



Newcrest

The Equity Division of TD Securities

September 23, 2005

TD Securities Joint Response to CSA Discussion Paper 23-403 and Market Integrity Notice 2005-021 and 016

To: c/o John Stevenson, Secretary
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About TD Securities - TD Securities Inc. (TDSI) is the securities trading arm of the TD Bank Financial Group. TDSI is one of leading broker-dealers in Canada with an underlying client base of over 3.5 million investors. TD Waterhouse, a separate division of TD Bank Financial Group, is the largest discount brokerage firm in Canada and has over 425 full service investment advisors. TD Newcrest, the institutional equities arm of TDSI, is the number one equity trader in Canada based on dollar value and shares traded.

Thank you for the opportunity to present our thoughts and comments on this vital issue.

TD Securities believes that the primary criteria to be considered in identifying appropriate structural requirements for the Canadian market is fairness to all investors and that the ultimate aim of marketplace regulation should be investor protection. We believe that the primacy of investor protection, along with the fairness and visibility of our current market structure, is a competitive advantage that helps to sustain the Canadian Capital Markets despite their relatively small size. This is the primary reason we favor trade through protection across marketplaces and applying to all types of investors. Our comments in this document are applicable to Market Regulation Services' Request for Comment on the same topic.

For reference purposes, we are following the order of the CSA questions

1. We agree with the CSA's assessment that balancing regulation and competition among all types of marketplaces, recognizing and supporting the role of retail participation, promoting greater order interaction and displayed depth and encouraging innovation are all important issues to be considered. We believe that striking the right balance amongst these has critical longer-term implications for capital formation in Canada.
2. TD Securities is concerned that market fragmentation and the attendant information fragmentation that may accompany it are important issues to consider. We are concerned that allowing trade-throughs will create a situation where there is unequal access to liquidity and information.
3. We would like to limit the discussion to exchange traded securities at this time.
4. TD Securities supports the RS proposal to extend trade-through obligations consistently to dealers and non-dealers alike on an interim basis. We agree that there are situations where there should be a limited ability to trade through. In particular we support the exemptions for portfolio trades and other transactions like Volume Weighted Average Price trades where the execution price is not known at the time of order entry. We also agree with the exclusion of iceberg orders from price protection.
5. TD Securities believes that, unlike the experience in the United States, trade-throughs are a departure from the history of equity trading in Canada. We believe that the imposition of the trade-through obligation is important, as it will maintain the current system of price priority until such time as the full implications of allowing trade-throughs can be assessed.
6. As with Question #3, we would like to limit the discussion to exchange traded securities at this time.
7. Yes. Trade-through protection is particularly important in situations where there are multiple marketplaces trading the same securities. As stated above, TD Securities believes that lack of such protection will have a negative impact on the Canadian capital markets.
8. TD Securities believes that there should be a limit on innovation as a result of an imposition of a trade-through obligation. We feel that any innovation that relies on the disregard for better-priced orders is not desirable, as it will undermine the fundamental goal of fairness to all investors. Innovation that creates regulatory arbitrage should not be allowed.

9. Connection to a marketplace should create an obligation to that marketplace. This obligation is separate from the best price obligation owed by the dealers to their clients.
10. The obligation should be imposed on the participant who has access to the market. Now that plans for a “market integrator” have been abandoned, TD Securities believes that a participant based approach will allow greater flexibility in developing a solution to trade-throughs.
11. As noted above, the imposition of the trade-through obligations on market participants as opposed to marketplaces allows for greater flexibility in addressing the problem. Technology currently exists to route orders between marketplaces and market participants should not be able to avail themselves of this to discharge their obligation to fill better priced orders.
12. No. Technology is not an issue and there are many vendors able to supply data and order routing technology.
13. Execution fees are an important aspect of trade costs and should be taken into account in determining potential trade through obligations. TD Securities believes that this is an area where market forces should be allowed to operate (rather than having fees mandated) in the hope that this will ultimately serve to make all marketplaces more competitive.
14. TD Securities does not believe that there are any other issues to be addressed.
15. The order book is at present highly visible in Canada. TD Securities believes that there should be a depth of book obligation.
16. The visibility of the order book in Canada and the small number of trading venues makes “sweep” orders unnecessary.
17. Order books that are not transparent should be “pegged” to prevent trade-throughs. In the absence of this, market participants should have to satisfy all better priced orders to the depth of the displayed book (e.g. no icebergs).
18. TD Securities feels that for practical reasons it would likely be easier if the obligation were met immediately. We would point out however that market participants should be aware of the extent of their obligations before trading through a better-priced market.
19. TD Securities believes that the obligation should be imposed to the extent of all disclosed volume at the time of trade execution.

20. TD Securities is of the opinion that special terms, for example settlement date, should not be added to an order to artificially differentiate it for the purpose of avoiding better priced orders in a visible marketplace.
21. Yes. As noted previously, we support exemptions from the rule where the price of a trade is generally not known at the time of order entry. This would include portfolio, basis and VWAP trades.
22. No. Block trades are priced with the benefit of information provided by visible orders in marketplaces. There should be an obligation to the providers of this “pricing information”.
23. N/A
24. In fully automated markets like those in Canada there should be no need for “sweep” orders as in the United States where there can be great differences in the level of automation, and hence execution speed amongst marketplaces.
25. TD Securities does not believe that there should be protection for invisible orders in a trading book. This will assist in eliminating much of the uncertainty in estimating what a market participant’s obligation to a marketplace might be.
26. There are currently no manual marketplaces in Canada and we do not anticipate that this will be an issue.
27. TD Securities believes that the primary impact of imposing a trade-through obligation on non-dealers is that there will be uniform standards and obligations for people or organizations that have the same level of access to a marketplace. Dealers are given powers to operate in the marketplace and rightly have obligations to the marketplace imposed on them. It is our opinion that this principle should extend logically to other market participants who are given access. Their level of responsibility should be commensurate with their level of access.
28. TD Securities believes that best execution and best price are very closely linked and will not be in conflict, as the technology currently exists to easily execute orders across marketplaces that trade the same securities.
29. TD Securities believes that “locked” markets are unlikely with proper order routing technology and securities priced in penny increments.

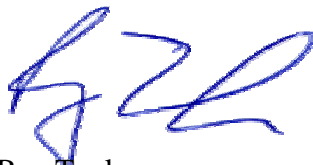
30. TD Securities believes that Marketplaces should be able to create their own trade allocation algorithms provided that they are non-discriminatory and do not disadvantage order flow from other marketplaces.
31. Only marketplaces that feature transparent, open, central limit order books should be able to set the last sale price of a security. Pre and post trade transparency are essential to investor protection.

In closing we would like to once again thank you for the opportunity to participate in this important process. We hope that you will also provide us with an opportunity to present our responses publicly at the forum scheduled for October 14th. We would like to reiterate our support for the interim trade through measures proposed by Market Regulation Services. We feel that this is a necessary step to maintain investor protection and confidence while this critical discussion occurs.

Regards,

A handwritten signature in blue ink, appearing to read 'Peter Haynes'.

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