to operations for a new marketplace; or 60 days prior for an existing marketplace (Section 12.3 of NI 21-101).

In particular for a new marketplace, these requirements can be distributed prior to regulatory approval. This is wholly inappropriate given that these changes must be integrated into existing business planning; without assurance that the marketplace will receive the requisite approvals. The clock for access to a new marketplace should begin only once approval has been granted otherwise this breaks the intended spirit of the guidelines around marketplace operation.

As a real world example, TMX Select announces their plans to launch an ATS on March 4, 2011. The anticipated start date is June 20, 2011; which is in accordance with the mandated 90 day notice period. However, there is no assurance that the proposed marketplace will receive regulatory approval and therefore it is unrealistic for participants to sideline other business priorities in order to meet an unconfirmed date. In the case of TMX Select, regulatory approval is granted only on June 3, 2011 and the launch date is pushed to July 11, 2011. The true notice period is therefore 25 days.

We believe that, in order to allow participants to meet their current obligations, all marketplaces must provide suitable notice on proposed operational changes. We are in agreement that the current regulatory guidance of 60 days for an existing marketplace, or 90 days for a new marketplace is sufficient. However, this notice period should not apply until the necessary regulatory approvals are in place and communicated out to the public at large.

We recommend that this issue be addressed within the proposed amendments to marketplace operations.

Marketplace Operation – Testing Facilities

Protected Canadian marketplaces introduce significant technical complexity, and are not held to account. Major system changes, such as the splitting of data feeds or the changing of messaging formats, introduce new technical risk into the market. The frequency of these changes is accelerating, increasing the risk that a participant may not keep up – proper regression testing of systems is time consuming. We believe that, in exchange for their protected status, marketplaces should be required to batch their updates, upgrades, bug fixes, and new functionality into regularly scheduled drops. These should include all updates from all marketplaces, making the process of change more predictable and manageable and minimizing the amount of system-wide regression testing required for compliance with the proposed and current rules.

Order Protection Rules force participants to connect to protected marketplaces. This places an expectation on dealers and their clients to ensure their systems are tested in accordance with prudent business practices. Fulsome test environments are needed in order to comply, otherwise performance cannot be tested.

The lack of a non-functional performance testing environment at any marketplace makes it impossible to know the effects of order rates on latency and on the throughput capacity of the marketplace.

Because these critical tests cannot be performed, it is not possible for participants to test in accordance with prudent practices.

We believe that, in order to allow participants to meet their current and proposed obligations, all protected marketplaces must provide full-scale test environments that permit performance and functional testing, or else risk losing their protected status. Proposed rules force a great deal of cost on broker dealers and their clients, and the excuse that full-scale test environments are expensive no longer holds.

Minimum Size Requirements for fully hidden orders

The proposed amendments introduce a requirement that orders meet a minimum size in order to be exempt from transparency requirements; though at this time an appropriate minimum size is not defined.

Further to our previous comments on dark liquidity, we are of the view that there should be no minimum size requirement imposed on dark liquidity. The introduction of size thresholds for dark orders should remain at the discretion of a marketplace. Furthermore, the decision on the appropriate size of an order should remain at the discretion of the market participant executing an order, in their capacity to satisfy best execution obligations.

Users of dark pools do so for a purpose, taking into consideration the risks and rewards of such order placement. Placing a size restriction on dark orders will have the negative consequence of restricting many orders from participating in the dark. Orders should not be disadvantaged by regulation because they are not of sufficient size to participate, such as retail or algorithmic order flow. Forcing smaller orders to post on visible markets unfairly limits their available execution options.

Imposing a minimum size makes the improper assumption that markets, marketplaces and market structure are static. Given this is not the case; the selection of an appropriate size threshold today may not be optimal at another time. Both average order and trade sizes have steadily declined over the years. The slicing of orders allows for both a reduction in risk and footprint. Market participants have the necessary tools and expertise to represent orders in a multi-market environment. If an order size restriction is set for dark liquidity, despite the imbalances this would create, the size threshold should at a minimum contemplate current and expected future average order and trade sizes.

Given the lack of evidence to demonstrate that dark liquidity is damaging to market quality and integrity, the introduction of synthetic size requirements only serves to eliminate opportunities to trade and thereby increases opportunity costs.

Marketplace Definition

In the companion policy of NI 21-101, clarification is given that a "dealer using a system that brings together multiple buyers and sellers using established, non-discretionary methods to match or pair order with contra-side orders outside of a marketplace and which generates trade execution through the routing of both sides of a match to a marketplace as a cross would be considered to be operating a marketplace".

The marketplace definition distinguishes between functions being performed systematically, using electronic methods, and those which are performed manually in the "upstairs" market. In this clarification, only the electronic matching of orders applies to the definition of a marketplace. As the evolution of markets has shown, dealer workflow continues to become more automated. We urge

regulators to consider unintended consequences as this guidance could lead to a requirement for all dealers to become marketplaces.

Furthermore, we question the approval of the Alpha Intraspread facility as contradictory to the spirit of this guidance. We re-iterate our view that fair access rules should ensure regulation is focused on broad accessibility to marketplaces and the liquidity that resides in them.

Our interpretation of the proposed language in the companion policy is that participants who create internalization pools or engines will be regulated as marketplaces and as such, subject to fair access rules. However, with the introduction of the Alpha Intraspread facility, precedent has been set for the selective access of order flow, thereby permitting dealers to control trading partners through exclusionary trading practices. Given this precedent, we are concerned that marketplaces can exclude, or otherwise discriminate against counterparties using rules and order types, to circumvent fair access.

In Conclusion

The introduction of new marketplaces; and changes to existing marketplace operations force a great deal of cost on broker dealers and their clients. Proposed rules give marketplaces the right to force technological change and risk on participants. We propose that this issue be addressed within NI 21-101 such that marketplace changes are adequately controlled to allow participants the requisite time to adapt to these mandatory changes.

Thank you for the opportunity to provide our comments on the proposed amendments to National Instrument 21-101. Please feel free to contact us with any questions or requests for clarification.

Sincerely,



Thomas Kalafatis
Managing Director & Head Prime Services Group
Cash Equities
CIBC World Markets Inc.