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VIA EMAIL

Market Regulation Branch
Ontario Securities Commission
22nd Floor, Box 55
20 Queen Street West
Toronto, ON M5H 3S8

AND

Richard J. Millar
Chief Compliance Officer
Omega Securities Inc.
133 Richmond Street West
Toronto, ON M5H 2L3

Attention: OSC Staff and Mr. Millar

Re: Omega ATS and Lynx ATS – Notices of Proposed Change and Request for Comment

TSX Inc. (TSX) welcomes the opportunity to comment on the Notices of Proposed Change and Request for Comment (RFCs) published by the Ontario Securities Commission (OSC) on October 23, 2014 regarding amendments to the self-trade prevention (STP) tools available on Omega ATS and Lynx ATS.

Our comments focus on the questions raised by the OSC relating to the role of marketplaces in offering STP tools to customers, and the recent trend towards extending the functionality of these tools so that they can be applied across multiple brokers.

Role of marketplaces

The specific questions asked in the RFCs relate to the appropriateness of a marketplace managing compliance with regulatory obligations belonging to others. By offering compliance related tools, STP or otherwise, we do not view ourselves as “managing” the compliance responsibilities of others. Our role in offering these tools is that of service provider, as is the case when offering other tools and services that a dealer might use to assist with regulatory obligations (e.g., pre-trade risk management tools). We fully expect that if marketplaces are not permitted to offer STP tools, then dealers will develop their own mechanisms or seek solutions elsewhere, where in some cases other solutions may be less efficient and effective than a marketplace-level solution.

In support of the view that the marketplace is not "managing" others' compliance obligations when offering STP tools, we also note that that their use is not enforced by the marketplace – the dealer exercises its discretion in making these tools available for its use and/or its clients' use. Further, enabling and using these tools also typically requires positive actions by the dealer that indicate that control and responsibility rests with the dealer and not the marketplace. Specifically using the STP tools made available by the TSX and other TMX equities marketplaces (together, the TMX equities marketplaces) as an example, these positive actions by a dealer include:

- creation by the dealer of a unique key for use on its orders or on its client's orders;[1]
- application of these unique keys to each order entered by the dealer; and
- selection of the STP tool to be applied on an order-by-order basis.

Under current TMX equities marketplace offerings, whether a dealer has decided to allow a client to establish or enter the unique keys on its orders is also at the discretion of the dealer and subject to the dealer's knowledge as to underlying beneficial account owners. The presumption is therefore that the dealer will have taken positive action to conduct some form of due diligence to ensure correct assignment and use of the unique keys based on underlying beneficial owner, and is also monitoring for continued proper use (e.g., in the case of a sophisticated DEA client with control over its order entry). If STP tool functionality is to be extended across brokers, then we would not see those responsibilities changing. What will change is that a dealer that chooses to facilitate cross-broker self trade prevention for a client will have a lower degree of comfort and certainty as to the underlying beneficial owner of any contra-order from another dealer to which a cross-broker self trade prevention tool is to be applied. A dealer will therefore have to either alter its due diligence and oversight processes to account for this, or choose to disallow cross-broker STP for its clients by either maintaining strict control over the creation and use of assigned keys or restrict the ability for clients to use STP tools other than those applied within-broker.

Any decision to allow or disallow cross-broker STP should not be based on the appropriateness of a marketplace assisting customers with their managing of compliance with regulatory obligations. We submit that the appropriate focus should be on the potential benefits and risks that arise from the availability of cross-broker STP tools, and the degree to which any potential risks can be properly managed by dealers. If the OSC is not satisfied that those risks can be properly managed and that they are properly balanced against the benefits, then marketplaces should not be permitted to extend the existing service offering in this manner. Below is an outline of some of these potential benefits and risks.

Cross-broker self-trade prevention

To this point, the TMX equities marketplaces have not yet decided whether to enable cross-broker STP functionality. If approved for other marketplaces, we may similarly choose to implement this functionality depending on customer demand and if appropriate as a competitive response.

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[1] The STP tools offered by the TMX equities marketplaces apply where two orders being processed by the tool contain (1) the same unique key and (2) the same underlying broker number.

We note that extending STP functionality across brokers may produce both positive and negative outcomes. Potential positive outcomes include:

- increased clarity as to the prices at which unrelated parties are transacting by reducing the occurrences of trades with no change in beneficial or economic ownership;
- reduced explicit trading costs in the form of reduced trading fees and clearing and settlement costs with respect to prevented self-trades for both dealers and their clients;
- decreased risk of wash trading for clients directing their own orders through DEA (whether institutional or other); and
- potential increase in market-wide liquidity and volumes to the extent that it will facilitate additional liquidity otherwise being held back to manage the explicit trading costs and risks of wash trading identified in the preceding bullets.

There are also potential negative outcomes associated with extending STP across brokers that should be considered. These include an increased potential for inappropriate or abusive trading activities to the extent that dealers will have less ability to ensure that these tools are being used to prevent or suppress trades involving contra orders of the same beneficial or economic owner. Additional monitoring by IIROC may be needed to address potential misuse. More specifically, the risk of misuse might arise where the intention is to facilitate:

- off-book trading relationships effected through matching and suppression of trades involving a change in beneficial or economic ownership that would otherwise have to be made on-marketplace and publicly reported – for example, through use of ‘match and suppress trade’ functionality across brokers involving unrelated accounts; or
- the blocking of matches (and trades) between parties that have some economic or other incentives to not trade with each other – for example, through use of ‘cancel newest’ applied across brokers between unrelated accounts.

Finally, we also note that the use of STP tools that match and suppress trades across brokers may reveal information to dealers about the nature and extent of trading business that the client is engaging in with another dealer that the client might not have otherwise voluntarily shared. However, this risk may be avoided by only using STP tools that block the occurrence of the match / trade.

Thank you for the opportunity to provide our comments on the RFCs. Please feel free to contact us with any questions or requests for clarification.

Yours truly,

“*Deana Djurdjevic*” *(signed)*

Deana Djurdjevic
Senior Vice President, Equities Trading, TSX Markets