**TD Newcrest**

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To:
Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Ontario Securities Commission
Prince Edward Island Securities Office
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

X c/o Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
e-mail: jstevenson@osc.gov.on.ca

And to:

Madame Anne-Marie Beaudoin,
Directrice du Secretariat
Autorite des marches financiers
800, square Victoria, 22e etage
C.P. 246, Tour de la Bourse
Montreal, Quebec H4Z 1G3
e-mail: consultation-en-cours@lautorite.qu.ca

And to:

Mr. James E. Twiss
Market Regulation Services Inc.
Suite 900
145 King Street West
Toronto, Ontario M5H 1J8
e-mail: jim.twiss@rs.ca

**RE: Joint Canadian Securities Administrators / Market Regulation Services Inc. Notice on Trade-Through Protection, Best Execution and Access to Marketplaces**

***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.***

We would like to thank you for the opportunity to present our thoughts and comments on these important issues. TD Securities Inc. believes that the ultimate aim of marketplace regulation and rule reform should be investor protection. We believe all investors are best served in a jurisdiction that fosters the principles of innovation & fairness to all investors. Fundamentally we believe that multiple marketplaces with trade through protection on full depth of market for all visible orders will support retail participation, promote greater order interaction and displayed depth, and encourage innovation. Exceptions to this rule should be limited to situations where the price of the trade is not known at the time of order entry. This would include portfolio, basis, and Volume Weighted Average Price Trades.

For reference purposes our responses to the specific questions on which comment was requested have been reproduced before our responses.

*Question 1: In addition to imposing a general obligation on marketplaces to establish, maintain and enforce written policies and procedures to prevent trade-throughs, would it also be necessary to place an obligation on marketplace participants to address trade execution on a foreign market?*

TD Securities believes that the best execution obligation will support the prevention of trade through of better prices in foreign markets. Additionally, arbitrage should keep prices in the US and Canadian markets very close when factoring in execution and settlement costs.

*Question 2: What factors should we consider in developing our cost-benefit analysis for the trade-through proposal?*

TDSI has no comment on this particular question.

*Question 3: Would you like to participate in the cost-benefit analysis by providing your input?*

TDSI has no comment on this particular question.

*Question 4: Should trade-through protection apply only during "regular trading hours"? If so, what is the appropriate definition of "regular trading hours"?*

TDSI believes that as a general rule any market that is open and running a continuous auction, operating normally, with visible quotes should be afforded trade through protection. Markets should be free to set their own trading hours.

*Question 5: Should the consolidated feed (and, by extension, trade-through obligations) be limited to the top five levels? Would another number of levels (for example, top-of-book) be more appropriate for trade-through purposes? What is the impact of the absence of an information processor to provide centralized order and trade information?*

As indicated above, TDSI supports trade through obligations for the full displayed depth of the order book. We believe that an industry led solution will emerge once multiple markets are established that will provide centralized order and trade information.

*Question 6: Should there be a limit on the fees charged on a trade-by-trade basis to access an order on a marketplace for trade-through purposes?*

TDSI believes that with multiple markets there will be competition for volume and that consequently there will be a natural tendency towards lower trade fees. In this case regulation of fees will not be necessary or appropriate. We would like to add that we do not believe that sub-penny pricing of orders should be allowed for continuous market trading so that prices will be more or less comparable across markets.

*Question 7: Should the CSA establish a threshold that would require an ATS to permit access to all groups of marketplace participants? If so, what is the appropriate threshold?*

TDSI believes that Marketplaces should not unduly restrict access and that all categories of marketplace participants should be allowed to trade.

*Question 8: Should it be a requirement that specialized marketplaces not prohibit access to non-members so they can access, through a member (or subscriber), immediately accessible, visible limit orders to satisfy the trade-through obligation?*

- *Should an ATS be required to provide direct order execution access if no subscriber will provide this service?*

  TDSI does not believe that this solution is necessary.

- *Is this solution practical?*

  TDSI does not believe that this is a practical solution.

- *Should there be a certain percentage threshold for specialized marketplaces below which a trade-through obligation would not apply to orders and/or trades on that marketplace?*

  The answer is most emphatically "no". TDSI believes that order routers will solve this problem so that it will be easy to access orders in other marketplaces.

*Question 9: Are there any types of special terms orders that should not be exempt from trade-through obligations?*

TDSI supports the exemption of the order types listed.

*Question 10: Are there current technology tools that would allow monitoring and enforcement of a flickering quote exception?*

TDSI believes that flickering quote exceptions will be difficult to monitor for. We would be in favour of "pattern" based regulation, so that if a participant demonstrated a consistent pattern of abusing the exception, then it would be dealt with accordingly by regulators.

*Question 11: Should the exception only apply for a specified period of time (for example, one second)? If so, what is the appropriate period of time?*

Please see our response to Question 10 above.

*Question 12: Should this exception only be applicable for trades that must occur at a specific marketplace's closing price? Are there any issues of fairness if there is no reciprocal treatment for orders on another marketplace exempting them from having to execute at the closing price in a special facility if that price is better?*

TDSI supports the exemption from trade through obligations of Market on Close orders. For example, the current TSX MOC facility is a call market and the trade price is not known at the time of order entry. We do not believe that reciprocal treatment of orders on other marketplaces is a possibility at this time as there is no practical way of coordinating a closing rotation with another market.

*Question 13: Should a last sale price order facility exception be limited to any residual volume of a trade or should it apply for any amount between the two original parties to a trade? What is the appropriate time limit?*

There should be no special exception for a last sale price order facility that operates during a market's normal trading hours. However we do support the idea of allowing trades to continue at the closing price of a marketplace. Last sale prints on the TSX are common and reflect single stock and portfolio risk transfers agreed to in advance and benchmarked to the close.

*Question 14: Should trade-throughs be allowed in any other circumstances? For example, are there specific types or characteristics of orders that should be subject to an exemption from the trade-through obligation?*

As noted in our response to Question 13, TDSI only supports trade through exemptions for situations where the trade price is not known at the time of order entry.

*Question 15: Are there other considerations that are relevant?*

TDSI believes that all the key elements of best execution, namely: price, speed of execution, certainty of execution, and overall cost of the transaction have been correctly identified.

*Question 16: How does the multiple marketplace environment and broadening the description of best execution impact small dealers?*

TDSI has no comment on this particular question.

*Question 17: Should the best execution obligation be the same for an adviser as a dealer where the adviser retains control over trading decisions or should the focus remain on the performance of the portfolio? Under what circumstances should the best execution obligation be different?*

TDSI has no comment on this particular question.

*Question 18: Are there any other areas of cost or benefit not covered by the CBA?*

TDSI has no comment on this particular question.

*Question 19: Please comment on whether the proposed reporting requirements for marketplaces and dealers would provide useful information. Is there other information that would be useful? Are there differences between the US and Canadian markets that make this information less useful in Canada?*

TDSI believes that the US requirement of broader disclosure is the correct approach and would support similar rules in Canada.

*Question 20: Should trades executed on a foreign market or over-the-counter be included in the data reported by dealers?*

TDSI has no comment on this particular question.

*Question 21: Should dealers report information about orders that are routed due to trade-through obligations?*

TDSI believes that this obligation more properly belongs with marketplaces.

*Question 22: Should information reported by a marketplace include spread-based statistics?*

TDSI believes that this information would be useful to all participants in making decisions on where to route orders.

*Question 23: If securities are traded on only one marketplace, would the information included in the proposed reporting requirements be useful? Is it practical for the requirement to be triggered only once securities are also traded on other marketplaces? Would marketplaces always be in a position to know when this has occurred?*

TDSI believes that the reporting information would not generally be useful in situations where a security is traded on only one marketplace. Given that marketplaces will be competing with one another we think that it would be in a marketplace's best interests to know when a security is or has become interlisted with another marketplace.

*Question 24: Should DMA clients be subject to the same requirements as subscribers before being permitted access to a marketplace?*

TDSI believes that this should not be the case as DMA clients do not presently have a direct contractual arrangement with the ATS. Any requirements should continue to be placed on the actual subscribers, which in the case of a DMA client would be the dealer who has sponsored access to the ATS.

*Question 25: Should the requirements regarding dealer-sponsored participants apply when the products traded are fixed income securities? Derivatives? Why or why not?*

TDSI has no comment on this particular question.

*Question 26: Would your view about the jurisdiction of a regulation services provider (such as RS for ATS subscribers or an exchange for DMA clients) depend on whether it was limited to certain circumstances? For example, if for violations relating to manipulation and fraud, the securities commissions would be the applicable regulatory authorities for enforcement purposes?*

TDSI supports the current structure and believes that the market regulator should not directly regulate clients.

*Question 27: Could the proposed amendments lead dealer-sponsored participants to choose alternative ways to access the market such as using more traditional access (for example, by telephone), using foreign markets (for inter-listed securities) or creating multiple levels of DMA (for example, a DMA client providing access to other persons)?*

TDSI believes that acceptance of the proposed amendments would cause liquidity from outside Canada to largely disappear and create greater inefficiencies in the Canadian capital markets.

*Question 28: Should there be an exemption for foreign clients who are dealer-sponsored participants from the requirements to enter into an agreement with the exchange or regulations services provider? If so, why and under what circumstances?*

TDSI believes that this would create a two-tiered system for clients to access marketplaces and does not support exemptions. As noted above, we believe that the clients who access ATSs directly should assume the level of responsibility that goes with that access, and that clients who access ATSs or exchanges via a dealer sponsored solution should not have a direct contractual relationship with the marketplace in question.

*Question 29: Please provide the advantages and disadvantages of a new category of member of an exchange that would have direct access to exchanges without the involvement of a dealer (assuming clearing and settlement could continue to be through a participant of the clearing agency).*

Further to our comments above, TDSI does not support the creation of a new category of member of an exchange. Dealers and Access Persons are given powers to operate in a marketplace and rightly have obligations to the market imposed upon them. In our opinion this principle should extend to other market participants who are given access so that the level of responsibility is commensurate with the level of access.

In closing we would like to thank you once again for the opportunity to comment on these issues.

Yours truly,

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