Australia
Canada
Hong Kong
Japan
The Netherlands
United Kingdom
United States

Gerry Rocchi
President

Barclays Global Investors Canada Limited
BCE Place, 161 Bay Street, Suite 2500
P.O. Box 614, Toronto, Ontario M5J 2S1

Telephone 416 643 4030
Facsimile 416 643 4039
gerry.rocchi@barclaysglobal.com

BARCLAYS GLOBAL INVESTORS

September 29, 2000

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut
c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

RE: Proposed National Instrument 21-101 Marketplace Operation and Companion Policy 21-101CP
Proposed National Instrument 23-101 Trading Rules and Companion Policy 23-101CP

Please find attached comments from Barclays Global Investors Canada on the above referenced Proposed National Instruments and related Companion Policies. We have addressed the 20 questions posed by the Canadian Securities Administrators, and, in addition, have contributed some further comments on other areas of the proposals.

Barclays Global Investors is the world's first and largest index fund manager, and the world's largest institutional money manager. We continue to have a growing business in Canada, and appreciate the opportunity to comment on these matters. We would be delighted to discuss any of these matters further.

Sincerely,

Gerry Rocchi

Comments on ATS proposals by Barclays Global Investors

Proposed National Instrument 21-101 Marketplace Operation and Companion Policy 21-101CP
Proposed National Instrument 23-101 Trading Rules and Companion Policy 23-101CP

Barclays Global Investors is the world's first and largest index fund manager, and the world's largest institutional money manager. We continue to have a growing business in Canada, and appreciate the opportunity to comment on these matters. We would be delighted to discuss any of these matters further.

General

We believe it is important to ensure that all market participants have the following available to them: the ability to get the best price on all their trades; and the availability of full market data for trading purposes

Any new rules or regime should not lead to competitive pressure on existing institutions to lower current standards. In addition, the regulatory framework, while maintaining a high level of market integrity, should continue to be responsive and flexible to the needs of all market constituents and participants.

We have provided comments on the specific questions posed by the CSA, and have some additional important comments that follow the responses to the CSA questions.

CSA Questions

1. Should broker ID numbers be collected and disseminated by the data consolidator? If yes, should the customer decide if the broker ID is disseminated?

> Yes, these broker ID numbers should be collected and disseminated by the data consolidator. It should not be at the discretion of the customer.
>
> Knowledge of broker activity is an important element of broker choice by investors when choosing a broker to work a large order or list of orders. In the absence of this information, an investor frequently must seek out liquidity by approaching many dealers and participants, leading to less favourable market conditions for large trades and price movement prior to execution.
>
> In addition, settlement quality and credit quality of the broker can be important factors in deciding when to execute trades, in addition to price, and knowledge of the broker posting bids or offers can affect trade timing.
>
> It is also important to collect broker ID numbers to aid in compliance and investigations. Enforcement will find it easier to spot patterns if this data is available.
>
> The customer should not be able to decide whether the broker ID is disseminated. As already noted, publishing the broker ID aids in the discovery of liquidity by all

investors, including the customer in this instance. Inconsistent publication of broker ID numbers will lead to administrative complexity. In addition, it will lead to potentially damaging uncertainty about the reason for suppressing the publication. Speculation will be generated about whether a broker is laying off a position they have acquired with their own capital, or whether a broker is acquiring a position for a takeover bid on behalf of a client.

2. Who should provide regulation for ATSs? Please provide reasons for your answer.

The following comments are directed towards the regulation of equity markets. The first preference is for the CSA to provide direct regulation for exchanges and ATSs, with industry participation. This provides for maximum independence and minimum of conflict. The second preference is for a self-regulatory organization for both exchanges and ATSs, which can also provide for a level playing field. In either case, the cost of funding the regulators can be financed by modest trading fees which should not damage the competitiveness of Canadian equity markets. The SRO in this instance would receive oversight from the CSA.

It is not clear that the prior responses by exchanges on this proposal still apply, given the exchange restructuring in Canada and the rate of global consolidation in exchanges, which the Toronto Stock Exchange (TSE) itself is participating in. The market has been subdivided with the TSE, Montreal Exchange, and the Canadian Venture Exchange. One regulatory system rather than several should help to improve the competitive position of the overall Canadian equity market. The competitive threat to the exchanges is that trading is moving to U.S. markets. In addition to the re-organization of trading that has occurred in the past year, the TSE has plans to de-mutualize and become a public for-profit corporation. This plan has implications for the regulatory function that the TSE currently performs. Two issues that clearly come to mind are:

> What assurance will investors have that the regulation function will be carried out with the same diligence concerning trades by the major shareholder versus trades by other investors?
>
> Regulation and surveillance is a cost center. What assurance will investors have that that this important function will receive the resources required?

A secondary and equally important consideration is to be positioned for changes that are occurring in the trading of equities. We are moving towards trading equities - globally. Exchanges in different countries are merging or forming alliances, and even engaging in hostile takeover bids. Nasdaq is attempting to become a global exchange. These changes plus the arrival of ATSs in Canada mean that the current status of exchanges will change. In this environment, regulation should be transferred to a body that will not be subject to the uncertainties that will be a fact of trading in the foreseeable future.

The exchanges potentially are in a conflict of interest with ATSs. Therefore if they continue to have a regulatory role it should be moved to a separate division or subsidiary with closer oversight by the CSA on potential conflicts of interest.

3. Is it appropriate for the IDA to assume the role of market regulator for all participants in the debt market?

No. There are many participants in the debt market, and an SRO based on broker interests is not appropriate as the regulator of an entire marketplace.

4. Should there be an exemption from the display requirements for debt securities based on the size of the order or some other criteria. If so, what should the criteria be?

Yes. The criteria should solely be based on the dollar value of the order. This threshold may need to differ between government and corporate bonds.

5. Is the definition of market maker appropriate?

Yes.

6. a) Should requirements imposed on market makers to provide pre-trade information for the debt market be implemented on a gradual basis? b) What information should be provided? c) When should this information be provided initially? d) If information is provided on an end of day basis, what time is appropriate? e) Is it appropriate to require this information be provided in real time in one year?

a) No. If the rationale for providing the information is to create more transparency and to try to draw out hidden liquidity then providing it once a day at the end of the day doesn't serve those purposes.

b) The information should include, bid/offer, size, price, and yield to maturity.

c) and d) Real time or as close to it as possible is the preferred timing. End-of-day timing precludes it from being pre-trade information.

e) No. The information should be provided as soon as is technically possible.

7. Should information only be required on a pre-trade basis for the most liquid debt securities or based on some other criteria? How should "most liquid" debt securities be defined? What information should be provided?

Yes. But that shouldn't preclude participants from providing the information for other less liquid securities. The most liquid securities could be defined as Government of Canada bonds, federal agencies, and large provincial and corporate issues. Large issues would be those with over $250 million in size

outstanding. The information should include bid/offer, size and price, and yield to maturity.

8. Should requirements imposed on market makers to provide post-trade information for the debt market be implemented on a gradual basis? If so, when should this information be provided initially? If information is provided on an end of day basis, what time is appropriate? Is it appropriate to require this information be provided in real time in one year?

Yes, while this information is very valuable it is less critical to drawing out hidden liquidity than is pre-trade information.

The information should be provided by 4 pm every trading day.

Yes, this timing is appropriate.

9. Should information only be required on a post-trade basis for the most liquid debt securities? How would "most liquid" debt securities be defined?

The more information the market has the better it will be served. The preference is to see this information provided for all securities, not just the most liquid ones.

10. Should the CSA follow a similar approach with respect to information provided to the information processor as NASD on corporate bonds?

No, it is appropriate to see full information for all trades

11. Are there any other requirements that should apply to the information processor?

No comment.

12. Is regulation 2100 of the IDA still appropriate?

The portion of regulation 2100 that prohibits inter-dealer bond brokers from dealing with anyone other than IDA members and Canadian chartered banks is no longer appropriate. It would prevent such brokers from becoming ATSs.

13. Should there also be an exception based on number of shares traded (in addition to value of shares traded)? Are there any other exceptions to the display requirements that should be included?

Yes, there is a need for a further exception based on number of shares traded. Sometimes participants may need to trade blocks of low-priced shares where the total value of the trade may not sum up to $100,000, but where the trade involves a large portion of the available float of the company. This exception is likely to have no impact on large-capitalization equities.

14. Should the requirement regarding customer limit orders apply to the fixed income market?

Yes they should.

15. Should there be an exemption based on the value of the order or some other criteria for fixed income securities?

Yes. The exemption should be based solely on the value of the order. That threshold may need to be different for government securities than for corporate securities, and should be established in consultation with industry participants.

16. Should special order audit trail requirements be adopted? Under what circumstances should the requirements be imposed? To whom should the requirements apply? What additional information should be collected?

Yes, audit trail requirements should be established. This should be a given. The information obtained would be used to ensure that the Canadian equity market operates at a level that investors can have confidence in. The audit should collect information on all trades reported to the consolidator including the time, nature of a trade (buy/sell), the size of the trade, the broker executing the trade and the bid/ask at the time.

17. Should the audit trail requirements be established by the CSA or should the requirements be determined by the exchange, approved agent or the IDA?

The minimum audit trail requirements should be established by the CSA. A minimum standard is required. Investors must have confidence regardless of where they trade in Canada that there is a quality standard that is there to protect them. As a fundamental component of investor confidence, this should be set directly by the CSA and not delegated.

18. Should the display requirements for over-the-counter orders or trades be expanded from market makers to all dealers?

Yes.

19. Should the information be sent to the data consolidator or another party?

Yes. The information should be sent to the data consolidator. A notation from the data consolidator could indicate that the transaction was an over-the-counter transaction.

20. Should the short selling provision be limited to trades facilitated on a marketplace or should they apply to dealers trading outside of a marketplace?

The provision should apply to dealers trading outside of a marketplace

Additional comments

Disclosure of transaction fees for marketplaces
National Instrument 21-101 Marketplace Operation
Part 10

Caution is advised on a potentially damaging and inconsistent use of the information on transaction fees for marketplaces, and a clarification of the companion policy would be useful. Transaction or access fees of an ATS are frequently the only transaction fee involved in trading on that ATS, with no further commissions. Comparison of an ATS price with the ATS transaction fee included (which itself may depend on cumulative factors) to an exchange price without commission may lead to misleading interpretations of best bid and offer, with consequent impact on trading rules. The recent debate in the United States on the display prioritization of orders on Nasdaq's proposed "Super Montage" is instructive in this regard. ECNs in the United States have objected to the portion of the Super Montage proposal that would include transaction fees in ECN prices, but not broker commissions in broker quotes, for the purposes of the algorithm to display best bid and offers. The current ATS proposal does not call for anything more than the publishing of the transaction fee schedule with the data consolidator, and does not anywhere call for a combined price calculation. This is appropriate, and the companion policy should be amended to clarify that this combined price is not intended to be calculated because of interpretation problems.

Short Selling
National Instrument 23-101 Trading Rules
Part 3

The relaxation of the short selling rules to permit a zero-tick rule, versus a zero-plus-tick rule, is appropriate. However, there still remains an inconsistency with one type of instrument. Futures contracts on stock indexes face no such rule, and can be sold on a downtick. This is an important element of overall risk control and liquidity. It seems appropriate to allow downtick short sales on those exchange traded funds which are direct equivalents of exchange-traded futures contracts on stock indexes. An institutional investor that wishes to sell the Canadian equity market as part of an overall investment strategy would now be forced at times to use futures contracts, depending on the most recent tick. This requirement to use futures may not be cost effective at times, introduces a distortion into the market place and increases the reliance on derivative instruments unnecessarily.

Clarification of wording on ATS trades

There are several instances where the wording of the proposals is unclear as to how some ATS trades would be treated. It is expected that some ATS trades will be in the nature of anonymous cross trades, whereby investors indicate volumes at which they would be prepared to buy and sell at a price which is referenced elsewhere and yet to be determined. For example, in the most popular form of crossing network, crossing orders are collected until a certain deadline during the day, and the matched orders are executed at a price which is the mid-point between the bid and ask prices on the principal market for that security, measured at a randomly selected time within five minutes of the order deadline. Other crossing orders may have conditions on the matching of a list of securities, or may reference closing prices, or may reference average prices, such as the "volume weighted average price" or VWAP. None of these orders generate classic bids and offers for display by a consolidator.

Some examples of wording that require additional clarity include:

National Instrument 21-101 Marketplace Operation
Section 7.1 Pre-trade Information Transparency

This section should clarify that an ATS which is a pure crossing network has no orders to display.

National Instrument 21-101 Marketplace Operation
Section 7.3 Post-trade Information Transparency

Clarity is needed on what and when is "post trade" for a VWAP cross which is arranged prior to market open, or for a closing cross arranged prior to market close.

Companion Policy 21-101CP Marketplace Operation

The existing language does not seem clear enough to exempt crossing orders from these requirements.