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Dear Sirs and Mesdames:

Re: Joint CSA and RS Inc. Notice on Trade-Through Protection, Best Execution, and Access to Marketplaces

ITG Canada Corp. commends the CSA and RS for their efforts to adapt and update rules and regulations to accommodate the new reality of multiple marketplaces and other developments described in the Joint Notices.

ITG Canada Corp. ("ITG Canada") is a specialized brokerage and technology firm that provides innovative technology solutions spanning the entire investment process. Our sophisticated solutions include pre-trade analytics, advanced trade execution technologies and post-trade evaluation services.

ITG Canada participated in and supports the comment letter submitted by the Investment Industry Association of Canada ("IIAC"). The IIAC comment letter represents the views of many IDA members in addition to our own. The comments below are intended to supplement and expand upon comments presented by the IIAC and provide further clarification and discussion on issues where ITG Canada would like to represent our specific views.

General Comments

We agree with many market participants that the preferred structure for equity markets is an integrated one. Specifically, we support linkages between marketplaces for trade through obligations. This approach would be consistent with the recently enacted Reg NMS in the US. We also note that a large portion of the Canadian Market capitalization is inter-listed and many domestic and foreign clients encourage complimentary if not similar market structures in Canada and the US.

We are concerned that with the movement toward global free trade in securities that the Canadian capital markets remain a destination of choice for global asset managers. It is important that our capital markets are structured to foster our business and that the regulatory regime is effective and efficient, as well as consistent with other major markets where we compete for capital. However, we believe, that in no case, the Canadian regulators should compromise market integrity or the protection of investors, big and small.

We will address the three elements contained in the Joint Notice in turn.

Trade-Through Obligations

ITG Canada supports the stated objectives of price discovery, liquidity, competition, innovation, market integrity and fairness and we believe that any proposed rules should take all of these factors into consideration.

The foundation to achieving these objectives with a trade through rule starts with a consolidated feed of market data. Even though many dealers and vendors are currently

working on their own solutions, we suggest that there needs to be one standard sponsored by the regulators prior to implementation of any final trade through rule.

When there are multiple transparent markets, a consolidated feed would even the level of price discovery and provide a common reference price for all investors, participants and vendors. The solutions such as “smart order routers” created by third party vendors and dealers could ensure access by all participants and prevent trade-throughs.

Even with dealer developed systems and the various 3rd party smart routers, we believe that the responsibility should reside with the visible marketplaces to interconnect and allocate orders amongst themselves unless specifically instructed not to by a dealer. Dealers would be free to build additional platforms and systems where they can take on the regulatory responsibility of trade through.

The precedent for an integrated market centered approach exists in the US. We support this approach and urge the Canadian regulators to implement a consistent system. The proposal contained in the Joint Notice, appears to put the responsibility for trade through protection on marketplaces, but seems to permit marketplaces to place that regulatory responsibility back with the dealers. This is not acceptable. There must be a clear and unambiguous assignment of responsibility to the marketplaces.

Visible marketplaces covered by a trade through obligation must also be responsible for ensuring accessibility on a consistent and reliable basis prior to launch. Coordinated and successful industry-wide testing should be a pre-requisite before final approval by the CSA for launch of a visible market or exchange.

CSA Questions:

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?

Our view is that since most Canadian POs are not direct members of any foreign marketplaces, it would not be practical to have this as a regulatory obligation; however it should be an element of any definition for Best Execution. There are also many factors that need to be considered when looking at prices in foreign markets such as access, foreign exchange volatility, currency for settlement (as requested by the client), fees, market structure, nature and conditions place on the order by the client.

A Participant that includes foreign markets in their order routing decisions should have flexibility to include foreign markets that provide additional liquidity without fear of unintentionally trading through a Canadian quote. The Participant should be able to demonstrate that they have taken reasonable steps when making the decision to route an order to a foreign market and historical be able to show that under normal circumstances a trade through of a better priced order would not occur.

In practice, in order to appropriately serve their clients, dealers do consider other markets where an issuer is actively traded. Certainly for Canadian/US interlisted issuers, it is reasonable to expect that a dealer will make every effort to ensure that a better price is not available in the US before trading in Canada, taking into account foreign exchange and access costs. We do not believe it is necessary to implement new regulation, as market forces have, and will continue to adequately address this concern.

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

The cost-benefit analysis should take into account access fees, settlement and clearing fees, as well as the cost of surveillance and monitoring of the trading on each marketplace. The considerable costs that will borne by the CSA and SROs in their efforts to conduct cross market surveillance should not be taken lightly. The regulators would also benefit in the same manner that the dealers would if many of these new services were consolidated at the marketplace level.

In addition, on a macro level, the global costs of a system which is inconsistent with the US should also be factored into the cost-benefit analysis. Having a distinct regulatory structure and unique requirements will present a barrier, and may discourage global investors from investing capital in the Canadian capital markets.

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

ITG Canada would be pleased to participate in the cost-benefit analysis.

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

We believe that it is only appropriate to have a trade through obligation when more than one transparent market is open. We favour the current regular market hours (9:30 am – 4:00 pm Eastern time) as a means to concentrate liquidity to a specific time period. If a market is not open for trading then the participant should not have an obligation to quotes that are visible but not tradeable.

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?

The consolidated feed and trade-through obligations should apply to the entire depth of the visible book. This is essential for compliance with best execution obligations. By enforcing the depth of book, all displayed quotes are protected. Any alternative will result in situations where executions may trade through displayed better prices to the detriment of the clients displaying their limit orders. As a result, clients may get a worse fill than available.

The availability of a consolidated data feed is essential for compliance with the trade-through obligations in the multiple marketplace environment.

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?

In general we believe it is not appropriate to regulate the pricing decisions of marketplaces or market participants. However, since the proposed trade through obligations could force dealers to connect to marketplaces that they not consider relevant for their business model, it is appropriate to ensure that visible marketplaces provide reasonable access to the primary marketplace for trade-though obligations. Market forces will ultimately justify its value and costs associated with subscribing to, and connecting to new visible markets.

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?

Yes, all ATS approvals should be predicated on equal and fair access to all Participating Organizations.

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?*
- *Is this solution practical?*
- *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?*

See above.

9. Are there any types of special terms orders that should not be exempt from trade through obligations?

The exemption of special terms orders (all-or-none, minimum quantity, special settlement, odd lots etc.) is appropriate. The dealers and the industry should provide disclosure where appropriate to investors that placing terms on orders could cause a trade through and as a practice they should be discouraged.

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

We believe that it is impractical to be monitoring and measuring the length of time a quote is displayed in order to determine if it is or was a flickering quote. At the time of order entry all quotes displayed will be considered by traders and order routers. If there is an unintentional trade through that is caused by a "flickering quote" then a dealer should not have a trade-through obligation. Dealers should also be able to demonstrate that their trading policies and procedures are designed to minimize these instances of trade-through caused by "flickering quotes".

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?

See question 10. A specified period of time may be too restrictive if there are system failures or problems with quote vendors.

12. [In respect of an exemption from trade through obligations for after-hours trading sessions at a specific closing price]. 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?

We strongly believe that any trade-through obligations should only apply during regular trading hours. Those participants that wish to leave posted bid or offers and choose to trade in after hours trading sessions should not be subject to the obligations or protections offered by the regulation.

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?

Such an exception should be limited to the volume that is traded during that session. The time period for order entry should be limited and standardized to minimize the occurrences of trade through. We believe that 60 seconds should be sufficient time to make a trading decision to participate in a Single Price Session. We however do not believe that it would be contrary to public interest to extend the prescribed time up to 2 minutes.

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 above, special terms orders should be exempt from prescriptive trade through requirements. Any abuse of this exemption could be captured under UMIR 2.1 "Just and Equitable Principles". In the case of all-or-none and minimum size orders, the trade through obligation should not apply to orders that are already in the special terms book where the trade is triggered by the marketplace algorithm. In such cases there may be an unintentional trade through of orders on another visible marketplace.

Best Execution

We commend the CSA and RS for adopting the broader, more functional concept of best execution, and the focus on the process to achieve best execution, rather than basing compliance on a trade by trade basis.

CSA Questions:

15. Are there other considerations that are relevant?

We agree that Best Execution must be broadly defined to include consideration of multiple factors including price, speed/certainty of execution as well as total costs (explicit and implicit). Best execution must also be considered in light of overall portfolio goals – e.g. if the order is part of long-term accumulation/unwinding strategy, then the context of the order will change based on whether the order is being done at the beginning, middle or end of the program.

We also believe that, without measurement, there can be no meaningful analysis of whether or not Best Execution was achieved. It is fundamental to the concept of Best Execution that execution be measured and analysed against appropriate bench marks. The analysis of implementation shortfall specifically enables managers to measure total costs including opportunity costs and market impact costs.

What is missing from the provided definition is the consideration of risk management. For example, costly trades may be made that are, from a risk point of view, very good trades since they may bring market exposure down, however, viewed in isolation, these trades may appear to be very costly and considered as very bad trades. Understanding the overall goals of the implementation is necessary before assessing the efficacy of the process.

We offer a general definition of Best Execution as: "a set of policies and procedures which govern the management of the trade process to achieve the best result for the client's objectives while managing the costs and risks of implementation of investment decisions."

Best execution policies must be documented as a process to which managers and dealers adhere. There must be specific guidelines as to how they systematically attempt to achieve Best execution for their clients and how they manage the investment process to minimize any potential conflicts of interest

16 How does the multiple marketplace environments and broadening the description of Best Execution impact small dealers?

Small dealers have an equal responsibility and duty to achieve Best Execution on behalf of their clients. In today's multiple market environment, Best Execution is easily

achievable for small dealers since trade access vendors have built solutions to provide smart routing of orders and the small dealers are not required to build costly technology solutions. By using smart routing, small dealers will be equally able to take advantage when better prices are available on alternative. Using of some of these markets may also enable smaller dealers to lower their cost of execution.

Further, many of the systems offered by access vendors provide comprehensive audit trails of order execution so that the dealer is able to objectively analyze the quality of execution.

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?

When an advisor retains control over trading decisions, they have the obligation of Best Execution on behalf of the investor's portfolio. Decisions regarding price and speed/certainty of execution remain important just as they are when the order is being executed by a dealer. When an adviser manages their own trade execution (DMA or Algos), they often use trading technology solutions provided by a dealer. The adviser may not have control over certain aspects of decision making – e.g. how routing decision are made or which executing brokers are used but they should still assure themselves that the dealer providing the trade execution tools has the appropriate infrastructure to enable them to achieve Best execution.

18. Are there any other areas of cost or benefit not covered by the CBA?
The CSA specifically request comment on the proposed reporting for marketplaces and dealers.

The areas of cost/benefit covered by the CBA appear to be comprehensive. Analysis of the costs should take into consideration the costs of implementation (development/data storage) separately from the costs of collecting and maintaining the data. Further, the analysis of these costs should be careful to isolate the specific incremental costs required for this reporting; these costs cannot be attributed to the costs of reporting if the costs are also required for other initiatives – e.g. electronic routing, or audit trail.

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?

The proposed reporting requirements for marketplaces would provide useful information that would enable participants to make decision about how to achieve Best Execution. This information should include information that provides data on average spread on the market (perhaps by sector) and average net change from last price or some other measure of volatility.

There has been little need for this type of information in Canada since issues have traded on a single market. Once there are multiple marketplaces trading the same security, then there would be the same value to this sort of information that participants have found in the US.

The proposed information for dealers would provide their clients with useful information about how that dealer manages execution, and the nature of any relationships that they have that influence their trade routing decisions.

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

Trades executed on a foreign market should be included in the dealer disclosure when there is a relationship between the parties which dictates how orders are routed – e.g. if a dealer routes orders to one US dealer exclusively because they receive reciprocal order flow or payments for order flow. Dealers in Canada should ensure that their routing choices in other markets are consistent with their Best Execution policies.

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

Detailed information about order decisions should not be included at this stage. Detailed information about routing of orders and decisions made in the trade process are more appropriately collected as part of the Electronic order Trail (TREATS) initiative.

22. Should information reported by a marketplace include spread-based statistics?

Information reported by a market place should include spread-based statistics to have any meaningful insight as to quality of execution. These spread statistics are an important element to an assessment of marketplaces.

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?

If securities are traded on only one marketplace then there is some small value to collection of this data but it would have little meaningful application. Therefore, it is not likely that it would be justified in terms of the cost of collection unless it was easily obtainable.

Only when securities are traded on multiple marketplaces, would this data be worthwhile for trading decisions. However, collection of this data from other markets will only provide value when there is sufficient trading volume to provide significant information on which to base an analysis. Considerations should be given to establishing some sort of time period after start-up before a marketplace is required to provide this data and/or setting some volume threshold above which the marketplace must start reporting.

Direct Access

We support the view that it is important to clarify the obligations for marketplaces, dealers and dealer-sponsored participants (DSAs). Although the primary objective "to level the playing field between dealers/participant organizations (collectively, "POs") obligations and client obligations to comply with the trading rules" appears to be reasonable goal, there are several problems with downloading regulation onto clients. In discussions with many of our clients and other dealers the message was clear that the dealers should remain as the "Gatekeepers" to the marketplaces. The dealers are in a better position to develop the systems and technology that are required to adapt to multiple markets and the many changing rules and requirements.

Definition of Dealer-Sponsored Access

In respect of the new definition of "dealer-sponsored access" (DSA), we note that by the use of the terms "electronic connection" and "access its order routing system", the definition could be broadly interpreted to include almost any order that is electronically transmitted to a dealer. This implies that there are two types of orders; the traditional phone, fax and e-mail orders and all other orders that employ consistent technology for transmission to dealers to be rationally considered dealer-sponsored access order flow. Taken literally, this definition could include orders where there may be no trader intervention but clearly not a case of direct access to a marketplace (for example algorithmic trades, program trades, list based trades etc.) PO's should be able to establish policies and procedures that would include filters, order routing logic and supervision as appropriate, on orders that would still be electronic in nature, but would

not attract any requirement for RS to have direct contractual obligations with the end user. We believe it is important to clarify that the rules proposed by the CSA and RS in their current form would only apply to Direct Market trading access by non POs were there was no possible intervention by a PO. This would mean that Direct Market Access would be a new defined term for non PO access to marketplaces (i.e. subscribers to an ATS)

Not withstanding the above comments, ITG Canada supports the decision by the CSA and RS to expand the availability of DSA to IDA Policy 4 clients. Historically with a very strict interpretation of DMA, the existing eligibility criteria are very problematic for some entities that have the appropriate level of sophistication and market knowledge and should have been eligible. TSX policy 2-501 rules extended eligibility to many US entities, however, these rules did not include other jurisdictions with similarly robust regulatory regimes such as UK.

DSA Client Contract with RS

We have a number of concerns with respect to the requirement for DSA clients to sign a contract with the regulation service provider (RS). Although it is beneficial to ensure DSA clients are aware of their obligations and provide a means of enforcing them, the regulators should consider certain issues that may arise as a result of prescribing a direct contract with RS.

The contractual relationship effectively creates a new requirement for clients to be registered with RS.

We note that other jurisdictions have not required DSA clients to enter into direct contracts with SROs (assuming that the merger between the IDA and RS will be successful). We believe that current practice of requiring the DSA agreements to be approved by the marketplace could be amended to require standard form contracts to be reviewed by the dealers SRO. The standard contracts could incorporate representations by the DSA client to comply with applicable marketplace rules. The addition of an obligation to a SRO would imply that the DSA users would gain quasi membership without all of the rights, obligations and costs that apply to the sponsoring dealer. We also believe that since the sponsor is expected to be the member of the various markets where trade through obligations will be enforced, the dealer must be the one held responsible as they ultimately control the access and the technology used by the DSA client.

It should be recognized that in certain circumstances, clients may be governed by Federal Laws or and Act of Parliament and not be permitted to take on this regulatory liability from a SRO (e.g. certain public entities and registered pension plans) and others may not be willing to sign (e.g. international clients). If the Canadian regulatory environment becomes too onerous and given that Canada only represents some 3% of

Global Markets, foreign investors seeking exposure to Canadian securities will access them via interlisted Canadian securities traded on US Markets. It should also be noted that a substantial portion of the Market Cap of Canadian securities currently have upwards of 50% of their trading volume occur in the US and many smaller cap names are quoted on the US OTC Bulletin Board.

If a contractual relationship is imposed, the process and administration relating to these contracts must be clearly defined, as in many cases a DSA client will have multiple brokers and the employees may have access to some marketplaces with one dealer and potentially different access with another dealer.

Aside from the general concerns regarding the requirement for the contractual obligation, we note some specific concerns with its application:

- The capability to comply with the gatekeeper requirement (UMIR 10.16) is not practical if there is no requirement or guidance on what compliance program must be developed to identify items to be report as detailed in UMIR 7.1.

- Section 6 of agreement does not provide any specific language as to qualifications or requirements for training or course approval. It leaves this open ended to the discretion of RS.

- Section 8.3 unreasonably extends RS jurisdiction to client trading representatives for seven years despite the fact that the individuals do not sign any and should not be legally bound by this agreement. This new requirement appears to impose a new requirement by DSA client to renegotiate their own employee contracts.
- Section 4.1, allows for the option of an "employee" to file notices. If the agreement is contested it may be difficult to establish that employee had the authority to bind the Access Person if they are not an Officer, Partner or Director. In turn, that employee should not be able to bind other employees to the contract as noted above.

Training Requirements

The proposed rules require that each DSA client trader and supervisor must complete a prescribed course such as the Traders Training Course. In addition to being impractical, it is the industry's common perception that the current course is out of date and may not be entirely relevant for DSA client regulatory requirements. The current TSX and TSX Venture DMA rules require the dealer to provide training and updates. We believe this is an appropriate way to ensure clients are trained. If the regulators are concerned with the content an application of these programs we suggest standardizing certain

documents/training materials to be used by firms. The regulators could also set a higher standard and provide clearer expectations of the material to be covered by such programs, and provide assistance with issuing notices and regulatory updates designed for DSA clients.

New Obligations for ATSs

We support the proposal that ATSs must develop a compliance program for surveillance of subscribers that are not POs. As discussed above these subscribers would be captured as DMA clients with similar obligations as other POs with compliance reviews of their activities by RS.

CSA Questions

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

On a high level, it is not necessary and is, in fact, undesirable to subject DMA clients to all of the same requirements as subscribers. The effect will be to duplicate systems that exist at the PO level, and impose additional regulatory costs on such clients which would ultimately be passed onto their clients and investing public.

The fact that POs control and develop the technology to access the marketplaces is critical in understanding the market structure and imposing obligations on its participants. Given this reality, the requirements applicable to clients can not be the same as POs, as they cannot be responsible for any technical rule violations caused by systems issues provided by their sponsoring firm. In some cases the DSA client may believe in good faith that they are technically complying with UMIR while a system provided by their vendor or PO sponsor may be dropping or incorrectly adding order markers.

We also note that currently the PO's receive trade desk reviews and regulator audits from RS and the IDA. In addition to identifying deficiencies, these reviews can also provide the benefit of preventing future violations and highlight where policies, procedures, supervision and compliance programs can and should improve before being the target of an enforcement action.

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

There currently no need for the training requirements to apply to over-the-counter products such as fixed income, due to the involvement of an in-house trading desk in such transactions. We however believe that the same DSA regulations and requirements should apply to all listed products (options, futures, debentures and bonds) when they trade on an exchange or ATS, as the same regulatory concerns and potential marketplace abuses exist.

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?

The existing regulatory fragmentation creates confusion and inconsistency. As such, it is appropriate that RS continue to have jurisdiction for market trading infractions by PO's and subsequently all IDA members after the merger. We believe however, that so long as the DSA clients are not full members of the new proposed merged SRO they should fall solely under the jurisdiction of the provincial regulators. In most cases the institutional DSA clients are already registered with the provincial regulators as advisors, and would already be covered by their reviews and compliance programs. It does not make sense to duplicate this requirement and subsequently add additional costs to the industry and ultimately the end investor/general public.

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)?

As noted above, the requirement to sign an agreement with RS may lead some foreign dealer-sponsored participants to find alternative ways to gain, exposure to Canadian securities, likely through the US Markets (Canadian interlisted securities).

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?

We expect that foreign clients will not submit to the proposed additional regulatory liability.

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).

We are concerned, that if available such a category of member would not be subject to the gatekeeper oversight that dealers presently provide. There is a real risk that market integrity could be compromised, unless UMIR is applicable to all members of such an exchange.

Conclusion

It was a very different time when Canada last had multiple exchanges trading the same securities. We recognize that new rules must be developed and regulation must evolve to ensure the protection of all market participants. We however believe it is particularly important during this transitional phase to provide a flexible and adaptive regulatory environment and not entrench prescriptive regulation until there is evidence that current practices and obligations (such as the Best Execution obligation) warrants new prescriptive based rules. The Participants and the Regulators have a common goal and obligation to ensure market integrity which will foster strong, better and more efficient Capital Markets for all participants.

ITGC appreciates the opportunity to comment on these important regulatory initiatives. If you have any questions or comments related to our response, please do not hesitate to contact me.

Yours Truly,

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