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BY EMAIL

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Manitoba Securities Commission
Autorité des marchés financiers
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Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Department of Justice, Northwest Territories
Nova Scotia Securities Commission
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Re: Request for Comment: Real Time Market Data Fees

CNSX Markets Inc. ("CNSX Markets") is pleased to respond to the request for comment issued by the Canadian Securities Administrators on November 8, 2012. CNSX Markets commends the staff involved in the preparation of the comment request for their careful analysis of the issues posed by the current state of the real time market data business in Canada. With one significant exception, to be discussed in detail in our response, we generally accept the observations and conclusions made in the paper.

Before addressing the specific questions posed, we would like to provide our perspective on a number of issues raised by the existing model for the distribution and sale of real time market data by the exchanges and ATSs in Canada, particularly how marketplace competition is

frustrated and the inordinate expense involved for market participants. We suggest an approach that we believe addresses all of the concerns expressed by market participants, while eliminating the current market data dissemination model as a force for the status quo.

Fair access to real time market data has been a focus of regulatory effort; ensuring both fair and broad access to the data is a cornerstone of efficiently functioning secondary markets. Prior to its launch in the summer of 2003, CNSX Markets devoted significant attention to the development of business relationships and efficient methodologies for the provision of its data services to market data vendors and end users. Without a means to provide ready access to its data services, CNSX Markets' ability to provide a competitive listing and trading service would have been severely limited. To save time and cost, an arrangement with (what became) TMX Datalinx was formed: a real time feed was provided to the TMX for onward distribution to the vendor community; end user sales and administration was handled by the TMX in return for a portion of the proceeds. Under this arrangement, CNSX Markets succeeded in providing its data to the vendors. For a number of reasons, however, distribution to the end user community was limited.

With the launch of Pure Trading in 2006, CNSX Markets elected to go a different route. In order to leverage the vendors' user distribution and administration capabilities, CNSX Markets opted for an "indirect" end user administration and billing method: vendors assumed responsibility for providing the data to end users under their existing agreements. Vendors bill and collect from their customers at a rate determined by them; vendors remit an agreed amount per user to CNSX Markets. Vendors then supply supporting usage and customer reports to CNSX Markets through an existing industry utility. This method proved extremely successful in encouraging broad access to CNSX Markets' data for end users: with no additional agreements to sign, no fresh administrative responsibilities, and commercial arrangements building on existing processes, the additional footprint of adding real time market data from Pure Trading was drastically reduced for an end user.

CNSX Markets' success in building its market data distribution model was recently recognized by the global market data trade organization, the Washington D.C.-based Software and Information Industry Association. CNSX Markets was named the association's "Outstanding Data Provider of the Year", outpolling exchanges in Oslo and Johannesburg and BATS/Chi-X Europe in voting by end users and vendors. Previous winners include Deutsche Boerse, NASDAQ/OMX and the TMX Datalinx.

With the proliferation of new marketplaces in Canada, however, the burden of integrating more and more data services into vendor displays, and dealer information, routing, order and risk management systems, has increased to an unacceptable level. The "Pass Through" model, in which users separately arrange to obtain data services from the various marketplace providers (whether received via the services of the Information Processor or not) has led directly to significant issues that harm the effectiveness of the competitive forces shaping market development in Canada. We note the following issues that have resulted:

1. The "Pass Through" model for the provision of market data to end-users is inconsistent with the Canadian principle of protected markets.

Canada provides full depth of book protection for better-priced limit orders across all protected marketplaces. The United States provides top-of-book protection only; the European Union and Australia do not provide for better-priced limit order protection, except through the principle of "best execution". In each of these jurisdictions, the exception being Canada, the market data consolidation and related business model is consistent with the order protection regime: the United States regulatory regime provides for the consolidated delivery of all top-of-book quote data (in addition to last sale and volume information) and a business model that provides top of book transparency for trade and quote information in all listed stocks through a single (per listing market) service. In the European Union and Australia, with no order protection, there was no immediate move to create (by regulatory fiat) a consolidated market data source from which data consumers could acquire all relevant data from a single source under a common financial arrangement. In Canada, we went half-way: feeds supporting the development of consolidated top of book and market depth displays were mandated by

the regulators; consolidation of the business model and arrangements were not. That has led to the consequences discussed below.

2. The “Pass Through” model enhances the incumbent’s competitive market position.

It would be surprising if the TMX Group did not advocate retention of the “pass through” model. One of the curiosities about the evolution of the Canadian equity trading landscape since the introduction of multiple markets is the lack of success of the new entrants compared with other jurisdictions. One of the key differences between Canada and the US (as noted above) is the requirement that new Canadian marketplaces make their own business and contractual arrangements for the provision of their market information with end users. The reality is that many data consumers have elected, because of the added cost and time associated with negotiating and managing multiple agreements, not to purchase data from the new marketplaces for the majority of their users. These users instead rely on “indicative” quotes from their historical provider, the TMX Group exchanges. This decision impacts the trading business in the incumbent’s favour in a number of ways:

- **Lack of Transparency for Alternative Markets:** for a number of listed securities, a material percentage of the quotations and trade executions occur on marketplaces not operated by the TMX Group. Buy-side clients, investment advisors employed by dealers and retail clients will most likely be unaware of previous trades, current market depth and spreads in a number of listed instruments in Canada. Given our commitment to transparency as a positive element in the maintenance of investor confidence in our markets, it is a bizarre result that our market data policies have effectively ensured that a material amount of activity occurs without the information being available to a high percentage of the trading community.
- **Excessive Cost:** investment dealers are rightly complaining about the increased cost of providing consolidated market data to their various end user groups. The cost to acquire all market information in Canada has increased by a factor of more than 5 times under the existing market data regime. The dealers, for whom market data costs form an increasingly large component of operating costs, have not seen any corresponding revenue benefit. The dealers have, therefore, in general, restricted access to real-time data across their large base of consumers (in-house and client) to TMX Group data only. The solution adopted in the United States has ensured that a complete picture of market activity, in real-time, is available to all participants at a cost that is closely regulated by the SEC. While the model may not be perfect, it ensures that the policy goals of transparency and market competition are supported in ways that do not operate to the detriment of competitive markets.
- **Competitive Imbalance:** dealers are extremely reluctant to post client orders away from the “central market” when activity on the alternative markets is only visible to a small portion of the trading community. The idea was that through data consolidation, a larger, more competitive pool of liquidity would be created. In fact, because of the costs and challenges posed by the market data business model, we have created a two-tiered system: markets operated by the TMX Group have a high degree of transparency because of their incumbency, and the competitors who are essentially invisible to a large majority of the industry and investors. Not surprisingly, many participants are uncomfortable transacting business in this way: we are aware of a number of buy-side institutions who prevent their executing brokers from printing crosses on marketplaces other than those operated by the TMX Group. The institutions want to ensure that their activity is done in the most transparent manner.
- **Revenue imbalance:** with its large base of existing market data customers, the TMX Group is at a material advantage over its competitors from a revenue perspective. Although the percentage of overall current revenue attributed to the market data business for the competitive marketplaces may be high, virtually all of the marketplaces would be substantially better off financially under a US-style model. By not requiring the creation of a means to provide market data under a common business model, the Canadian Securities Administrators have assisted in perpetuating the status quo. The TMX

Group maintains a high revenue/high margin business, while efforts to create a competitive market for trading services are harmed by the lack of access to alternative marketplace real time market data services.

Before moving to the specific commentary requested by the CSA, there is one observation from the staff analysis that has to be questioned. In reviewing the current state of the real time market data environment in Canada in comparison with the rest of the developed world, staff concludes: “[t]here is no conclusive evidence that the fees charged by the TSX and the TSX-V are unreasonable”. This statement is open to question on many fronts, including:

- The current fee model (subject to some changes that have seen increases for some users and modest decreases for others in recent years) was developed during a time when the TMX Group exchanges were an absolute monopoly in the provision of trading and listing services. Given that fees were not regulated in Canada, it is reasonable to assume that the level of fees would reflect a portion of the monopoly rent exacted by the incumbent. Staff’s analysis bears this out: on a per share traded basis, market data fees in Canada are considerably higher than those in the US, where such fees are regulated. There is also a fundamental error in the analysis: when comparing pricing for “top of book” and “depth” services, TSX fees are compared to the consolidated US exchange equivalent (Network A for NYSE and Network C for NASDAQ). They should instead have been compared to the fees charged by the US exchange for access to data from its own market. NASDAQ Basic, for example, is approximately half the cost of the consolidated service. In other words, the comparison between fees charged to users is actually twice as unfavourable to Canadian users as staff’s analysis would suggest.
- The sample group in the analysis consists of virtually identical incumbent monopolies. All of these organizations would be reasonably expected to charge a monopoly rent for their data services. The regulator in the one jurisdiction cited where fees are controlled, the US, is currently being sued by a consortium of user firms for its failure to properly regulate fees. It is in no way surprising that the TMX Group would fall somewhere in the middle of its peers under this analysis.
- Most significantly, the monopoly on trading services has been lost, but there has been no reduction in TMX Group market data fees. Prior to the acquisition of the Alpha Exchange, the TMX Group had lost approximately 35% market share in TSX listed trading and approximately 15% share in TSX-V trading. None of these competitive pressures were reflected, however, in the pricing of TMX Group market data services.

Finally, our responses to the specific questions posed by the CSA should be read in the context of our preferred model for real time market data dissemination. Although not one of the options described in the request for comment, we believe that our solution addresses the concerns expressed by industry participants about the present state of affairs, particularly as it affects cost of the data and access to the non-incumbent marketplaces:

- The CSA should “facilitate” the creation of an industry body (“administrator”) that would act as the administrator of consolidated real time data services from the Canadian marketplaces to vendors and the end user community. With the sophistication of the technology deployed by information vendors, and their ability to supply different services (at varying price points) that meet the latency needs and price sensitivity of different customers, there is no need to interpose a technical “consolidator” of the different data feeds from the different marketplaces. As we have observed to the regulators in another context, the present TMX Information Processor could disappear tomorrow, and it would have absolutely no impact on the ability of CNSX Markets to supply its data to the overwhelming majority of its existing and prospective data customers.
- The amount of the facilitation required from the CSA would be dependent on the marketplaces’ ability to agree on the creation and management of the administrator.

- Under our plan, each Canadian marketplace would authorize the administrator to license consolidated data feed and display products (depth and top of book, in particular) to vendors. The price charged by the administrator to the vendor, and the principal contractual terms and conditions of the vendor license, would be regulated by the CSA. As in the United States, different services would be created around each listing exchange (at present: TSX, TSX-V, Canadian National Stock Exchange, futures and options). The administrator would use the “indirect billing” model used by many exchanges and information suppliers around the world: the vendors would be charged a fee per end user by the administrator for particular services (the regulated fee) based on usage reports that would be assembled and reported by the vendors using an existing industry utility. Display requirements and other terms of service delivery to end users would be set out in the agreement between the administrator and the vendors, obviating the need to regulate the activities of each vendor. End users would not have to contract with the administrative body for services; the terms and conditions of their use of the services would be governed by their existing agreements with the vendor.
- The administrator would be encouraged to negotiate arrangements designed to reduce costs and improve efficiencies for users: enterprise pricing, “usage based” fees and consistent and transparent policies (for indexing, historical database, computer assisted trading, QA, etc.).
- Proceeds from the sale of the data would be apportioned by the administrator less agreed operating costs among the contributing marketplaces according to a formula to be agreed upon. As we will see from the discussion below, this task will be a difficult one: the market data revenue sharing model could easily encourage behaviour not in the best interest of the broader market.
- The price charged to the vendors for the consolidated services should be in the neighbourhood of that charged by the each of the listing exchanges for their service at present. Taking this approach would dramatically reduce costs for users from the present state, while eliminating the unfairness present in the existing market data model.

With these preliminary observations concluded, we now move to the specific commentary requested by the CSA.

Option 1: Cap fees for "core data"

This option would consist of defining a set of data, known as core data that would be necessary to comply with regulatory requirements. The regulatory authority would then regulate the distribution of the fees applicable to this core data, whether distributed through the IP or through the marketplaces. Since core data would not necessarily need to include all data elements that are currently in market data feeds, it could be available at a lower price.

Marketplaces would be free to set fees for non-core real-time data products, subject to the normal fee review and approval process. To prevent marketplaces from bundling core data with other data as a way to circumvent the pricing restrictions, marketplaces would be required to offer core data as a stand-alone product.

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?

This option does not address one of the key issues facing market participants and policy makers: with the inherent advantages of the incumbent, a “pass through” model does not address the large differences in visibility of trades and quotes among the various protected markets.

Changing the format of outbound data feeds, or making significant content changes to existing feeds would force the industry into another costly round of technical development, testing and integration. There is no appetite for such a spend at this point on any front, especially (as we observe) when this option does little to address the issues at hand.

This option could also lead to a further increase in costs for user firms: firms with latency sensitivity will choose to access services directly from each marketplace. These services would likely be defined as “non-core”. These firms will also purchase services from the IP (or otherwise) for compliance and risk management services at additional cost. We see examples of exactly this behaviour in the United States, where user firms often pay for the same data twice: once from the SIP, and also from the marketplaces directly.

We are also concerned that this option, and indeed all of the options that propose to “cap” user fees for market data, will lead to marketplaces finding other areas to earn revenue from the market data function. Data feed charges, data access charges, usage based fees (black box trading, wall board display, indexing, algorithm development, for example) and enterprise deals for large users who self-report usage, are all examples of fees charged by Canadian marketplaces for access or use of their real time market data services at this time. A cap on fees for the basic top of book and depth services would only exacerbate this trend.

Question 2:

What are the competitive and business impacts of the proposed option?

The option does nothing to address the competitive imbalances that are cemented with the present model for market data distribution. If it in fact increases costs for user firms that are required to purchase the same data twice (albeit in different forms), the impact may be to further reduce availability of data from marketplaces other than those operated by the TMX Group.

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 do not agree with imposing a cap for individual marketplace data fees. If, however, Canada were to adopt a model similar to that used in the US, a core set of data elements would have to be defined in the supporting regulations. Protected marketplaces would be required to provide the requisite data elements to vendors creating consolidated top of book and depth displays. The definition should be drawn from existing feed protocols and services to enable any party to create both “top of book” and “depth” displays on a consolidated basis: all orders (with broker identifiers) with time stamps and unique identifiers, cancellations and CFOs, trades with relevant detail (timestamp, buying broker, selling broker, volume), along with any corrections. We advocate identifying this core set of data as being included in the creation of a US-style service based on the listing market, which would have a single end-user fee for each display service. The resulting revenues would be shared among the contributing marketplaces according to a formula to be negotiated. Given the technical capabilities of the vendors and end users, there is no need to create an expensive technical infrastructure to create and deliver these consolidated services. Instead, the contracting and administrative work could be handled by an industry group using existing administrative services to manage the legal commercial aspects of real time data distribution. To enforce a minimum level of transparency, display requirements for vendors and other users creating the resulting displays could be created and enforced through the standard agreement that the administrator of the consolidated service would enter into with each vendor. We believe that such a service

should be made available at a substantially lower cost than the combined fees for the marketplaces currently charging for real time market data services in Canada. The fees currently charged by the TSX for top of book and depth of market displays would be a good starting point for TSX-listed services.

Question 4:

What elements should be included in core data? Why?

There is a large degree of commonality amongst existing market data services provided from the marketplaces in Canada. As noted above, defining the elements required by a vendor/developer to create consolidated bid/offer, last sale, and volume displays is not difficult:

- *All orders, with time stamp and unique identifier*
- *Cancellations and CFOs of any order, along with the identifier*
- *Trades, with price, volume and any public markers (special terms)*
- *Broker Ids and marketplace identifier on each of these data elements*

Question 5:

How should the cap be set? Please provide as much detail as possible.

We do not believe that capping real time market data fees at the individual level addresses the visibility and access issue that frustrates competitive markets and user firms alike.

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?

Fundamentally, the key issue in assessing any marketplace fee is whether or not the fee charged serves to limit the "fair access" to the marketplace's services. Referencing the cost to produce the data, market share, rates of return, and other benchmarks are only bound to generate unintended distortions in the market.

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

This option would impose a cap on the fees that a marketplace could charge for its market data until it reaches a de minimis threshold for a period of time. This threshold could be based on market share or market share combined with some other metric. The cap could be set at zero or at a nominal amount until the threshold is met. If a marketplace falls below the de minimis threshold for a certain period of time, its market data fees would be subject to the cap until the marketplace moves above the de minimis threshold again.

The cap would not apply to marketplaces that are above the de minimis threshold. Marketplaces in this situation would be able to set fees, subject to the approval process in place.

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?

The origin of this option is the understandable concern on the part of the dealer community that the present commercial model for real time market data has led to a proliferation of marketplaces not otherwise economically viable. The cost of integrating new marketplaces into all of the systems operated by a typical

dealer is material. A more direct approach to the issue of marketplace proliferation can and should be addressed directly by the regulators through the recognition order and ATS approval processes: is a new marketplace, or marketplace service “in the public interest”? Are policy objectives of a healthy, competitive environment for trading services enhanced by the applicant’s service? Is there a “net benefit” demonstrable? If these questions can’t be answered affirmatively, then the new services proposed ought not to be permitted.

We are particularly concerned about three kinds of unintended consequences in connection with this option:

- Unless a marketplace is assured of a reasonable return on its investment, the incentive to invest in systems that provide good quality market data services or reduce the costs of market data processing and distribution for consumer firms may be lost. Arbitrary caps and minimum thresholds on fees may act as a deterrent to innovative behaviour.*
- Imposing a minimum threshold would incent marketplaces and their owners to adopt business models and practises designed to promote market share at the expense of other revenue streams. We have a current example of a marketplace paying participants to post crosses. Is promoting such behaviour in the public interest? Is an intentional cross “worth” the same amount as a data point as a trade resulting from the continuous auction market? How about a group of marketplace owners getting together to increase market share at their venue by agreeing to move all limit orders to the venue and agreeing to preference their venue on their smart routers? Is that behaviour that should be encouraged through the market data business model? Although these questions would have to be resolved in the context of our proposed consolidation model, we wouldn’t have to deal with behaviour from the marketplaces designed to meet or exceed an artificially imposed threshold.*
- This option also doesn’t incent marketplaces over the threshold (whatever it might be) to consolidate services under one fee: call it an incentive to “self-fragment” in order to maximize revenues from market data. For example, there is no indication that services from the Alpha Exchange will be consolidated with services from the TMX Group now that they are under common ownership. Notwithstanding potential cost savings and administrative efficiencies for the end users, the TMX Group would lose revenue if it took this step.*

Question 8:

What are the competition and business impacts of the proposed option?

This option would likely limit the number and range of new services launched by existing marketplaces, and also serve to limit the number of new entrants. While this may, in itself, achieve an objective sought by some members of the community, the more direct approach described above carries less risk of unintended consequences.

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 think that pursuing a model that would see the consolidation of both top-of-book and depth-of-book displays would be a substantially more effective way of addressing concerns around the cost of market data **and** the marketplace proliferation issue. Marketplaces with a de minimis share of trading would receive a correspondingly modest revenue share from the data contributed to the pot.*

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.

We do not believe that this approach is recommended: establishing a rigid threshold is almost guaranteed to result in marketplaces adopting other incentives and market models designed to boost market share without offering corresponding value (or innovation) to the industry. Whether these measures are in the public interest is something that the regulators should be addressing directly.

Question 11:

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

For the reasons set out in our response to the first two options, we do not believe that individual marketplace services should be capped. Instead, as discussed in the preamble to our response a consolidated service based on each listing exchange (and an options and futures service) should be consolidated and offered to clients, with the fees to be determined with regard to a number of factors:

- *Number and capitalization of issuers traded*
- *Comparison with data services in other markets around the world*
- *“Fair access” and other public interest considerations*
- *Cost to produce/administer*

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

This option would limit the level of market data fees individually charged by all marketplaces. Similar to the previous option, the de minimis threshold could be based on market share or market share combined with some other metric. We have not decided what the de minimis threshold metric could be; however, to facilitate an understanding of this option we will use market share as the de minimis metric. Whereas option 2 only contemplates a single market share threshold and fee cap, this option would create a matrix with a cap level for each threshold interval.

The cap for the de minimis threshold could be set at zero or at a nominal amount until the de minimis threshold is met. The cap would increase when a marketplace moves beyond the de minimis market share threshold and into a higher market share threshold. Conversely, the cap would decrease to a lower level if a marketplace regresses back to a lower market share threshold. Similar to option 2, a marketplace must remain above a set threshold for a certain period of time before it can increase its fee up to a level that corresponds to the threshold tier it is in.

This option would prevent any marketplace from charging fees that are not reflective of its market share. Additionally, the tier fee caps and market share thresholds structure would keep fee increases in check by tying them to a marketplace's market share.

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?

We have the same reaction to this proposal as option 2 with one additional concern: market data administration is already complicated enough without introducing the concept of a marketplace service being fee liable one

month, not the next, and then again, depending on market share swings. The likelihood that the industry is capable of accurately accounting for such changes in fee liability is close to zero.

Question 13:

What are the competition and business impacts of the proposed option?

As discussed in Option 2.

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)?

As discussed in Option 2.

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?

As discussed in Option 2.

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.

As discussed in Option 2.

Question 17:

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

As discussed in Option 2.

Option 4: Cap fees for data sold through the IP

This option would cap the fees that marketplaces charge buyers who purchase their data from the IP. All marketplaces would be subject to a cap, although not necessarily the same one (as in option 3). This model preserves the pass-through model but caps the costs that could be passed through. The cap could be set by the regulators and implemented through a rule. The marketplaces would still be free to set fees for direct subscribers and vendors, subject to the normal fee review and approval process. This option would create a lower-cost consolidated data feed from the IP. As many users do not need to purchase data directly from marketplaces (e.g., users that are not latency sensitive) this option could address their concerns. Users whose business models require them to purchase data directly from the marketplace or from third party vendors would not necessarily see a direct benefit in terms of lower costs, but the existence of a lower-cost alternative may impose some market discipline on data prices generally.

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?

We have already discussed the implications of the pass-through model: given the cost of accessing marketplace individually, many users have opted to not purchase real time market data from all venues. We have created two classes of market participants as a result: those with all the data and those without. Capping the individual marketplace or IP's fees will not address this concern unless a massive fee decrease is imposed, bringing costs in line with what the TSX charged when it was the sole operating marketplace. There is also a danger, and we have seen this already with the low service fee charged by the current IP for its services, of distorting the economics of the vendor business. If services are available from the IP at an artificially low level as a result of fee regulation, commercially motivated vendors will have no incentive to invest or provide consolidated data services sourced independently from each of the marketplaces. Service levels would suffer, and Canadian markets would be less competitive as a result. Conversely, if the IP is constrained from investing in its service delivery because of artificially low revenues, service levels from the regulated provider (the IP) would almost certainly suffer.

Question 19:

What are the competition and business impacts of the proposed option?

We have spent some time in this response discussing the negative implications of the "pass through" model on the visibility and access for alternative marketplace services. We submit that the model needs to be addressed to provide a more competitive marketplace environment.

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)?

For the reasons discussed, no.

Question 21:

What factors could be considered in establishing the caps?

Any rate regulation exercise would have to follow the principles set out in our response to Question 11.

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

This option is similar to option 4, except that it would directly regulate the fees charged by the IP for consolidated data rather than the fees charged by marketplaces. Unlike option 4, this model would eliminate the pass-through model but would necessitate creating a different fee and compensation model for the data fees. Like option 4, this option would not regulate fees for data sold directly by marketplaces.

In this option, the IP and not the marketplaces would set the fee for its consolidated data, subject to approval by the regulatory authority. The fee could be determined by a rule of the regulatory authority, the IP independently or co-operatively by the marketplaces, as is done with consolidated data in the United States. Marketplaces would share in the IP's revenue on a pre-determined basis, either by agreement or rule or as approved by the regulatory authority. Under this option, marketplaces would be free to set fees for direct subscribers and vendors, subject to the fee review and approval process.

This approach is similar to the approach taken in the United States, where the revenue from the consolidated data distributed by the SIPs is allocated by a set formula.

This option requires legislative amendments to the securities regulatory authorities jurisdiction to specifically regulate the operations of the IP and the fees charged for its products.

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 that this option is getting closer to the preferred model for real time market data, but question why the fees would be capped for the IP only. This gap could well lead to unintended consequences (offers of "free" data if you come to us directly!) that, while attractive on the face, would lead to significant administrative and compliance risk and costs for the user firms. Mandating provision of a core set of data to vendors (as explained above, you don't need to interpose the expense and technology of the current IP) is the way of best avoiding these consequences. The revenue sharing model has to be carefully constructed to avoid creating negative behaviours among the marketplaces contributing data to a consolidated service. The US experience in this regard should be used as a guide, rather than a reason not to proceed, in this direction.

Question 23:

What are the competitive and business impacts of the proposed option?

Although this model would likely compel individual marketplaces to adjust their fees for customers receiving their data directly, we do not believe that this approach is the one that achieves the greatest administrative and technical efficiencies. Latency sensitive consumers would continue to take data from the marketplaces directly: why should their fees not be subject to the same level of regulatory oversight?

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)?

As discussed, it gets part of the way there; we are more supportive of an approach that provides for a consolidated fee for data irrespective of how the data is sourced by the end user, either from an IP or an independent vendor. As we have submitted earlier in this response: there is no actual need to have a separate technology platform maintained by an IP to consolidate data. The vendor community, and many end users, are more than capable of generating technically advanced and cost effective services that meet the needs of different users on their own. Instead, the focus should be on consolidating the administration and commercial aspects of real time market data: a single agreement, administrative reports and billing could all be set up using existing industry capabilities. While the fees charged by the vendors to their customers would not be regulated, the fees charged by the administrator to the vendors would be subject to regulation. The regulated fee would be public, forcing vendors to ensure that the rate they charged end users continued to be reasonable. The benefits of consolidating services (to enhance visibility and transparency) can be enjoyed without spending the technical resources required to maintain a separate Information Processor.

Question 25:

How should the fee be set and by whom?

The marketplaces should be given the opportunity to develop an acceptable framework, with general guidance from the relevant regulator. In the event that the marketplaces fail to reach agreement, the regulator will have to impose a model based on input from affected parties. Although painful, this is the approach that resulted in the creation of the SIPs in the United States.

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

This option is also similar to option 4, however, instead of capping the fees that marketplaces charge buyers who purchase their data directly from the IP, the fees that marketplaces charge buyers of consolidated data from all data vendors would be capped. Marketplaces would be free to charge whatever fees they determine appropriate for non-consolidated data whether distributed by vendors or by the marketplaces directly. This will allow all data vendors to distribute the consolidated data at the same lower, capped rate to marketplace participants as 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?

This option perpetuates all of the unintended consequences we have outlined from the current "pass through" model, and would do nothing to address the serious transparency problem created as a result.

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?

While we support the notion of regulating the fees charged to end users irrespective of the source of their data, as indicated above, unless the "pass through" model is addressed, there will continue to be a serious imbalance in the availability of the different data services available from the marketplaces.

Question 28:

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

It is important that we do not lose sight of the fact that the user community has a wide variety of intended uses and performance tolerances for real time market data services. The vendors are best positioned to service these different requirements through a variety of services designed (and accordingly priced) to meet these different needs. A consistent application of fees for the raw material (the data from the individual marketplaces) is important. With the consistent application of time stamps on data elements from the markets, we do not believe that permitting users to rely on services from different vendors would compromise compliance efforts or imply any lessening of investor protection.

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?

No. Vendors have to be allowed the flexibility to meet the needs of their customers without subjecting themselves to a new and intrusive level of regulation. The market for market data services is competitive enough to ensure that end user costs will reflect a reasonable market price for the service. Under the model proposed in the preamble, vendor conduct in the provision of the data could be enforced through provisions in the agreement with an industry administrator.

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

Concerns about the costs of market data have led some marketplace participants to suggest the creation of a "public utility" source of consolidated market data in Canada.

A mandated data utility could be funded by marketplaces and/or data customers and would operate on a cost-recovery basis. Any revenue generated from the selling of the consolidated data would be divided amongst the utility participants based on a revenue sharing model agreed upon by all parties involved. The amount of revenue that each participant receives would be proportionate to their contribution to price discovery and liquidity. This utility would have to be overseen by the regulatory authority as it would be providing a service critically important to the capital markets.

This option is similar to Option 5, except that it would be developed by the industry rather than imposed by the regulatory authority. Legislative amendments and an overhaul of the transparency requirements would be needed if a public data utility was created.

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?

We support the creation of such a utility, but believe (as stated above) that the utility need concern itself with the contracting, administration and collection functions only. Such an approach would dramatically reduce the cost and time involved of introducing the utility, and rely on existing industry processes to deliver the benefits of consolidation and improved administrative efficiencies.

Question 32:

What are the competitive and business impacts of the proposed option?

This approach would address the current enormous gap in the visibility of trade and quote information from the different marketplaces. As a result, marketplaces would be better positioned to compete in the provision of market services knowing that they are on a level playing field with the incumbent from a transparency perspective. Users would be able to access services from the vendor community at a price point that meets their

needs: non-latency sensitive users would see services tailored to meet their needs and price concerns; latency sensitive users would invest in services that meet their needs at, presumably, a much higher price point.

Marketplaces would receive fees that properly reflect their contribution to price discovery, thereby incenting behaviour that supports the development of more competitive markets. Issues related to the proliferation of marketplaces can and should be addressed directly through the recognition process with the responsible regulator.

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)?

With the proviso that this option sees the creation of a utility that focuses on the administrative components of data consolidation only, this option best addresses the issues that have been raised by the community.

Question 34:

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

As suggested above, the marketplaces should be given the opportunity to establish the pricing and revenue allocation model before intervention from the regulators. That said, pricing and terms and conditions of the service should be subject to initial approval from the regulators; any changes thereafter should be subject to continuing regulatory oversight.

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?

The data elements identified in question 3 should be provided by each of the contributing marketplaces to vendors intending to distribute consolidated market data. As indicated, we do not see any reason to require the utility to build and maintain the technology required to receive process and re-distribute data to the vendors. The expense and added latency involved is entirely unnecessary.

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

This option would require a marketplace to publish for comment any amendments to its market data fee schedule. We could require marketplaces to also publish the rationale for amending the fees and a pre-implementation impact analysis at the time their proposed fee changes are filed with the regulatory authority for approval. This would impose some discipline as marketplaces would have to publicly justify any changes to fees and/or fee models.

Question 36:

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

Unless the “pass through” model is addressed, we will be perpetuating the current transparency deficit, and the resulting impact on competitive marketplaces. We are also concerned about the fairness of the criteria established by the regulators in assessing the implementation or changes to any fees.

As we discussed in our response to Question 1, it would also have to be clear that the “market data fee schedule” was not limited to the end user fees for access to top of book and depth services. Canadian marketplaces currently charge for a wide range of services (data feed access, cross connects or other telecommunications services involved in data delivery) and uses (indexing, analytic development, black box trading, historical archiving) above and beyond the end user/terminal charges. Regulating the end user/terminal charges, while ignoring the fees described above, will lead inevitably to fee increases in the provision of unregulated services.

Question 37:

What are the competition and business impacts of the proposed option?

There is a high risk that requiring marketplaces to submit “any” change in its market data fees and related policies to the full regulatory review process would dramatically slow the pace of innovation and investment in new market data services. While having to undergo the process would reduce the temptation for a marketplace to introduce frivolous or marginally economical services, under the present model data buyers have the ultimate choice in simply determining not to purchase the product or service. Moving to the consolidated model we have proposed earlier in the comment would also address this issue: pricing, revenue share, and terms of the consolidated service should be regulated in the manner proposed in this option, so that services that data consumers are “forced” to purchase are in fact closely controlled.

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 in the previous answer, we believe that regulating a consolidated service in the manner suggested by this option is the appropriate model for the delivery of the standard “top of book” and “depth” services from the Canadian marketplaces.

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?

Again, if a consolidated service is regulated in the manner proposed, then an impact analysis for any proposed fee change is a sensible requirement. As discussed in Question 11, we believe that a number of considerations should be taken into account in assessing the fees, and any proposed changes, for a consolidated service:

- *Number and capitalization of issuers traded*
- *Comparison with data services in other markets around the world*
- *“Fair access” and other public interest considerations*
- *Cost to produce/administer*

Conclusion

We again thank the Canadian Securities Administrators for the opportunity to share our views on the issues surrounding the provision and sale of real time data by marketplaces. We look forward to continuing the

dialogue with staff of the securities commissions and other industry participants as we work towards a more competitive market structure in Canada.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Richard Carleton".

Richard Carleton
CEO, CNSX Markets Inc.

cc: Cindy Petlock, CNSX Markets Inc.
Pina De Santis, CNSX Markets Inc.