CIBC World Markets

October 11, 2005

Ontario Securities Commission
c/o John Stevenson, Secretary
20 Queen Street West
Suite 1903, Box 55
Toronto, ON
M5H 3S8

Dear Sirs,

<u>RE: Request for Comments – CSA Discussion Paper 23-403 – Market Structure Developments and Trade-Through Obligations</u>

CIBC World Markets Inc appreciates the opportunity to comment on this CSA discussion paper regarding Market Structure Developments and Trade-Through Obligations.

To sum up;

- We support trade through obligations to ensure that those contributing to transparency and price discovery are not overlooked.
- It is essential that rules and requirements are applied consistently across all marketplaces (Exchanges, ATSs and any alternative marketplace)

We will elaborate below.

1. Market Structure

We agree that innovation is of paramount importance for the continued development of the Canadian Capital markets. However, regulation across all markets must remain fair, consistent and equitable. Care must be taken to ensure that innovative and new markets do not lead to unbalanced regulation, which, in turn, can lead to "regulatory arbitrage". Rules and requirements should not favour one marketplace over another.

2. OTC Trading

We believe that this discussion should be limited to listed securities only.

3. Extension of Trade-Through Obligation

In order to keep trade-through obligations fair and consistent, it is important that the requirements apply equally to every marketplace, and to anyone accessing these marketplaces, including access persons and subscribers. The discussion raises the question of whether the trade-through obligation is an obligation to the client, or an obligation to the market. We feel that the obligation to the client is currently sufficiently addressed through Best Price and Best Execution requirements. (UMIR 5.1, UMIR 5.2).

We believe that the key intent of the Trade-Through obligations discussed in this paper is the obligation owed to the Market and specifically those markets which offer transparency. A key component to this transparency is the existence of limit orders committed to the order book. This contributes to an efficient and effective price discovery mechanism. Arguably, markets that lack transparency would still make use of the price discovery mechanisms offered by the transparent market displays. As these limit orders are essential to price discovery and transparency, it is important that those who are prepared to commit these orders are not overlooked and remain protected.

4. Satisfying the Trade-Through obligation

As discussed earlier in this response, our view is that trade-through protection should only apply to those markets that offer transparency. That obligation belongs to any party with access to any Canadian market. This is contrary to Regulation Services view that the duty is owed only to those marketplaces to which the Participant, Access Person or Subscriber has access. As noted in the discussion paper, limiting the obligation solely to accessible markets creates a gap whereby the obligation to honour trade through obligations could be avoided by simply not having access to transparent markets. (ie. Access persons and subscribers accessing only non-transparent markets directly, and trade transparent markets through a Participant dealer)

The obligation should be determined upon order entry, but provide allowances for rapidly changing quotes ("flickering quotes"). This would help ensure that the requirement remains reasonable and not purely technical in nature.

Trade through protection should extend to the full depth of book where the depth of book is fully transparent.

While a post-matching approach is more complex in potential markets that execute on a matching basis, such as an "upstairs" market, nonetheless they need to nonetheless be subject to the same requirement and obligation. This is essential in order to maintain regulatory consistency.

5. Exemptions from a Trade-Through Obligation

We feel that there are special circumstances when a trade through obligation need not be imposed:

- Special Terms Order – special terms orders should be exempt from the obligation providing that the terms of the order cannot be satisfied through the regular market. Care must be taken to ensure that the rules clearly prohibit the adding of terms to an order for the purpose of avoiding a trade-through obligation
- Non Exposed Orders Quantity – Trade-Through obligation should only be owed to exposed order quantity. Arguably, an order where only part of the order quantity is exposed is less transparent and less involved in the price discovery mechanism and is not entitled to the same protection.

6. Implications of a Trade- Through Obligation

Potentially, one of the largest impacts would be to Access Persons and Subscribers who have not been traditionally subject to similar obligations. It is important to maintain market integrity that alternative markets have consistent obligations. Regardless of whether the responsibility to fill better-priced orders rests with the market, Participant, Access Person or Subscriber, it is important that the requirements are consistent and fair across all marketplaces.

One of the concepts currently being dealt with by the industry is the concept of "Best Execution". The discussion raises the question of whether an imposed trade through obligation is inconsistent with the pursuit of best execution. As mentioned earlier, trade-through protection is largely designed to protect orders that have been committed to a transparent order book. A Dealer, Access Person or Subscriber would still diligently pursue best execution, knowing that best execution is much more than just best price, but must do so while still honouring any marketplace obligations. This is not largely different than today where best execution is pursued, but within the context of market rules and regulations.

Over the past several years the development of the regulatory framework that governs the securities industry in Canada has been focused on ensuring that consistent and fair rules apply equally to all Participants. This was done in part to ensure that as new markets, ATSs and ECNs emerge, they are required to operate under the same rules and requirements. This, in part, was to ensure that the levels of integrity and fairness across entire marketplace remain high and consistent. We must ensure that as rule development continues, we do not allow regulatory imbalances between markets and do not create a marketplace where trading decisions are based on regulatory inconsistencies.

Thank you for the opportunity to submit our comments. Please feel free to contact us should you have any questions in regards to our response.

Regards,

CIBC World Markets Inc.

cc. Anne-Marie Beaudoin, Directrice du secretariat