



February 10, 2023

By email

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission, New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Service NL  
Northwest Territories Office of the Superintendent of Securities  
Office of the Yukon Superintendent of Securities  
Nunavut Securities Office

Ontario Securities Commission  
20 Queen Street West  
19th Floor, Box 55  
Toronto, Ontario M5H 3S8  
Email: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Dear Sirs/Mesdames,

**Re: CSA Consultation Paper 21-403 *Access to Real-Time Market Data* (the “Consultation Paper”)**

Tradelogiq Markets Inc. (“Tradelogiq”) is a regulated Canadian marketplace operator with two separate alternative trading systems (“ATS”): Omega ATS and Lynx ATS. Our subscribers, all registered dealers, trade securities that are listed on the Canadian recognized exchanges. As an ATS operator, our revenues are derived primarily from trading, market data, and ancillary technology services that comprise the “core marketplace revenues” described in the Consultation Paper.

We appreciate the opportunity to comment on the Consultation Paper. As indicated in the paper, access to market data is a topic on which there has been an increased focus globally by industry and regulators. We commend the CSA for their work on this important topic and are encouraged that the CSA is taking a consultative approach towards identifying potential next steps.

We have organized our comments based on certain themes and topics. Through this approach, we are responding indirectly to a number of the specific consultation questions. In general, we agree that there are

issues to address, and feel we can contribute best by providing input regarding the impact of the various solutions under discussion.

Note that terms used in this letter, unless otherwise defined here, reflect terms used in the Consultation Paper.

## **A. Justification for an Admin IP approach in Canada**

The Consultation Paper identifies and describes in concept what it refers to as an “Admin IP” approach to addressing the identified issues and concerns. This approach reflects what had been proposed and approved by the SEC for implementation in the United States,<sup>1</sup> with the primary difference being that the Consultation Paper leaves open whether the technical consolidation function would be performed by the Admin IP entity or by an independent party.

While the US approach is aimed at addressing some of the same types of issues and concerns raised in the Consultation Paper, we suggest that the adoption of an Admin IP approach would be an outsized response for the Canadian market – a market that is approximately 1/10th the size of the US market.<sup>2</sup> It would also present the significant risk of a long, costly and burdensome process to establish and then maintain the Admin IP structure over the long-term, with a questionable degree of certainty as to whether the Admin IP structure will deliver the intended benefits. If the CSA ultimately proposes an Admin IP structure, we recommend that a meaningful and thorough cost-benefit analysis should accompany the published proposal.

While not intending to discount the concerns raised and the data presented, it is worth noting that the revenue and fee data provided in Appendix A to the Consultation Paper indicates that total marketplace revenue from market data did not grow at a significant rate.<sup>3</sup> Further, while the growth rates in some of the fee categories presented may appear high, the adoption of some of these fee types was a result of the evolution from a manual to an electronic trading environment. This evolution resulted in a shift in how data was being used, and how fees for those uses (which also take into consideration the value derived from such use) were being charged and has impacted industry participants differently depending on their business models. Reiterating again that it is not our intention to discount the concerns and data presented, we feel that these points are also worth considering in the context of the justification and need for a complete overhaul of the current model for data consolidation.

Instead of a complete overhaul, we suggest that CSA staff focus their efforts on certain meaningful and addressable barriers, which would assist in addressing some of the key concerns while minimizing the imposition of new structures, and additional costs and burdens.

## **B. Suggested approach**

We suggest that CSA staff focus their efforts on the following:

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<sup>1</sup> Via the Governance Order and the Market Data Infrastructure Rule.

<sup>2</sup> Based on average daily volume and value of trading in the US for NMS securities for the month of January 2023 as compared to trading in all Canadian listed securities over the same period.

<sup>3</sup> As noted in the Consultation Paper, marketplace revenue from market data grew at a CAGR of 3.2% over the referenced 13-year period, and at an even lower CAGR of 1.4% over the latter 5 years.

- Targeted actions to improve access to consolidated quote and trade information for retail investors and their advisors
- Defining and mandating use of key base terms to ensure consistency
- Establishing a standardized agreement for consolidated data obtained through the IP
- Implementation of a public filing process for data fees

Each of these potential solutions is discussed below.

*1. Targeted actions to improve access to consolidated quote and trade information for retail investors and their advisors*

Rules imposed by securities regulators for dealing with clients and agency trading often afford greater protections to retail investors on the presumption that they are most likely to be the least informed. Extending this to consolidated market data, it is reasonable to presume that a retail investor is the least likely to be aware that the quote and trade information provided by their dealer does not reflect a consolidated view. Said another way, a retail investor is most likely to make a trading decision on price or volume information that they believe reflects the best prices and the total volume available at those prices, when it actually does not reflect such information. This gap in understanding arises despite the standard disclosures that dealers make to these clients regarding the limitations of the data provided.

From a principles-based perspective, we think the desired outcome should be to ensure that retail investors are being provided with real-time consolidated price and volume information unless it is clearly not being used to inform a decision to trade and/or affect the parameters of an order to be entered. In addition to the benefits to retail clients from such increased transparency, further benefits might arise if an increase in the visibility of consolidated best prices and volume markets were to increase the possibility of non-marketable retail client orders being posted on non-listing marketplaces – for example, increased competition, and greater market resilience in the event of an outage at a listing exchange.<sup>4</sup>

We also think that, for similar reasons, there would be a benefit in improving access to consolidated market data for retail investment advisors, and it would allow them to better service their retail clients in the context of their client’s investment and trading decisions (whether for solicited or unsolicited trades).

Cost, however, presents a significant barrier that affects a dealer’s ability to provide consolidated data to its retail clients and to many of its retail investment advisers. Considering that the statistics presented in the Consultation Paper indicate that the cost of providing consolidated quote and trade data to a retail investor or a retail investment advisor is approximately double (or even more than double) the cost of providing quote and trade data for only the listing markets, it would be unreasonable to mandate that dealers provide consolidated data without ensuring the aggregate costs to do so for these users are reduced. It would also be similarly unreasonable to expect dealers to voluntarily take on a significant cost increase

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<sup>4</sup> In CSA Staff Notice 21-326 *Guidance for Reporting Material Systems Incidents*, CSA staff identified that one of the findings of its review of the impact of a significant outage at a listing exchange was that “The lack of market data from the [listing exchanges] during the [outage at those exchanges] precluded retail clients from trading.” It is our understanding that retail investors may have understood from the lack of listing exchange data that the markets were closed, whereas trading in the securities of the affected exchanges continued to be available on all other marketplaces.

where, depending on their business models, the additional costs might not be justified by the increased benefits for their customers (and any attendant benefits for their business).

We note that the mechanisms through which such cost reductions could be achieved are likely varied, and we are not advocating at this time for any particular approach. We are supportive, however, of any approach that would sufficiently balance the costs and benefits for retail dealers to incentivize them to provide consolidated data to their retail clients and retail advisers, while also having regard to the fact that access to consolidated real-time data may not be necessary for all retail clients, retail investment advisers, or their use cases.

## *2. Defining and mandating use of key terms to ensure consistency*

We agree that there is benefit to standardizing key terms, as this can avoid or at least minimize some of the types of barriers and burdens identified in the Consultation Paper. Most importantly this can help to avoid scenarios where a data recipient unnecessarily applies the most restrictive term or definition when consuming data from multiple trading venues because the cost and burden associated with accurate tracking and reporting is perceived to outweigh the cost of applying the most restrictive term / definition.<sup>5</sup> In the worst-case scenarios, application of the most restrictive terms can create barriers to access by significantly reducing any benefits from use.<sup>6</sup>

However, we also think that any efforts towards standardization should be limited to key, foundational terms, and any attempts for standardization across all terms and fee categories should be avoided to ensure that there will continue to be opportunities for competitive differentiation, and to allow marketplaces the continued flexibility to adapt to changes in the market data product and distribution environment.

We suggest that CSA staff look to Annex I of the June 2021 ESMA Guidelines<sup>7</sup> as an example of an appropriate level for key terms, and one at which an appropriate balance might be struck between the desire to address barriers and burdens and the need to avoid imposing undue restrictions. These key terms include:

- professional vs. non-professional
- display vs. non-display
- real-time vs. delayed

Existing North American standards should be reviewed to ensure any standardized terms leverage the commonalities that already exist for those terms across the various Canadian and US marketplaces. This will help to minimize the potential for disruption and burden that can result if process changes are needed at dealers, data vendors, and other data consumers in order to identify, record and report units of count under redefined terms.

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<sup>5</sup> For example, this scenario can arise when an individual qualifies as “non-professional” at some venues, and as “professional” at others.

<sup>6</sup> For example, in the context of a delayed consolidated data feed if the definition of what constitutes delayed data for one venue was significantly longer than the existing standard employed by the other venues, or if that one venue did not accommodate the ability to consume its data on a delayed basis.

<sup>7</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-156-4305\\_final\\_report\\_mifid\\_ii\\_mifir\\_obligations\\_on\\_market\\_data.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-156-4305_final_report_mifid_ii_mifir_obligations_on_market_data.pdf)

### *3. Establishing a standardized agreement for consolidated data obtained through the IP*

Under the current equity IP model, consumers of consolidated data products from the TMX IP are required to execute agreements with each of the contributing marketplaces. To help address the associated administrative burden, we would be supportive of the creation and use of a single agreement to be used when consolidated data products are obtained from the TMX IP that could be executed by the data recipient and all of the marketplaces. While a single agreement would not alter how fees are set and billed for the received data, or the manner in which the terms of the agreement could be enforced by any single executing marketplace, it would simplify the continued administration and application of those agreements, including through a use of a single set of harmonized terms. Other benefits would include a more streamlined onboarding process for new TMX IP customers and for requesting and accessing additional consolidated data products or declaring additional uses of the received data. It may also present the potential for reduced burden related to market data audits to the extent that the agreement provides for the coordination of audits.

### *4. Implementation of a public filing process for data fees*

As display fees are already subject to constraints through the application of the Data Fee Methodology (referred to in the Consultation Paper as the DFM), we believe that it would be unreasonable to subject these already-constrained fees to a public filing process. They are an example of a fee that is generally well-understood and the main issue for consideration, being the amount charged, is covered by the DFM.

We also note that staff of the securities regulators already have the ability under the “review protocols” to subject data fee changes to a public comment process where the fee change may have a significant impact, or otherwise raises regulatory or public interest concerns.

Notwithstanding the above, and while we generally have reservations about publishing changes to fees for comment, we can see some benefit to the market in making data fees (other than those already subject to the DFM) subject to a public filing process. It may introduce additional rigour into the data fee review and approval process, and thereby assist the regulators in carrying out their marketplace oversight responsibilities. However, it would be unduly burdensome on marketplaces unless an appropriate framework is put in place to govern the review and approval process. The current processes set out in the “review protocol” would serve as the starting point, but the following should be incorporated into processes for dealing with any data fees subject to a public filing process:

- There should be no requirement for cost disclosure in the public filing. The allocation of costs to data production is an imprecise science given the joint product nature of trading and data, and its reliability will always be questioned by commenters given the perceived inherent incentives for a marketplace to over-allocate. It should also be recognized that cost does not and should not be required to equate to the value derived from use. Further, we think that it is unreasonable to require this type of disclosure given the sensitive competitive nature of such cost information.
- There should be no requirement for a marketplace to summarize and respond to public comments, as is currently the case for other significant changes, such as trading functionality changes. The public comments should serve as an input to CSA staff’s review process and can be used to help staff formulate their own questions and comments for the marketplace in question as part of the normal filing review process.

- There needs to be clear, objective standards for approval, and an effective and efficient mechanism for a marketplace to appeal. Without this, there is the risk that in the face of negative comments (which should be expected with any proposed fee increase), CSA staff will hesitate in their willingness to recommend approval despite the marketplace having provided sufficient justification, resulting in the filing being unreasonably delayed or placed in a state of limbo. We recommend a process whereby when staff have communicated an unwillingness to recommend approval, the marketplace has an opportunity to have the matter reviewed by the applicable Commission (or by a special panel of Commissioners). The marketplace should be permitted to present its position to the Commission for a decision and attend any related presentation by staff. To ensure transparency and fairness in the process, staff should document the recommendation to not approve and provide the marketplace with the reasons for the recommendation, in advance of that presentation. Alternatively, we recommend that such fees be permitted to be filed on an “effective upon 30 days from filing” basis, whereby the filing would be deemed to be approved unless there is a staff challenge or staff notice that more time is required due to the filing complexity. Where such a challenge or notice is made, a process similar to that set out above for reaching a decision may still be needed.

### **C. Specific comments relating to the Data Fee Methodology**

The Consultation Paper discusses the DFM, how it is used, and areas where changes are being contemplated. If it is to be retained, we offer the following views in relation to certain specific topics raised in the Consultation Paper.

#### *1. Extension of DFM beyond display fees*

In our view, and as borne out by the data presented in the Consultation Paper, we believe that the implementation of the Data Fee Methodology has helped to manage the growth of professional display fees. However, while helpful in that regard, we think that it would be difficult and cumbersome to extend it to other data fee categories for the same reasons outlined in the Consultation Paper. Most notably, it would likely require the regulators to set specific benchmarks and create unique formulas and allocation methodologies for each data fee category.<sup>8</sup> As indicated above, we think that the public filing approach discussed is potentially a reasonable and manageable alternative that would allow for the application of additional rigour to the fee review and approval process for these other data fee categories.

#### *2. Transparency of calculated fee ranges for display fees*

We are supportive of making the calculated fee ranges for the display fees of each marketplace public. We believe this would increase accountability, while providing much-needed transparency to industry participants that will allow them to understand and even anticipate changes to the display fees they will be charged. It would also provide comfort to marketplaces that the DFM is being applied consistently. Marketplaces are currently provided with their own calculated fee ranges, but not the fee ranges of the other marketplaces.

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<sup>8</sup> We further submit that the process for establishing any such benchmarks and allocation methodologies should be transparent, involve sufficient consultation with appropriate stakeholders and be subject to a public comment process. There should also be a requirement for a periodic review to ensure their continued validity and to allow for adjustments.

We do not believe there is value in making the results of the more granular input metrics<sup>9</sup> public, because the complexity and limited-use nature of some of these metrics presents the risk of results being misinterpreted or misapplied. However, we think that it would be helpful if each marketplace is provided with the input metrics for all other marketplaces, as this would allow each marketplace to better understand how the metrics of others affect its own calculated fee ranges.

3. *Necessary adjustments to DFM allocation methodology*

It is our view that the treatment of opening and closing auction trades and intentional cross trades results in an over-weighting of trades for the purposes of the DFM's post-trade metrics. This allows the listing exchanges, as well as marketplaces that have been successful in creating an appearance of trading activity by attracting the posting of intentional crosses, to have higher fee ranges for their data display fees (and therefore higher fees) than is likely justified under the principles of the methodology.

This does not mean that these trades should be removed from the allocation methodology – doing so would ignore the fact they have informational value. Instead, we suggest the following:

- For intentional crosses, the volume and value of each trade should be limited in some way to reduce their influence on the DFM's post-trade metrics. This could be achieved by capping the number of shares and the total value credited for each intentional cross to the lesser of the actual amount traded and some set level for each security – for example, the 95<sup>th</sup> percentile of the size of non-cross continuous trades in the security or using a common block-cross definition.
- For opening and closing auction trades, considering the size and number of trades output by these point-in-time auctions, it may be appropriate to restrict these to accounting for one trade (per security), and limit the volume and value of the total amount traded in the auction for the security in a similar way as suggested above for intentional crosses.

Thank you again for the opportunity to provide our views on this important initiative. Should you have any questions or would like to discuss further, please do not hesitate to contact us.

Regards,

*Laurence Rose*

Chairman, President and CEO  
Tradelogiq Markets Inc.

cc: Bob Lupmanis, Head of Market Data Services  
Cindy Petlock, Chief Legal Officer and Corporate Secretary

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<sup>9</sup> Such as the "\$Time(value)" and "Percent of Best Spread" metrics that help to establish the pre-trade contribution.