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Dear Sir and Madame:

**Re: CSA Staff Consultation Paper 21-401 – *Real Time Market Data Fees*
(the “CSA Paper”)**

ITG Canada (ITG) would like to thank the OSC for this opportunity to comment on the issue of Real Time Market Data Fees. We appreciate the extensive research and thought that went into the comment paper, and hope our comments will constructively illuminate areas that may require further careful consideration.

ITG is a Global brokerage firm offering leading edge research, trading, cost measurement and trade management tools and services to institutional and brokerage clients. We have long been a top 10 dealer in the Canadian equity space, and are well within the top 20 in the U.S., Western Europe and Asia. We are very large consumers of real time market data around the globe, and are well versed in the pricing issues at play.

Before we consider each of the options outlined, we will first address the current state of market data pricing in Canada, as well as our high level view of market data pricing dynamics.



From a very high level, we live and work in the Capital Markets and are strong proponents of the free enterprise system. Under a free enterprise system, pricing is based on supply and demand relationships within the marketplace. This mechanism is subverted, however, when one introduces monopolistic powers, as is the case with market data in Canada. Each marketplace is the single provider of their market data. As a result of regulator requirement, significant players within the market are forced to consume this product. (Note: any suggestion that dealers do not need to buy data from each marketplace, while technically true, is logistically false in a world of low latency trading and informational arbitrage. The ability to effectively trade with only a partial view of the true data picture is logistically implausible, and as such should be disregarded.) When a monopolistic entity has captive consumers of a vital product, it is incumbent on regulators to determine and set a fair price for said product to afford price protection for consumers. This price should be set at a level that allows a reasonable profit to the provider, without creating undue harm to the consumer.

We would argue that such a price would likely be significantly lower for most, if not all, lit Canadian marketplaces. It would appear that the OSC is leaning towards determining data pricing for the ATs based on TSX pricing, which is the assumption that TSX pricing is currently fair. We would suggest that TSX pricing is in fact inflated and needs to be addressed. We come to this conclusion based on the following inputs:

- 1) While the CSA paper suggests that consolidated DOB U.S. marketplace data costs \$285.17 – this is based on a single user CTA fee of \$127.50. We suggest the real cost for a user of this data is more reasonably set at \$30 – the price charged to a firm with over 20 subscribers. We believe this would encompass more than 95% of the terminals in existence, as opposed to the \$127.50 figure which we believe is charged to well under 1% of all terminals. As such the number we should be using is less than \$190.00.
- 2) We believe that DOB Canadian marketplace data costs \$279.35. This includes the recent Chi-X fee for venture listings.
- 3) As such, **Canadian full depth of book data costs in excess of 48% more than U.S. data, even before one normalizes for the volume and value traded in each market.**

- 4) If we consider the Australian Stock Exchange – a market that is similar in size and scope to our own, and services a country of similar size and population, we find that the **ASX charges a rate that is roughly ¼ that of TMX for top of book, and ~ 1/9 that of TMX for full depth of book information.**
- 5) Australia reported total 2012 information systems revenues of \$66.9 Million AUD, of which \$33.1 was from market data for professionals. The TMX just reported 2012 numbers, and earned \$179 MM CAD from Information Services. They do not separate out what portion is from professional market data users, but the two entities have somewhat similar business. It would certainly appear that total TMX revenues from this item are significantly higher than the ASX, despite lower trading volumes and values. (We are ignoring the notion about ASX dilution, as it should have zero impact on data pricing and appears to be a red herring to us.)
- 6) The European comparisons made in the CSA letter are misleading. The European markets do not have a firm trade through obligation, significantly altering the negotiating dynamics around such pricing. Beyond this, several European markets have seen a recent ramp up in pricing that is currently being considered by European regulators, and is likely not sustainable. By way of example, the market data pricing on NYSE Euronext – according to a recent study by Copenhagen Economics – increased 247% since 2004. **The only major European market that hasn't seen significant increases in market data pricing is the LSE – which currently charges a fee that is ~ ¼ that of the TMX when normalized for value traded – according to the CSA comment paper.**
- 7) We also note that during the study period used for the paper, TMX volumes and values were inflated by significant non-economic trades that print on that marketplace daily. Street estimates put such non economic trades in the range of 5 – 10% of volume, and a higher percent of value traded. Such trades do not print on most of the TMX peers considered in the paper. Thus the relative mispricing is even greater than suggested by your study.
- 8) The CSA paper concludes that the data “seems to support the view that TSX fees are not unreasonable, as they fall between the fees charged in Europe and those charged in the U.S.”, we believe that any test of reasonability of captive users must be linked to cost of production, not to the ability of international peers to set fees on similarly captive users at levels that may be equally onerous to those of Canadian providers.



- 9) Any fee cap on data should also consider the problems presented by higher priced faster data feeds. By allowing a market place to build feeds that give a speed advantage over core feeds, this poses many problems not the least of which is that it forces participants to choose between data price protection and good execution quality. We don't believe that marketplaces should be allowed to market data feeds that are faster than core feeds. (Direct feeds that have the same latency are fine, but faster feeds introduce advantages aimed at increased intermediation and thus higher transaction costs).
- 10) TMX market data pricing has increased over the last 2 decades, despite decreasing costs for memory and other technologies, increased economies of scale and the off loading of the data distribution function to firms like Bloomberg and ITG. (I.E. TMX no longer has the cost of providing CATS terminals to traders).

With those key points in mind, we will now comment on the various options outlined in the consultation paper.

Cap fees for core data.

We believe that capping fees on core data is a good partial solution to the problem at hand. Capping the pricing on both top-of-book and depth-of-book products would provide pricing protection for captive consumers. This point of view holds provided marketplaces were not able to circumvent this cap by offering relatively slow feeds at the capped price and much faster feeds at a non capped rate.

Any such cap should be based on a true cost of production, allowing the primary marketplace to make a reasonable rate of return on their product, and forcing smaller venues to offer similar pricing regardless of ability to make a profit at such levels. We find the CSA's suggestion that smaller markets might need to charge higher fees to offset higher costs to be disturbing. If said markets are unable to offer competitively priced products, then they should not be protected businesses. Provided the primary market doesn't undercut pricing of data in order to use cross subsidization to squeeze out competitors, we believe that smaller marketplace data pricing should be benched to that of the primary market, not its own cost of production. (In the unlikely event that smaller venues have considerably lower cost of data production than the primary market, we may



need to bench everyone off of this lower rate and force efficiency on the primary market).

Clearly the biggest issue with the pricing mechanism is determining the true cost of production, and ensuring that any regulated management accounting techniques are not misused to present a higher than true cost of production. Clearly, any such caps should move market data fees closer to historical levels, not result in further increases and trading friction.

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

This proposal fails to address the key issue of excessive fees at established venues, and would allow established venues to use data fees to cross subsidize trading fee reductions in an attempt to thwart any new competitors into the marketplace. A simple examination of the correlation between marketplace trading and data fees through the first part of this century demonstrate a willingness to offset lower trading fees with data fee increases.

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

While this proposal is clearly superior to the previous one, and allows for caps on larger established marketplaces, we caution that a simplistic use of volume or value traded to set caps will be problematic. We already see evidence of Canadian markets paying for volume, in the form of rebates for both sides of a cross trade – and fear the possibility of further such programs aimed at ‘creating’ trading volumes to boost the overall data revenues. (We note that a fee program based purely on value or volume would also allow dark markets to charge levels similar to lit venues, despite a lack of pre-trade contribution to price discovery).

Preventing new and small marketplaces from charging for data until such time as they reach a de minimis standard is a very reasonable solution. The cost to the community of connecting to a new marketplace is already high, and should not be increased by data fees until such time as that market becomes relevant.



Cap fees for data sold through the IP

This proposal is deeply flawed in that it places a cap only on the very slowest market data available; meaning that those seeking price protection on data will be disadvantaged in the marketplace. Should such a cap be the exclusive pricing protection program, trading venues would be highly incented to increase the latency delta between the IP product and direct feeds, to increase the 'value' of such direct feeds. This would actually result in a more costly data environment, not a more reasonably priced one.

Regulate consolidated market data fees charged by the IP

This proposal fails for the very same reason as the previous proposal.

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

This proposal would once again create the perverse incentive for trading venues to design faster direct feeds while not spending similar resources to improve the price-capped fees.

Mandate a data utility to operate on a cost-recovery basis

The creation of a data utility will be costly, and thus is a suboptimal solution. Capping fees at the exchange level, based on a variety of price discovery contribution metrics, and ensuring markets don't sell lower latency, or otherwise advantaged feeds at higher rates, is a good model. The introduction of another level of technology and bureaucracy to implement this model is an unnecessary and costly addition to the process.

That said, we would be in favour of such a utility if the markets were unwilling to provide proper costing metrics. Where the commission is unable to determine a fair costing on which to base costs, the natural solution is to put the provision of data out to tender, and use a free market auction to determine fair price. We once again note that this solution only works if markets are prevented from producing and marketing higher cost, lower latency feeds meant to create a trading disadvantage to those participants that gain pricing protection.

Publish amendments to market data fees and fee models for comments



While the greater transparency offered by such publication is desirable, such publication in and of itself is unlikely to adequately address the situation. In recent years we have seen a number of proposals put forth for comment that were clearly not in the best interest of natural investors, despite the near unanimity of street participant pushback. We do not believe that moral suasion or corporate shame are currently great motivators, which is why this entire debate is currently necessary.

Conclusion

In conclusion, we congratulate the CSA on this very important first step in addressing the dire state of market data pricing in this country. We believe that a successful market data regime will require the following aspects;

- 1) A de minimis standard to prevent start up exchanges – which already exert considerable cost on the industry – from subsisting on data fees.
- 2) A fee model based on reasonable cost of production, that allows efficient players to make reasonable but not oversized profits. Where reasonable cost of production is not readily determined we suggest the use of an auction mechanism to determine fair costing.
- 3) The elimination of advantaged data feeds that prey on natural market participants. All feeds pertaining to any market should have identical latency from source, but may have greater end time latency if the user wishes to outsource the consolidating function.
- 4) Data prices at the various markets should have strong correlation to each market's contribution to the price discovery mechanism. This contribution should be more exhaustive than a mere volume traded market share metric, and should consider non-economic cross trades to be of lesser value than 'real' risk transference trades.
- 5) Markets should not be able to rebate any portion of their data fees to participants. This was one of the great mistakes made in the U.S., where data rebate programs created otherwise unprofitable trading strategies and market noise.



- 6) The CSA needs to diligently consider any related fees – such as access or redistribution fees – to ensure trading venues don't just substitute new fees for existing capped fees.
- 7) The CSA should strongly consider the notion of Multiple Instance Single User (MISU) pricing mechanisms. Currently, many industry participants pay data fees multiple times to allow for operation of various products on their desktop. For example, a trader may have a Triton (EMS), Bloomberg (Market Data), Fidessa (OMs) and risk management tool on her desktop and pay four sets of data charges despite being a single user.

Clearly a final solution to this issue will take significant time to design and implement. While this process is underway, we strongly urge the CSA to take interim steps to address the data mispricing at those venues where pricing – after normalizing for value traded – is seriously out of line with TSX pricing. While the final solution should result in a logical resetting of all real time market data, the most apparent outliers should be partially addressed immediately to offer up some much needed relief to captive consumers.

We thank the CSA for giving us this opportunity to weigh in on such an important topic, and offer up our continued assistance throughout the process.

Doug Clark
Managing Director
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