

October 26, 2005

VIA COURIER AND EMAIL

Alberta Securities Commission
British Columbia Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission
Registrar of Securities, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Yukon Territory
Registrar of Securities, Northwest Territories
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Dear Sirs & Mesdames:

Re: Request for Comments on Canadian Securities Administrators (“CSA”) Discussion Paper 23-403 – Market Structure Developments and Trade-Through Obligations (the "Discussion Paper")

Re: Request for Comments on Market Regulations Services Inc. (“RS”) Integrity Notice 2005-016 – Interim Provisions Respecting Trade-Through Obligations (the “Proposed Amendments”)

We have reviewed the Discussion Paper and the Proposed Amendments (together referred to as the “Proposals”) and appreciate the opportunity to provide our comments on trade-through obligations. The Proposals are timely and cover aspects of trading that need to be addressed in order to promote a fair and efficient market structure in Canada. We have developed our comments from a high level perspective with an intention to be more principles-based and as such, specific questions raised have not been addressed individually.

By way of background, TD Asset Management Inc. (“TDAM”) is one of Canada’s largest asset managers. As of September 30, 2005, TDAM including its affiliates managed approximately CDN\$ 131 billion for mutual funds, pooled funds and segregated accounts and provided investment advisory services to individual customers, pension funds, corporations, endowments, foundations and high net worth individuals. TDAM managed approximately \$42 billion in retail mutual fund assets on behalf of more than 1.4 million investors at that date. As the manager of these mutual funds we also represent the interests of the retail investors in such funds.

General Viewpoint

TDAM is supportive of initiatives that promote competitive markets, enhance market liquidity and lower frictional costs of the capital markets in Canada. We are motivated by our objective of obtaining best execution for our clients, as part of our fiduciary duty, through the trading we undertake on their behalf.

TDAM, however, would not support a market structure that purports to accommodate competition among multiple marketplaces if it compromises investor protection, fairness, transparency, and market efficiency.

Thoughts on the Trade-Through Obligation

Generally, we believe that a trade-through obligation should be in place where there are multiple marketplaces trading the same security. This belief is not founded in theoretical arguments about market liquidity and the potential to reduce liquidity in the market place if limit orders are routinely bypassed. We believe that to get the best fill for our clients, we would want the ability to pick-up all visible orders that are better priced. However, in the best execution process, price is only one factor. We would be concerned if other factors such as speed and certainty of execution were negatively impacted by a trade-

through obligation. So the question that needs to be dealt with is “*how to apply a trade-through obligation without impacting the ability to achieve best execution*”.

A trade-through obligation should initially be applied to all equity trading occurring on Canadian marketplaces. The issue of whether to consider trade-through obligations for other asset classes such as fixed income and derivatives should be delayed until an optimal solution has been designed for equities. The markets for other asset classes are separate and distinct and operate significantly differently from equities and this needs to be considered in further detail before applying an “equity type” solution.

From an operational viewpoint, TDAM is of the view that a trade-through obligation should be satisfied in the following manner; first, all visible better-priced orders should be executed; then the balance of the inferior-priced orders should be executed. This needs to occur simultaneously. Best execution will not be obtainable if delays are introduced into the process resulting in the inferior order being executed first.

To Whom Should the Trade-Through Obligation Apply?

We believe that applying the trade-through obligation to Access Persons, [as defined in the Universal Market Integrity Rules (“UMIR”)], is not a practical solution for the following reasons:

- As proposed by RS in the Proposed Amendments, applying trade-through obligations to Access Persons will not result in the complete elimination of trade-throughs. If Access Persons sign up with only one Alternative Trading System (“ATS”) and execute orders on that ATS, they could potentially trade-through orders contained on other marketplaces or other ATSs. In this way, Access Persons would be compliant with their trade-through obligation, but trade-throughs would still be occurring in the marketplace. The application of the trade-through obligation in this manner could be seen as compromising investor protection.
- If Access Persons were interested in accessing more than one marketplace, then they would have to purchase or develop technology that would monitor the marketplaces to ensure that they were not inadvertently trading-through better-priced orders. The potential cost of implementing and maintaining such technology to each Access Person would likely be significant and could escalate every time a new liquidity source appeared in the Canadian marketplace. Given the cost involved, we are of the view that several Access Persons may opt to use fewer ATS’ in order to ensure that they do not violate their trade-through obligations. We strongly believe that applying the trade-through obligation to Access Persons could impede the potential success for new Canadian marketplaces and the efficiency of the market in general.
- One also has to consider the regulatory burden involved in applying the trade-through obligations to Access Persons. For example, RS would have oversight over many Access Persons who were not previously regulated by RS.

TDAM is of the view that a trade-through obligation could best be implemented if it were imposed on the marketplaces rather than on Participants, (as defined in UMIR), or Access Persons. In order to achieve this, it should be mandatory for all marketplaces to be electronically integrated. This way, buy or sell orders could be automatically and consistently routed and matched to the best corresponding orders, irrespective of which marketplace the orders originated from and thereby minimizing the need for manual intervention by Participants and Access Persons.

The trade-through obligations of Participants and Access Persons should be limited only to those US marketplaces where Canadian inter-listed stocks are traded.

We believe that competition would continue even if the trade-through obligation were applied to the marketplaces. The marketplaces would differentiate themselves on other factors that go into the trading decision such as: speed, order types, liquidity sources, anonymity, ease of access, and fees or pricing.

To What Level Should the Trade-Through Obligation Apply?

The trade-through obligation should apply to all better-priced orders that are immediately executable using a full depth-of-book approach. The obligation should be limited to those orders visible on the marketplaces at the time of execution. The un-displayed portion of iceberg orders should not be included in the depth-of-book determination.

Should there be any Exemptions to a Trade-Through Obligation?

The ability to opt-out of the general trade-through obligations should not be provided in the trade-through rules. This would defeat the rationale for having such a rule in the first place if certain players or marketplaces were allowed to opt-out of the requirements.

Specific order type exemptions could be provided for in the rules, especially for orders for which price cannot be determined on order entry such as Market on Close and Market on Open orders.

How Should Trade-Through Rules be Applied?

A trade-through obligation imposed on marketplaces should occur at the time of execution. It will be impossible to re-create the market after the fact due to its constantly changing dynamics and thus it would not make sense to have the obligation applied after the fact.

Are Best Execution Obligations and Best Price Obligations the Same?

Defining best execution in the narrow sense of best price fails to recognize the importance of other factors such as size, urgency, market impact, certainty, anonymity that may take precedence over price for certain types of orders for institutional investors.

The Trade Management Guidelines issued by the Chartered Financial Analyst Institute (“CFA”) define best execution for asset managers as “the trading process asset managers apply that seeks to maximize the value of a client’s portfolio within the client’s stated investment objectives and constraints. This definition recognizes that best execution

- is intrinsically tied to portfolio-decision value and cannot be evaluated independently,
- is a prospective, statistical, and qualitative concept that cannot be known with certainty *ex ante*,
- has aspects that may be measured and analyzed over time on an *ex post* basis, even though such measurement on a trade-by-trade basis may not be meaningful in isolation, and
- is interwoven into complicated, repetitive, and continuing practices and relationships.”

As we stated in our response to CSA Concept Paper 23-402 - Best Execution and Soft Dollar Arrangements, it is our view that for Access Persons, best execution is the process of obtaining the maximum value for the client within its constraints, which on an individual order might not be the best price in the market. Any definition of best execution must take this into consideration and should not be based only on the best price.

Conclusion

As stated above, TDAM is supportive of initiatives that promote competitive markets and enhance market liquidity. We are also supportive of regulatory changes that would encourage competition in an integrated manner and trust that the CSA and RS would seriously consider our views stated above when developing the trade-through rules for Canadian markets.

We would be pleased to provide further explanations or submissions regarding the matters raised in this letter and would be more than willing to make ourselves available for further dialogue relating to the Proposals.

Yours truly,

Barbara Palk
President