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Registrar of Securities, Nunavut

Ann-Marie Beaudoin, Directrice du secretariat
Autorite des marches financiers
Tour de la Bourse
800, Square Victoria
C.P. 246, 22e etage
Montreal, Quebec
H4Z1G3

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

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The Canadian Security Traders Association, Inc. is pleased to have this opportunity to respond to the request by the CSA on Trade-Through Obligations.

The Canadian Security Traders Association, Inc. (CSTA), is a professional trade organization that works to improve the ethics, business standards and working environment for members who are engaged in the buying, selling and trading of securities (mainly equities). The Canadian STA represents over 700 traders nationwide in Canada, and is led by Governors from each of three distinct regions. The organization was founded in 2002 to serve as a national voice for our affiliate organizations. The CSTA is also affiliated with the Security Traders Association (U.S.A.), which has 6,000 members globally, making it the largest organization of its kind in the world.

We often comment on industry developments and form opinions on trading issues based on input from our membership. The CSA has used four criteria within their discussion paper in which to address the pertinent issues relevant to Market Structure and Trade-through Obligations.

The first discussion point of "balancing regulation and competition amongst all types of marketplaces" must occur within the reality of the unique nature of the Canadian markets. Our capital markets are predominated by two distinct characteristics; a relative lack of liquidity and by transparency. The Canadian STA believes that we must respect these two characteristics while the CSA attempts to ensure fairness, visibility and to maintain ease of access to our capital markets.

The relative illiquidity of the Canadian markets ensures that wide bid ask spreads can predominate, reminding everyone these spreads represent underlying posted orders within the central limit book. To completely eradicate the validity of this order flow is illogical whether it is from an institutional or retail perspective. This is not meant to imply that regulation should be onerous or costly when if it is required on trade-through; but it does require that we offer all participants a fair and equitable marketplace.

The transparency of the Canadian markets remains a global competitive advantage. We can and will attract order flow to our capital markets when participants, especially on a global basis, find that execution is accessible and relatively easy. This is many times the case for non-North American investors that may only access the Canadian capital markets on an occasional basis. The transparency factor must remain prevalent in all of our minds and might I remind everyone that all traders are “in the business of doing business”. From a practical purpose it would appear “unseemly” for an international money manager to have not received a fill on an order that was displayed within the central limit order book, while stock has traded through the client’s limit.

Within this discussion on the market structure issues and the determinants that should be considered as part of the trade-through obligation, the Canadian STA would like to articulate two fundamental views 1) best execution is not the same as best price 2) best execution has not been clearly defined by any industry parties and is currently viewed by our constituents as a process. From a trading perspective best execution relates to our ability to buy or sell stock subject to the volume, pricing and risk parameters characteristic of that specific name at the exact time of execution. All current participants in the Canadian marketplace are conversant with the time priority rules and that if your volume constraints require you to test price discovery limits outside the current quote then you will find some displacement of volume that must be satisfied. This is a standard and well-understood trading protocol. In many cases the dealing community utilizes their trading capital to facilitate the client’s ultimate volume requests. However our existing trading community is totally conversant with the need to satisfy demand or supply within the central limit order book. Therefore the process of satisfying your ultimate volume, pricing and risk parameters on a stock must ensure that market structure in Canada remains a global competitive advantage. Given that view the Canadian STA maintains that access fees for ATS's must be fair & transparent, with accessibility and speed not becoming impediments to execution (which would be contrary to any definition of best execution) and that liquidity and depth of market are not negatively impacted by the eradication of the strength of the central limit order book. The Canadian STA does however recognize the realities of the cost structure inherent in satisfying trade-through obligations and would state that the onus should be upon the marketplaces to maintain the integrity of trade through. In most cases the buy side is not equipped nor trading any type of proprietary capital, thereby complicating the realities of any trade costs. The cost of maintaining systems to respect the trade through would also not be reasonable or practical at this stage for the buy side constituents.

The second discussion point by the CSA recognizing and supporting the role of the retail participation in the market clearly speaks to the need to maintain the integrity of the central limit order book. Institutional investors clearly conduct the majority of their business on the upstairs markets, while satisfying the supply and demand constraints of the central limit order book when volume and risk parameters deem it appropriate. The Canadian STA views its comments as complimentary and consistent with the protection and improvement of the role of the retail investor.

The CSA objective to "promote greater order interaction and displayed depth" speaks clearly to the need to an evolutionary process in the Canadian capital markets as we address whatever operating realities present themselves due to trade through obligations. When researching the Reg NMS case for trade-through we must not miss a simple yet key difference between our Canadian capital markets and the U.S.A. They actually have volume going through on their ATS's, it is yet to be seen if Canadian market participants will actually demand ongoing services from an ATS sufficient for many to survive profitably. The Canadian capital markets may likely require far fewer alternative market places. Having said that our view remains that increased competition is required in the Canadian capital markets and whether there are 2 or 20 market places eventually operating in Canada we must foster a fair, transparent and accessible market structure. The CSA must also ensure that greater order interaction and displayed depth will occur; this must predominate any of its regulatory actions, but this will never happen with onerous regulatory constraints. Our Canadian capital markets represent our listed corporations well on a global basis because we can offer investors be they domestic, American or International a transparency, ease of access and execution that does garner global interest. Trade-through protection should be imposed where there are multiple marketplaces trading the same security otherwise order depth will disappear, a trader from either the buy side or sell side will not post orders in the central limit order book merely to help their competitors achieve an effective price discovery process, why post a bid or offer if the probability of actually getting execute is lowered while others benefit from your information? That being said given that the Canadian STA adheres to the notion that all marketplace participants should have an obligation and a duty to the markets, if a trade-through obligation is imposed it should be on the market places. The buy side is not equipped at this stage to be addressing the neither costs nor systems issues relevant to all market place participants.

As a means of consolidating the thoughts of the Canadian STA, we would like to advocate the following market structure characteristics if a trade-through obligation is determined:

- The requirement of a data consolidator to improve accessibility and maintain transparency
- Access fees must be eradicated
- That a Full Depth-of-visible book be used, with full functionality for sweep orders.
- That the obligation should be simultaneous with the time of execution of the inferior priced trade versus post trade.
- It should be imposed on all better-priced, pre-existing orders at the time of execution only and only on the visible amount of stock traded at the inferior price.
- Special Terms orders have no standing, therefore should not be subject to the trade-through if it is imposed. (AON, DD, etc.)
- An exemption should be provided for orders for which the price or other material terms cannot be determined on order entry such as VWAP or MOC.

Best execution may not necessarily mean best price. As “best execution” is termed a process, “best price” should also be viewed as an objective and not a finite description. However, best execution and trade-through protection are not necessarily mutually exclusive propositions. If technological links exist between the market places, there is no reason to assume that orders could not be executed efficiently and quickly while maintaining trade-through protection.

The following are our responses to the questions put forward in the discussion paper:

<u>Response to Question 1:</u> The factors or criteria that should be considered in identifying the appropriate structure and requirements for the Canadian market are **fairness**; visibility and access (also see response to question 2).

<u>Response to Question 2:</u> The market structure issues that should be considered as part of the discussion on the trade-through obligation are access to ATS’s and fees, speed, **fairness**, liquidity and depth of market.

<u>Response to Question 3:</u> N/A

<u>Response to Question 4:</u> Both dealers and non-dealers should be subject to the trade-through obligation to the extent of having access to the ATS (Reg NMS applies to all participants).

<u>Response to Question 5:</u> The main difference between the markets is Canada and the U.S. is the U.S. actually has volume going through on their ATSs. It’s yet to be seen if the ATSs in Canada will survive. We are much smaller than the U.S., therefore we don’t believe that there will be a need for many market places here. Issues regarding trade-through obligation still has to be resolved whether there are 2 or 20 market places eventually operating in Canada. There is a significant infrastructure in the U.S. that we don’t have here in Canada.

Response to Question 6: Derivatives should be excluded from the regular market data, as they are not true exchanges of ownership or allow the general marketplace to participate; a derivative trade-through need not to have the same requirements as the general market.

Response to Question 7: Obviously the trade-through protection should be imposed where there are multiple marketplaces trading the same security otherwise why would it be needed?

Response to Question 8: The trade-through obligation would have to be met by a majority of participants in order for competition. This model must also imply fair competition amongst market places.

Response to Question 9: All marketplace participants should have an obligation and a duty to the markets. Non-dealer participants are still trading for their clients; this is the same as if they were acting as agent just like a dealer. It should be the same playing field for all.

Response to Question 10: If a trade-through obligation is imposed it should be on the market places. The buy side is not equipped at this stage to be caught in the cost to all market place participants. This would be prohibitive.

Response to Question 11: N/A

Response to Question 12: Of course the absence of a data consolidator will have great affect on whether and how the trade-through obligation should be imposed.

Response to Question 13: Access fees need to be definitely addressed before imposing a trade-through obligation.

Response to Question 14: N/A

Response to Question 15: The obligation should use a Full Depth-of-book.

Response to Question 16: Yes there should be a solution to deal with sweep orders.

Response to Question 17: This should be restricted to visible orders only. How can you impose on a dealer that they have to satisfy better-priced orders available on other marketplaces if there is no transparency? Yes this should be restricted to visible orders only.

Response to Question 18: If the trade-through obligation is imposed, it should be simultaneously with the time of execution of the inferior priced trade versus after the time of execution or there is an opportunity for “gaming”.

Response to Question 19: It should be imposed on all better-priced, pre-existing orders at the time of execution only and the amount of stock traded at the inferior price.

Response to Question 20: Special Terms orders have no standing, therefore should not be subject to the trade-through if it is imposed. (AON, DD, etc.)

Response to Question 21: Yes an exemption should be provided for orders for which the price or other material terms cannot be determined on order entry such as VWAP or MOC.

Response to Question 22: It should be the same across the board, no matter what the size of the order is. There should not be an exemption for block orders.

Response to Question 23: (See response 22)

Response to Question 24: If a trade-through obligation is imposed, the ability to move the market within the allowable percentage should be allowed. We do not have the same issues as the Americans regarding sweeps.

Response to Question 25: No the trade-through obligation should not be applied to any non-visible portions of a trading book.

Response to Question 26: The rule should be drafted to apply to protect only those orders that are immediate and automatically accessible. We do not have any manual equity marketplaces in Canada and doubt very much there will ever be one again.

Response to Question 27: The impact of imposing a trade-through obligation on non-dealers is cost. The cost incurred by smaller Participating Organizations and Buy-Side investors could be prohibitive and result in an unfair advantage for those with deeper pockets.

Response to Question 28: Best execution may not necessarily mean best price. As “best execution” is termed a process, “best price” should also be viewed as an objective and not a finite description. However, best execution and trade-through protection are not necessarily mutually exclusive propositions. If technological links exist between the market places, there is no reason to assume that orders could not be executed efficiently and quickly while maintaining trade-through protection.

Response to Question 29: If the technological links are in place, we should not have this problem in Canada.

Response to Question 30: Time and price priority should be the same across the board because it’s fair.

Response to Question 31: The last sale price should be the one on the primary exchange. That is where the real volume and price is. Otherwise, it would be similar to pricing an inter-listed stock that trades on both the TSX and NYSE, on the market with the least amount of trades and volume.

Before implementing a Trade-Through Obligation, the CSA should completely understand the industry ramifications and costs relevant to the systems and automation necessary and clearly address issues relevant to access fees. Once market participants have open and efficient access to trade on all market centers on an automated and market neutral basis, competition should ensure that client order flow is executed within the process relevant to best execution. The CSA should utilize an evolutionary process on any adoption of the trade-through obligation basing it upon empirical analysis and evidence from the Canadian capital markets whilst ensuring that fairness, transparency and access encourage greater order flow on a global basis into Canada.

Thank you for the opportunity to comment on these important matters.

Yours sincerely,

On behalf of the Trading Issues Committee

James Beattie
Chairman, CSTA

Nick Savona
Chairman, Trading Issues Committee