Direct: (416) 869-5596
Fax: (416) 861-0445
E-mail: sromano@stikeman.com

BY FACSIMILE
CONFIDENTIAL

July 22, 2003

Canadian Securities Administrators

c/o Ontario Securities Commission
Cadillac Fairview Tower
Suite 800, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8
Attention: John Stevenson, Secretary

Re: ATS Rules – Proposed Amendments to National Instruments 21-101 and 23-101

I am writing in my personal capacity (and not on behalf of the firm or any client) to comment on the proposed amendments to NIs 21-101 and 23-101, and the associated policies. These comments are in no particular order. First, I wish to commend the CSA on its more flexible approach.

1. The proposed amendments appear to assume, and the request for comments in fact states, that "all marketplaces are required to enter into a contract with a regulation services provider". This is not correct, as, among other things, recognized stock exchanges and recognized QTRSs may in fact choose instead to self-regulate, that is regulate directly. See ss. 7.1(2)(a) and ss. 7.3(2)(a) of NI 23-101. As a result, proposed ss. 7.1(1) and 7.2 of NI 21-101 should be revised to reflect the fact that a marketplace may not have contracted with a regulation services provider, perhaps by deleting the words "with which the marketplace has executed a contract under NI 23-101" or by conforming the language to that used in ss. 7.3 and 7.4 and/or s. 10.1(b)(ii).

2. Proposed ss. 7.1(1) and 7.3(1) of NI 21-101 use the words of displaying orders to "a person or company", whereas proposed ss. 8.1 and 8.2 do not. Perhaps these should be consistent.

3. Proposed ss. 7.1 through 7.4 require the provision of order and trade information to "any information vendor". This forcible supply provision could undercut the value of the data provided, and adversely affect the ability of markets to receive reasonable compensation therefor and to negotiate reasonable contractual terms. Should it not say "an" information vendor, and then there will be more competition? The request for comments suggests that supply to "an" information vendor is all that would be required. Marketplaces may still choose to provide this information to multiple vendors, but won't be obliged to do so, which will assist in preserving their ability to negotiate appropriate terms. Otherwise, I fear that marketplaces may lose a valuable source of revenue or potential revenue.

4. Ss. 7.1 and 7.2 of NI 21-101 require the provision of information "as required by" the information processor or approved information vendor. I think it should instead contemplate that the information to be required should be subject to negotiation to preserve the different competitive positions of different marketplaces, especially given the conflicts of interest to which RS is currently subject. Accordingly, I would also recommend amending the words "as required by" in ss. 7.1(1) and 7.2(1) to read instead "as agreed between them, and, failing agreement, as determined by the Commission". In my view, similar changes should be made to ss. 8.1 and 8.2. At a minimum, the former "reasonableness" requirement should be retained.

5. Section 9.4(2) seems to potentially mandate either total inter-connection or unrestricted access to all persons who wish to participate in a marketplace. If the former, it seems inappropriate given the proposed repeal of s. 9.2. If the latter, it seems inconsistent with s. 6.13(b) and similar provisions, which permit reasonable restrictions on access.

6. Proposed new s. 2.1(1) of CP 21-101 suggests that any dealer that internalizes orders and does not "print" trades on an exchange or QTRS is considered to be a "marketplace" and an "ATS". This seems potentially inconsistent with s. 2.1(5) and other provisions of CP 21-101. In addition, this provision suggests that all dealers should be filing ATS Form 21-101F2s, contracting with Market Regulation Services, etc. for all kinds of transactions, such as prospectus offerings, TSX wide distribution take-on trades, off-market "private agreement" transactions, etc., which does not seem logical and to my knowledge has not occurred. Perhaps this needs to be reconsidered. It seems to raise a lot of very complex issues. I would suggest that instead, consideration be given to an obligation on any such dealer to supply trade information to an information vendor if the

transaction is not otherwise publicly disclosed, unless an exemption is obtained.

7. Will the confidentiality of the forms affect the notice and comment procedure used with respect to applications for recognition by stock exchanges and QTRSs, which may well similarly lead to the disclosure of "intimate" information?

Thank you for the opportunity to comment.

Yours truly,

Simon Romano

SAR / he