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Director

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The Secretary
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Dear Sir and Madame:

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

The Investment Industry Association of Canada (“IIAC” or “the Association”) appreciates the opportunity to comment on the CSA Paper. The issue of market data pricing has been a matter of concern to our industry for some time, becoming more urgent in recent years with the entry of new exchanges and trading systems into the market. The Association has expressed our concerns in a number of letters to the CSA and TMX over the past several years. In addition, in 2011 we commissioned an independent report authored by the Securities Litigation Consulting Group (SLCG) to examine the competitiveness of the Canadian market in relation to market data fees. The report, which we made available to the Ontario Securities Commission and the TMX concluded that:

1. *TSX and TSXV have taken advantage of their monopoly power by increasing its fees for market data products. The TMX fee increases have occurred in a setting in which there is no evidence of increasing technology costs.*
2. *The fragmentation of trading has also led to escalating costs of compliance with best execution and best price obligations as all of the new marketplaces have also begun charging for market data.*
3. *Canadian financial market participants appear to pay excessive fees for securities market data.*

As such, we were surprised that the CSA Paper came to different conclusions on the basis of the same data. In particular, we were very concerned with the following finding.

The cost of consolidated data in Canada is higher than it is in the United States relative to trading activity. We acknowledge the view held by marketplace participants in Canada that the data fees charged by Canadian and U.S. marketplaces should ideally be closer. However, differences in the regulatory environment, industry structure, scale and size of the two markets may explain the cost differential and arguably make such an outcome unrealistic.

This finding seems to form the basis for the view that it is appropriate for volume scaled market data fees to be ten time more expensive (for Depth of Book (“DOB”) data) than in the US, mainly due to the size differential between the two jurisdictions. This logic would lead to absurd results when applied to any product other than market data, and should not form the basis of a regulatory policy analysis and recommendation on this issue.

We are also concerned that the data on page 10109, on which the comparability of the price of market data in the US is inaccurate and understates the differences between the cost of data in Canada and the US.

We do recognize footnote 37 on page 10108 acknowledging the sliding scale for subscriber rates for CTA Level 1 data however believe it is misleading to use the single device tiered price. According to the CTA Plan (source: www.nyxdata.com/cta), the most expensive tier is \$127.25 for a single professional device for Network A data, while the least expensive is \$18.75 (for 10,000+ devices). We also acknowledge page 10124 also makes reference to using the “single-participant” fee to “reflect incremental cost for each new participant” however, we believe it is unlikely a firm classified with

professional users would operate with a single employee (or CTA access). We believe a number of 30 devices/employees may be a more appropriate measure to use. This qualifies for a per device fee of \$27.50. It should also be noted that CTA provides a pricing schedule for non-professionals at a rate of \$1 per device, so individual consumers classified as non-professionals already benefit from a significantly lower rate than non-professionals.

Using the 30-99 device rate of \$27.50 for Network A, a non-member rate of \$14.60 and \$15.60 for Network B Last Sale/Bid Ask and Nasdaq UTP fees of \$20 per subscriber, we arrive at a consolidated data rate of \$77.70 – considerably less than the Canadian calculated equivalent of \$118.85 (even when adjusted for USD exchange rates). The conclusion here should be that the costs of Level 1 consolidated data in Canada are much higher than in the US and thus should be explored further.

We also take issue with the statement in subsection of 4.1(5) of Companion Policy 23-101 (echoed by UMIR Policy 5.1, which deals with dealers' obligations to obtain information from marketplaces. The Companion Policy states that:

“This does not mean that a dealer must have access to real time data feeds from each marketplace. However, its policies and procedures for seeking best execution should include the process for taking into account order and/or trade information from all appropriate marketplaces and the requirement to evaluate whether taking steps to access orders is appropriate under the circumstances. The steps to access orders may include making arrangements with another dealer who is a participant of a particular marketplace or routing an order to a particular marketplace.

The process of making arrangements with other dealers in order to work around the requirements is practically unrealistic, given the additional latency, administration and complexity introduced into the process. The reality of the Canadian regulatory framework with the dealers' trade through and best execution obligations and practically require that in the vast majority of cases, dealers must obtain real time data feeds from each marketplace.

We are encouraged, however, by the statement in the CSA paper that:

“...while the amount of some of the data fees charged is not unreasonable, the quantum of some fees may result in a high fee for consolidated data. A high fee for consolidated data may introduce inefficiencies and hamper the ability of market participants to fulfill their regulatory obligations. As a result, we believe

that further steps should be considered to address the fees charged for market data on an individual marketplace and/or aggregate basis.”

We understand that Chi-X recently applied and received approval from the regulators to begin charging for data. In the interests of transparency, would it be appropriate that the methodology that the regulators used to arrive at the level of fees they deemed to be reasonable be published. It is important for market participants to understand the factors that are considered in determining whether market data fees charged by marketplaces are reasonable and appropriate.

Options to Address High Market Data Fees

We have examined the various options in the CSA Paper to address high market data fees. While all of the proposals have their strengths and weaknesses, we propose a hybrid model that incorporates elements of many of the proposed solutions.

1. Cap fees for “core data”

We believe that setting a cap for core data fees is appropriate, as this information is necessary to comply with regulatory obligations, and as such, is not subject to normal market forces which would prevent excessive pricing through competitive forces. Core data should be defined as both top-of-book and depth-of-book data. Prices for ancillary services offered by a marketplace would not be subject to fee caps.

The concern we have with a cap for core data fees as a standalone solution is that it does not take into account the prospect of ever increasing fees when new marketplaces enter the market .

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

This proposal has the value of keeping new entrants and marginal marketplaces from charging fees when they are not delivering value. It does not, however, address the central problem, which is the unchecked escalation of fees by established marketplaces, often where the fees charged are disproportionate to their share of the market.

This proposal could be helpful if it is used in conjunction with other fee management methodologies, but it is not adequate as a standalone solution.

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

The effectiveness of this proposal depends on whether a reasonable cap exists for those marketplaces that have a significant market share. If caps are too high for dominant players, this would not address the problem of such players exercising their near monopoly power. However, if caps are set representing the value of market data as a whole, and divided up among marketplaces based on a metric such as trading volume, it may be a sensible way to address the problem. This proposal does have the added element of complexity and the need for constant monitoring of market share of each marketplace which may make forecasting of data charges less predictable.

4. Cap fees for data sold through the IP

This proposal retains the problematic pass-through model, which does not provide an effective cap on market data fees, as new marketplace entrants could drive up total market data costs. It also may disadvantage other entities selling market data, in that they may not be able to price their offerings competitively if marketplaces are selling their data to them at different rates than to the IP. This may limit the number of helpful tools and analytics available to participants, as they may be priced out of reach by marketplaces counterbalancing their fee cap to the IP. The price for core data should be capped and consistent for all customers. If the marketplaces and data providers wish to sell packaged data with additional attributes such as lower latency or analytics, they would work from the same cost base, but determine the price of these packages based on the value-add portion above and beyond the price of core data.

5. Regulate consolidated market data fees charged by the IP

Although this proposal addresses our objection to the pass-through model, it also creates a different cost base for clients who wish to purchase data through entities other than the IP. We believe that that consolidated market data sold through the IP should be regulated by regulating the price of core data and establishing a formula to allocate it to the marketplaces when it is purchased through the IP. However, as stated above, the core data fee caps should also apply to straight core data purchased directly from the marketplaces or other providers. Marketplaces and other providers could charge for value-added products and services packaged with the core data, such as lower latency or other products or services not available through the IP.

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

As noted above, we favour this model to give consumers a choice of where to purchase core data, and allow vendors to offer value-added services based on a competitive price for core data.

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

Although members were cautious about endorsing the development of a data utility, due to the costs of establishing and maintaining the infrastructure and governance, it was agreed that understanding the costs of producing data is very important and should be incorporated into any price cap proposal or the establishment of the value of market data as a whole to the market.

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

We agree that the publication of market data fees and fee models is critical in establishing transparency and ensuring fairness in the process. However, this cannot be seen as a standalone solution, as it does not address the problems relating to increased individual marketplace and aggregate market data fees. The publication of fees and fee models should be implemented in relation to the creation of caps for core data, the establishment of the value of market data as a whole, and the method of distributing revenue from the IP to the participating marketplaces.

Marketplaces are increasingly becoming information providers, offering data content, infrastructure and other services outside of their core functions as marketplaces facilitating trading and providing market information as an output of these transactions. We feel it is important to maintain a separation around the core functions to ensure non-core functions are not unduly subsidized by revenue obtained for redistribution of market data that can only be obtained from one source (and thus potentially subject to monopoly position). Other infrastructure and market data providers often compete with marketplaces for services such as networking, co-location, market data terminals, etc. and should not be at a disadvantage.

Any changes to core data fees and the IP's fee structure should also be transparent and subject to public comment, along with reasonable justification from the marketplaces for such changes.

In summary, we advocate a system whereby core data fees are set using information about the cost of producing market data. The core data fees would be used to establish the value of market data as a whole as sold through the IP, or directly by the marketplaces or other service providers. Formulas would be developed to value core data sold by each marketplace based on their market share or some other formula agreed to by the marketplaces. Changes to the price of core data would be subject to requests for comment. In establishing the value of core data, regulators may consider the size of the marketplace and use thresholds or other mechanisms to ensure fairness is achieved. It is also crucial that when regulators are evaluating fees, that they consider certain “hidden fees”, and additional costs of market data. For example, currently the TMX charges for data license fees for real-time use of their market data in applications or programs which generate orders or in analysis programs. These additional fees can range from \$1,000 to \$4,000 monthly and as such should be factored into the evaluation process.

Thank you for considering our comments. If you have any questions, we would be pleased to meet with you to discuss any issues raised in our submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Copland', written in a cursive style.

Susan Copland