STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

DIRECT DIAL : (416) 869-5596
DIRECT FAX : (416) 861-0445
E-MAIL : sromano@stikeman.com

BY TELECOPIER July 15, 2004

Ontario Securities Commission
20 Queen Street West
Suite 1800
Toronto, Ontario M5H 3S8

Attention: Mr. John Stevenson, Secretary

Dear Mr. Stevenson:

Re: Comments of Proposed National Instrument 24-101 and CP 24-101

This letter represents my personal and without prejudice comments (and not those of the firm or any client) with respect to the OSC's proposed National Instrument 24-101 and CP 24-101.

1. Should "counterparty" be defined with reference to principals and agents? i.e. Where a dealer is acting as agent for a client, is the counterparty the client or the dealer?

2. Should the definition of "institutional client" contemplate that the custodian may hold on behalf of clients of a portfolio adviser or other institutional investor, not only on "his, her or its" behalf?

3. Can CDCC be used by Ontario registrants to clear trades, given that it is not recognized and the definition of recognized clearing agency seems to require that?

4. As the TSX, for example, is not recognized in many provinces, how does this affect a non-Ontario dealer or institution subject to the rule?

5. "Clearing or settlement days" should perhaps be a defined term.

6. In section 1.2, it is unclear how this applies if no dealer is involved (i.e. two institutions transact directly), or if there is no separate custodian (i.e. an institution acts as its own custodian), and should the "other side's" dealer and/or custodian, if applicable, be involved also?

7. ATSs, while technically dealers, should presumably be exempted from these rules as they are marketplaces.

8. What happens in sections 1.4, 3.1, 3.3, 5.1 and 5.2 if there is in fact a continuing dispute as to the trade details? "Matching" and settlement may not be possible in those cases, and there should not be an obligation to do so, whether on T or T+1.

9. For an ATS or other marketplace that provides after-hours trading facilities, I suggest that sections 3.1 and 3.3 (and sections 3.5 and 3.6) need to allow for T+1 matching, since the close of business will already have occurred. In addition, T+4 settlement should also be allowed in such cases under section 5.1.

10. Furthermore, to facilitate special terms trades and other negotiated transactions, both sides should by mutual agreement be permitted to do a trade on an other than T+3 basis, and as a result an exemption should be provided from section 5.1 where the parties mutually agree otherwise. Sometimes (in fact, usually) this is necessary in negotiated transactions, among other situations, to deal with various matters (e.g. releases of pledges, board consent, regulatory or third party approvals, etc.).

11. Section 3.5 should also allow simply for a disagreement even in the absence of "incorrectness or incompleteness". There could simply have been a miscommunication, for example.

12. Section 4.2 may preclude beneficial changes and add inflexibility, and how does it apply to existing businesses that would fit within the definition of a "matching service utility"?

13. Should sections 2.1 and 5.2 not also provide an exemption for legended securities?

14. It should be clarified that an ATS is <u>not</u> a matching service utility, given NI 21-101, section 13.1. In addition, clearing bankers should be carved out of this definition.

Thank you for considering these comments.

Yours truly,

Simon Romano

SAR/he