



February 9, 2023

VIA E-MAIL

Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Dear Sirs and Mesdames,

Re: CSA Consultation Paper 21-403 (published November 10, 2022) (the “Consultation Paper”)

We at Select Vantage Canada Inc. thank the CSA for this opportunity to comment on the Consultation Paper, which contains a wealth of analysis and useful considerations and proposals. The comments below reflect our experience as a proprietary trading firm with over 2,000 traders subscribing to Real Time Market Data (“RTMD”) from over 110 marketplaces in Canada, the United States, Europe, Asia, and other regional markets.

Preliminary Remarks

Ours will never be an industry where competition between data providers can act as an effective pricing constraint on RTMD fees. RTMD is a product that derives its value from its “network economics”¹ nature, such that increasing prices are largely absorbed by an investing public with no effective substitute product to consume. Accordingly, regulatory oversight will remain the only effective pricing constraint on RTMD fees charged by the marketplaces. However, such oversight must be applied in a way that does not frustrate network maintenance and upgrades, or overall product innovation.

Moreover, the data vendors that supply RTMD to end-users play a significant role in how market data is distributed, in how its usage is reported back to the data providers, and in overall fees paid by end-users. These vendors are outside the formal jurisdictional scope of the CSA, yet they are a critical constituency to be considered (see comment on expert panel below).

With that in mind, our comments are as follows.

¹ We use this term to emphasize that normal price competition is extremely attenuated in industries where a network dominance exists, whether through a monopoly (e.g., Microsoft Windows) or an oligopoly (e.g., 5G telecommunications providers).



Initial Option - Enhanced Oversight over all types of RTMD

It is entirely appropriate and necessary that the CSA extend the current Data Fee Model to include oversight of RTMD fee changes in the manner generally proposed in the Consultation Paper. Currently, with “headline” RTMD professional user fees being the sole focus, distribution and non-display fees paid by vendors and market participants are subject to no effective oversight. We already require similar transparency for changes to marketplace execution fees.

The marketplaces should be entitled to claim confidentiality over any commercially sensitive information regarding their “costs of producing the product or services”², in which case disclosure of the sensitive information would be made only to the regulators and on a confidential basis.³

Initial Option - Retain External Assistance

In a “network economics” industry immune to regular competitive forces, it is difficult to ascertain what is optimal market data pricing. Given our own experience, we would agree with the CSA’s observations in Appendix A of the Consultation Paper that professional user fees in Canada are significantly higher (relative to the value of securities traded) than in the United States.

External assistance should be sought by the CSA from industry specialists who are largely independent of conflicts - ideally, market data industry consultants, and data vendor operations staff who are retired. Hopefully, this body could develop into some form of permanent CSA expert panel on market data issues.

Initial Option - Standardize Key Terms

RTMD is essentially an interchangeable product across marketplaces, and so key terminology should be standardized. Trading firms make representations on their use of market data, and are subject to audit by marketplace representatives of their use of such data. Data vendors charge an administration fee for ensuring reporting compliance. If key definitions such as “professional user”, “interrogation device” and “non-display use” are not applied consistently across marketplaces, the compliance costs for trading firms increases with no discernible benefit for the market data providers (absent any instance of a compelling structural difference between marketplaces).

Additionally, such standardization may alleviate some of the issues reported to the CSA about data consumers managing separate contractual relationships with varying marketplaces.

² Item 2.h. (2002) 45 OSCB 9500.

³ Consideration needs to be given to preventing *Freedom of Information Act* requests from accessing such confidential information.



Longer-Term Option - Leveraging Current IP Model

The TMX IP has performed well from our perspective. All of our traders' Canadian RTMD is indirectly sourced from the TMX IP and we have experienced no material issues with the feed's performance or latency (our human traders not being as latency sensitive as algorithmic trading firms).

However, we would encourage a closer look at, and reliance on, the U.S. Securities Information Processor ("SIP") model. For example, the SIP routinely discloses the total number of its users across different categories (in 2021, being approximately 300 thousand professional users, and 6.4 million non-professional users)⁴, whereas we cannot find any comparable information of the total number of professional and non-professional users of TMX IP-distributed market data. The TMX IP does not even have its own web-site, appearing instead as one of many "TMX Webstore" product offerings.

Without being privy to how the TMX IP is currently operated and supervised, we would encourage the CSA to consider the segregation of relevant assets and allocation of duties to specified TMX IP personnel, ideally within a separate legal entity with directors and officers owing a fiduciary duty to that entity and its mandate. The goal should be more meaningful reporting to the CSA and IP constituents as to the IP's operations, including any necessary upgrades to TMX IP-specific infrastructure, than what we assume is currently the case.

Moving Retail Order Flow to Other Markets during Market Outages (Question #23)

The current reality is that when the primary marketplace goes down, a significant amount of trading will not only *not* be shifted to alternative marketplaces, but trading on those marketplaces will practically vanish for the duration of the outage. This has happened with every periodic TSX outage in the past fifteen years, including most recently on November 1st. We do not see this as being an RTMD issue.

NBBO Quotes on Listing Markets versus Alternative Markets

We find the information in Table 1, Section 4.2 of Appendix A of the Consultation Paper to be consistent with our trading experience: NBBO quotes in any particular symbol will disproportionately appear on the listing market rather than on alternative marketplaces. However, we also see frequent instances of price improvement first occurring on alternative marketplaces only to be matched on the listing exchange.⁵

⁴ See <https://www.nasdaq.com/articles/sip-accounting-101-2021-03-25>.

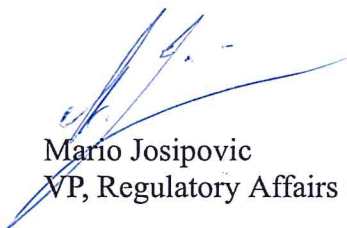
⁵ It would be interesting if CSA staff could ascertain from its research data on which marketplaces were price improvement changes in the NBBO first initiated - for example, the NBBO for a particular stock may rest all but 10% of the time on its listing market, but moves in its NBBO may be initiated on alternative marketplaces significantly



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We again thank the contributing CSA staff members for their time and attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mario Josipovic".

Mario Josipovic
VP, Regulatory Affairs and General Counsel

more than 10% of the time, with market participants on the listing market then opting to match the price improvement initiated elsewhere.