

February 6, 2013

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Department of Justice, Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Nunavut
Ontario Securities Commission
Registrar of Securities, Prince Edward Island
Saskatchewan Securities Commission
Registrar of Securities, Government of Yukon Territories

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Subject: CSA Staff Consultation Paper 21-401 – Real-Time Market Data Fees

BMO Nesbitt Burns Inc. (BMO) welcomes the opportunity to provide comments on the CSA's Consultation Paper relating to real-time market data fees. BMO appreciates the efforts made by the CSA to understand the industry's concerns around market data fees and for taking the time to solicit feedback from marketplace participants.

As a starting point, we agree in principal with the three themes outlined in the Consultation Paper relating to the cost of real-time market data. We also believe that the Consultation Paper's analysis of market data fees is a good starting point in terms of understanding the absolute and relative costs across domestic and global marketplaces despite the fact that direct comparisons are difficult given unique regulatory regimes and OPR requirements.

We do however believe the findings outlined in the Consultation Paper are not consistent with the views of the broader participant community, specifically:

- While the fees charged by the incumbent exchanges may not appear high in relation to their market share of trading, we believe they remain high on both an absolute and relative basis;
- While market share of trading is one metric for comparison, we believe that other factors such as quality of market data should also be considered as part of any analysis;
- We continue to believe that marketplace participants are paying excessive fees for real-time market data in Canada and remain concerned that increasing costs continue to weigh on the dealer community;

While the analysis assumes a single instance of market data, the reality is that a large number of professional users access the same market data through one or more market data, order management or risk management applications that increases the costs on a per user basis by a multiple of those outlined in the Consultation Paper. This further supports our view that market data costs are too high.

It is our understanding that a number of U.S. exchanges have adopted a MISU (multiple instance/installation single-user) methodology whereby users are only charged for a single instance of real-time market data regardless of the number of applications that access this data. We would be supportive of marketplaces considering this approach as a step towards reducing market data costs.

While the Consultation Paper focuses on data fees relating to professional users, we would support a timely examination of issues related to non-professional users as we believe this group is also impacted by high market data costs, particularly as it relates to per-quote fees that are being absorbed by the discount brokerage community and its clients.

We believe that any solution to address market data fees should aim to resolve three key issues relating to real-time market data:

- 1. Link fees to value provided**

There needs to be a clearer linkage between the value provided and the fees charged by marketplaces. Marketplaces should continue to strive to provide value-added services that should ultimately translate into market share. Market data fees should be linked to market share or some other metric to avoid marketplaces operating solely to collect market data fees from participants.

2. Set limit on maximum market data fees

As additional marketplaces open up, the incremental value of each additional one is diminished. We believe that the total cost of market data should be fixed regardless of the number of marketplaces (and relative to the cost of delivery). The onus should be on marketplaces to provide value in order to win a bigger share of a finite slice of market share. This is standard operation in any competitive marketplace as participants go after a finite amount of profits and thus are incented to compete in order to win share.

3. Price per user, not per instance

As discussed above, we believe the actual cost of market data is understated due to the multiple charges currently being levied to access data through different applications. We do not have an issue with a per user data delivery cost but we do not support the idea of double/triple dipping for the same market data.

Following are BMO's responses to the specific questions posed within the Consultation Paper:

Option 1: Cap fees for "core data"

Question 1: *Are there unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes of firms be more impacted than others?*

Marketplaces may decide to levy excessive fees for non-core data products that would negatively affect market participants who subscribe to this data.

Question 2: *What are the competitive and business impacts of the proposed option?*

It is unclear how the 'core data' fees would be shared across marketplaces.

Question 3: *Would the proposed option be effective in addressing market data fee issues? Would this option be more effective if pursued with an additional option? If yes, which one(s)?*

We believe this option will go some way towards addressing these issues however, we believe that fee caps should be considered for all data products particularly for marketplaces that have de minimis market share.

Question 4: *What elements should be included in core data? Why?*

Core data should include all elements that are currently required to satisfy regulatory requirements – at present this would include top-of-book and full-depth-of-book data for all 'protected' marketplaces.

Question 5: *How should the cap be set? Please provide as much detail as possible.*

The cap should be based on a cost-based approach. We would suggest that the cost of providing this data should not differ materially across marketplaces.

Question 6: *Should there similarly be caps applied to non-core data? If so, how should the caps be set? Alternatively, what should staff consider when assessing the fees to be charged for non-core data?*

Yes, as noted above, we believe that fee caps should apply to all data to avoid excessive fees being charged for non-core data that firms require to support their business.

Option 2: Cap data fees charged by a marketplace until it meets a de minimis threshold

Question 7: *Are there any unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes of firms be more impacted than others?*

Certain marketplaces may no longer be financially viable given the loss of market data revenues that would result from instituting this type of cap.

We would not necessarily consider this as a negative outcome as it is our opinion that the economic viability of marketplaces should be predicated on their ability to provide competitive value added services to subscribers, not because of mandated fees.

Question 8: *What are the competition and business impacts of the proposed option?*

See response to question 7.

Question 9: *Would the proposed option be effective in addressing market data fee issues? Would this option be more effective if pursued with another option? If yes, which one(s)?*

We believe this will address the one issue of marketplaces charging fees that are high relative to their market share of trading activity. This however does not address high fees charged by other marketplaces.

Question 10: *What factors could be considered in establishing the de minimis threshold? What could be the appropriate measure and measurement period? Please provide as much detail as possible.*

Market share of trading and quality of quote data over a defined period would be appropriate. The intent would be to establish a pattern of consistency of these factors whereby volume and/or quote spikes do not skew observed patterns. We suggest this be assessed on a quarterly basis and believe that market share of 5% is an appropriate de minimis threshold, below which, no fees should be levied.

Question 11: *What factors could be considered in setting the cap? Please provide as much detail as possible.*

See response to question 10.

Option 3: Cap all data fees for all marketplaces starting at a de minimis threshold and gradually increasing the threshold and the applicable caps

Question 12: *Are there any unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes of firms be more impacted than others?*

This option would create an added level of complexity and possibly confusion unless the tiers are well defined, easily tracked, and fully transparent.

Question 13: *What are the competition and business impacts of the proposed option?*

See response to question 12.

Question 14: *Would the proposed option be effective in market data fee issues? Would this option be more effective if pursued with another option? If yes, which one(s)?*

This option would be effective in more closely linking a marketplace's fees to its market share. We also believe that having fee caps at each threshold tier are appropriate to link fees to value and to keep fees in check.

Question 15: *What factors could be considered in establishing the de minimis threshold and the successively higher thresholds? What could be the appropriate measure and measurement period?*

Market share of trading and quality of quote data over a quarter would be appropriate. The intent would be to establish a pattern of consistency of these factors whereby volume and/or quote spikes do not skew observed patterns. We believe that market share of 5% is an appropriate de minimis threshold, below which, no fees should be levied.

Question 16: *What factors could be considered in setting the gradually increasing caps? What could be an appropriate approach in setting these caps? Please provide as much details as possible.*

See response to question 15.

Question 17: *Should the caps for fees be waived when a certain threshold is met? Please provide as much detail as possible.*

No - we believe that fee caps should be implemented regardless of market share.

Option 4: Cap fees for data sold through the IP

Question 18: *Are there any unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes of firms be more impacted than others?*

This option would only benefit a subset of users who purchase data from the IP buy not address the issues facing other participants who rely on direct feeds from marketplaces or other vendors. Our view is that all participants should be treated equally.

Question 19: *What are the competition and business impacts of the proposed option?*

See response to question 18.

Question 20: *Would the proposed option be effective in addressing market data fee issues? Would this option be more effective if pursued with another option? If yes, which one(s)?*

We believe that fee caps should be applied consistently across marketplaces and market data vendors.

Question 21: *What factors could be considered in establishing the caps?*

See response to question 15.

Option 5: Regulate consolidated market data fees charged by the IP

Question 22: *Are there unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes of firms be more impacted than others?*

We believe this approach is too narrow as it does not address fees sold directly by marketplaces and inadvertently favors the IP.

Question 23: *What are the competitive and business impacts of the proposed option?*

See response to question 22.

Question 24: *Would the proposed option be effective in addressing market data fee issues? Would this option be more effective if pursued with another option? If yes, which one(s)?*

We believe this approach has merit, particularly the revenue distribution approach as this addresses our desire to link fees to value provided, however we believe the scope should be expanded to include all data providers.

Question 25: How should the fee be set and by whom?

While we believe that fees should be set by the IP or equivalent, there should be some oversight by a regulatory authority to ensure the fees are reasonable in relation to the cost of data delivery and are not being used to subsidize other areas of the marketplaces' operations.

Option 6 – Cap consolidated data fees sold by marketplaces to all data vendors, not just to the IP

Question 26: Are there unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes benefit more than others?

We prefer this option over options 4 and 5 as it simplifies the fee structure across all data vendors and does not inherently favor one solution to another.

Question 27: How does this option compare with option 4? What costs and benefits arise from offering regulated fee consolidated data through competitive data vendors rather than a single regulated IP?

See response to question 26.

Question 28: What advantages, if any, would result from being able to receive consolidated data from a number of data vendors?

Competitive forces will provide best of breed solutions that provide higher quality data feeds at lower price points in order to win business.

Question 29: How should the fee be set and by whom?

See response to question 25.

Question 30: Should data vendors distributing aggregated data under this model be subject to regulation by the CSA?

See response to question 25.

Option 7: Mandate a data utility to operate on a cost-recovery basis

Question 31: Are there unintended consequences at the industry, marketplace or firm level that could result if this option is pursued? Would these consequences be evenly distributed across the industry or will certain types or sizes of firms be more impacted than others?

While we are generally supportive of a public data utility model, as it should result in lower costs, we are concerned about the time and effort to create, implement, and govern this utility. In addition, we would like to see competitive forces take natural course to provide innovation and extract efficiencies over time but question whether this is attainable with this model.

Question 32: *What are the competitive and business impacts of the proposed option?*

While the utility model addresses costs in the short term, we are concerned about shifting to a model that does not promote competition. The existing model is a good example of why we have reservations about going to a non-competitive model, as there is no recourse/choice today for anyone not satisfied with the available data solutions as marketplaces have a captive clientele for their data products. Any data product innovation is directed towards driving trading volumes from a subset of participants as opposed to the wider community that is paying for market data.

Question 33: *Would the proposed option be effective in addressing market data fee issues? Would this option be more effective if pursued with another option? If yes, which one(s)?*

See response to questions 31 and 32.

Question 34: *Is it sufficient to create a utility, or must its prices also be regulated?*

The creation of a cost-recovery model should enforce the necessary discipline to keep fees in check. Given the importance of this utility, we believe a regulatory authority should govern its operation and pricing.

Question 35: *Should there be any restrictions on the data to be provided by marketplaces to this utility – e.g., should this data be limited to core data?*

In the interest of consistency, we believe this should extend to all components of market data and not just core data.

2. Option to Address Transparency of Fee Proposals and Changes to Fee Models

Option 8: Publish amendments to market data fees and fee models for comments

Question 36: *Are there any unintended consequences at the industry, marketplace or firm level that could result if this option is pursued?*

While this will impose some discipline on marketplaces setting fees in the future, we do not believe this addresses the issue of existing high existing fees.

Question 37: *What are the competition and business impacts of the proposed option?*

See response to question 36.

Question 38: *Would the proposed option be effective in addressing market data fee issues? Would this option be more effective if pursued with another option? If yes, which one(s)?*

As noted above, we do not believe this option adequately addresses the existing concerns regarding market data fees.

Question 39: *Would the rationale and the pre-implementation impact analysis be sufficient in assessing whether the proposed fees do not constitute an unreasonable condition on accessing a marketplaces data services? If no, what other requirements should be considered?*

We believe that marketplaces should also publish any agreements to ensure the terms and conditions are well defined. We also believe there should be a 'net benefit' test to the wider community for any approval of proposed market data fees. While a competitive market place should be free to set their pricing, we firmly believe that under the current regulatory framework, we do not have a free market operation as participants effectively have an obligation to subscribe to market data from all marketplaces regardless of cost.

In closing, while each of the proposed solutions addresses some part of the issue, we believe the ideal solution would be a combination of several options. As mentioned in our introduction, we believe there are three main issues that need to be resolved:

1. **Link fees to value provided** – Addressed by option 2
2. **Set limit on maximum market data fees** – Addressed by option 6
3. **Price per user, not per instance** – Not addressed directly in any option but should be considered in conjunction with proposed solutions

BMO thanks the CSA once again for the opportunity to provide feedback on this very important topic. We are hopeful this process will go some way towards addressing the concerns raised by the industry and lead to a more competitive and cost effective market place to conduct business.

Yours truly,

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