

Australia  
**Canada**  
Hong Kong  
Japan  
The Netherlands  
United Kingdom  
United States

May 18, 2001

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 Mr. John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, Box 55  
Toronto, Ontario  
M5H 3S8

Claude St. Pierre, Secretary  
Commission des valeurs mobilières du Québec  
800 Victoria Square  
Stock Exchange Tower  
P.O. Box 246, 22<sup>nd</sup> Floor  
Montreal, Quebec  
H4Z 1G3

Dear Sirs:

**Re: Canadian Securities Administrators Request for Comment 23-401 – Proposed Universal Market Integrity Rules of TSE RS and CDNX**

We at Barclays Global Investors Canada Limited (BGI) thank you for your invitation to comment on the proposed Universal Market Integrity Rules (UMIR). We are keenly interested in ensuring a competitive, fair and orderly Canadian capital market and have followed the ongoing discussion of exchange and ATS regulation closely, including providing comments on the Canadian Securities Administrators' ATS Proposal. In addition, concurrently with our submission to you of these comments, we are submitting comments to Toronto Stock Exchange Regulation Services ("RS") and the Canadian Venture Exchange Inc. ("CDNX"). A copy of our submission to RS and CDNX is attached hereto.

BGI is one of Canada's largest and fastest growing investment managers. We currently manage approximately \$35 billion in assets for Canadian pension funds and other investors. At BGI we believe that it is essential that securities industry participants take every opportunity to present their views and understanding of the industry to regulators. For this reason we continue to be an active participant in discussions between industry participants and with regulators on a wide variety of regulatory

---

**Gerry Rocchi**  
Managing Director/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  
gerry.rocchi@barclaysglobal.com

---

**BARCLAYS GLOBAL INVESTORS**

developments related to the securities industry. We have found the members of the CSA to be interested and attentive parties to these discussions and urge you to continue with the open approach to regulation that has become evident over recent years.

We have considered the UMIR proposal as carefully as possible given the relatively short comment period provided for in your Request for Comments (the “Request”) and our responses to your specific questions are set out below. Section numbers used in this letter refer to the corresponding question numbers in the Request. For a more general discussion of our view of the UMIR Proposal we refer you to our attached submission to RS and CDNX. Prior to turning to these specific points however, we offer three general observations on the scope, approach and likely overall impact of the UMIR Proposal and the manner in which the changes to the CSA Proposal embodied in the UMIR proposal have been presented.

## **GENERAL OBSERVATIONS**

The UMIR approach has the potential to be an effective solution to the quandary of appropriate regulation of ATSs, and we support this direction, subject to some significant and serious concerns with the details of UMIR, as proposed.

The UMIR proposal represents a significant departure from the proposed trading rules published by the CSA. As noted in the Request, recent discussions concerning ATS regulation and trading rules began with the CSA’s July 2, 1999 ATS proposal. Considerable industry discussion and consideration has been given to the CSA’s proposal, including the changes reflected in the July 28, 2000 proposal. The proposal and comment process in respect of the CSA proposal provided sufficient time for due consideration of the proposal and its potential impact. We are concerned that significant changes to the subject matter of this prior dialogue have taken place at this relatively late stage of consideration of this matter and that they were introduced without further prior consultation with industry. Given the magnitude of these changes, we would have hoped that the new approaches and concepts embodied in the UMIR proposal could have been considered earlier in the process and therefore been subject to a more considered review. Thirty days is quite clearly an insufficient period of time to permit due consideration of these issues and we urge RS, CDNX and CSA to extend the period of time during which comments may be submitted for consideration

As reflected in a number of our comments below and in our RS/CDNX submission, the implementation of the UMIR proposal will significantly hamper the formation of alternative trading systems in Canada and will undermine the competitiveness of Canada’s capital markets. Implementation of the UMIR proposal has the potential to drive trading activity in Canadian securities to non-Canadian marketplaces where available, Canadian issuers will feel increasing pressure to cross list their securities on exchanges outside of Canada and non-Canadians interested in Canadian markets will be motivated to use non-Canadian investment managers. It appears that “competitiveness” was not a primary consideration in developing UMIR and that the sole focus was market integrity. The globalization of capital markets makes consideration of competitiveness critical. The original CSA ATS proposal recognized the significant growth in ATS activity in Canada and this reflects the flexibility and efficiency these systems offer in response to investor demand. The overall impact of the UMIR proposal is that alternative trading systems would be required to follow existing rules applicable to exchanges. This would significantly undermine their ability to innovate in response to investor demand and we urge you to consider these anti-competitive issues as seriously as do all market participants.

## RESPONSE TO CSA QUESTIONS

1. *Are the scope and content of the UMI rules appropriate?*

There are at least two significant areas in which the scope and content of the UMIR are inappropriate.

Firstly, while the definition of “Participant” does not expressly include affiliates of registered dealer, we expect that this was an oversight (as otherwise, dealer affiliates that are not dealers themselves but that participate in a marketplace would not be covered by UMIR at all). If our understanding is correct and the definition of Participant is intended to include dealer affiliates, the competitive impact of this approach is significant. Competitors of such dealer affiliates would be permitted to participate in the capital markets subject only to the rules applicable to Non-Dealer Subscribers in respect of ATS activities but such dealer affiliates would be subject to the entire UMIR regime. There is no policy justification for this type of inequity in treatment and non-dealers should be treated equally under trading rules, regardless of whether or not they are affiliated with a dealer. Dealer affiliates do not face additional requirements when transacting in other marketplaces.

Secondly, it is essential that the concept of just and equitable principles be defined. An appropriate definition would define “just and equitable” as the absence of a specifically prescribed list of activities. Expanding the applicability of a vague concept such as “just and equitable” without specifically referable indicia to non-dealer subscribers is extremely non-competitive, will hamper ATS growth and will motivate non-Canadian investors with an interest in Canadian securities to use non-Canadian investment managers. This will significantly undermine the competitiveness of the Canadian investment management industry with a resulting negative impact on the efficiency of Canada’s capital markets.

2. *Should the market regulator regulate non-dealer subscribers directly and subject non-dealer subscribers to some or all of the trading supervision obligations described in section 7.2 of the UMIR and to proficiency requirements?*

Extending regulation of trading supervisory obligations and proficiency requirements to non-dealer ATS participants is a radical departure from existing practice, unprecedented globally, and will significantly hamper the development of ATS with a resulting negative impact on the competitiveness of ATS and the Canadian capital markets.

3. *Should the market regulator require that an ATS be responsible for training its non-dealer subscribers on the applicable rules?*

No. At this time ATS should have no compliance responsibility or authority greater than the current requirements applicable to dealers in respect of client trading activity. An exhaustive regime governing the relationship between dealers and their clients already exists and we are not aware of any evidence that this regime has any material shortcomings. Until such time as the regulatory treatment of ATS as something other than dealers or exchanges is amended, this current regime should continue to apply. The aggressive nature of the rules and the expansive group of parties to whom they would apply makes this approach even less appropriate.

4. *Should the UMIR replace all or part of the CSA Trading Rules that were published for comment at the same time as the July 2000 ATS Proposal?*

If modified to address the concerns identified herein and any additional concerns identified by other parties commenting on the UMIR proposal, it would be appropriate to have the UMIR replace the CSA Trading Rules in the areas that UMIR apply. Multiple layers of trading rules are

unnecessary, cumbersome and dampen competitiveness. If the UMIR are appropriately modified, they should form the single set of trading rules applicable to the Canadian market for equity securities.

5. *Please comment on the extent to which the UMIR are applicable to the debt and derivatives markets and OTC trading.*

Given the magnitude of the potential impact of the UMIR proposal on Canada's equity markets and the short period of time provided to consider and respond to the proposal, we have not been able to appropriately consider the applicability of UMIR to these other markets. The applicability of UMIR to markets other than the equity market (and exchange traded funds) should be the subject of a separate proposal and request for comments. The potential consequences to these markets of expanding UMIR without due consideration are significant and mitigate strongly against taking this step at this time.

6. *Does the concept of a standard trading unit apply to the debt and derivatives market?*

Yes. However, as noted in response to question 5 above, the applicability of UMIR to these other markets should be considered as part of a separate proposal and request for comments.

7. *Please comment on whether it is appropriate for an exemption to be granted from the CSA Trading Rules for manipulation and fraud if a marketplace participant is in compliance with the UMIR.*

Yes. As noted in response to question 4 above, it is unnecessary and inappropriate to have multiple levels of regulation of the same subject matter. However, as noted in that response, the UMIR should be modified to reflect the significant shortcomings identified in this submission and by other market participants prior to implementation.

8. *Should the best execution obligation be subject to "prevailing market conditions"?*

Yes. As noted in our RS/CDNX response, considerations of the trade-off between (a) price and timeliness and (b) price and depth in the market should be considered in determining best execution. For example if an order is placed to buy 100,000 securities and there is a standing sale order for 100,000 securities at \$50 and a standing sale order for 10,000 securities at \$49, it may very well be "worst" execution to trade purchase the 10,000 securities at \$49. The market will react to the transaction driving the trading price up and, by the time the full 100,000 security order has been filled, the average trading price could very well exceed \$50. Similarly, the timeliness of effecting a trade may very often be a relevant consideration in determining the "best execution" of that trade. A concept that looks solely at trade price is not appropriate.

9. *Should there be exceptions to the best execution obligation? If so, what exceptions are appropriate?*

Yes, there should be exceptions to the best execution obligation and certain of these have been identified in the UMIR. In addition to the exceptions identified therein, a further exception should apply to "cross" trades. The factors to be considered in determining best execution do not address certain of the potential advantages to clients of such trades and any investment advisor that implemented such a trade would already be under a fiduciary and statutory obligation to ensure that the trade is in the best interest of the clients. By "cross" trades, we mean trades directed towards a crossing network which is either external to the investment manager or internal to the client flow of an investment manager.

10. *Is the proposed threshold for order exposure of 50 standard trading units appropriate?*

As noted in our response to the CSA proposal, an exception based on number of shares traded is appropriate and the 50 standard trading unit concept appears to address our concern.

11. *Is the proposed threshold for principal trading of 50 standard trading units appropriate?*

See our response to question 10.

12. *Should participants be permitted to implement the audit trail requirement regarding transmission of order information over time? If so, what would be the appropriate phase-in period?*

To the best of our knowledge, no persuasive case has yet been made as to why the audit trail requirement should not be implemented immediately. As noted in our submission on the CSA proposal, the audit trail information is essential to ensuring that the Canadian equity market operates at a level that investors can have confidence in. Unless a persuasive argument can be made that this is not the case then the audit trail requirement should be implemented immediately.

Once again, we thank you for the opportunity to provide comments on the UMIR proposal. This would represent a very significant step in the development of the Canadian markets and, as noted, a significant step in a direction different than that which appeared to be the direction being taken under the CSA Proposal. As noted in our RS/CDNX response, given the relatively short comment period and the magnitude and complexity of the UMIR proposal, we feel the Canadian capital markets would be well served by an extension of the deadline for submitting comments on the proposal and by further industry consultation. If such an extension is granted we would take the opportunity to elaborate on certain of our comments and we would most certainly be happy to participate in any further industry discussions.

If you have any questions in respect of our comments, please contact the undersigned at your convenience.

Sincerely,

Gerry Rocchi  
Managing Director/President