BMO Financial Group

January 14, 2009

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Registrar of Securities, Department of Justice, Northwest Territories
Registrar of Securities, Government of Yukon Territory
Registrar of Securities, Legal Registries Division, Department of Justice, Nunavut
Registrar of Securities, Prince Edward Island
Saskatchewan Financial Services Commission
Superintendent of Securities, Newfoundland and Labrador
Ontario Securities Commission

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Re: Notice of Proposed Amendments to National Instrument 21-101 *Marketplace Operation* and National Instrument 23-101 *Trading Rules*

BMO Nesbitt Burns Inc (BMO) welcomes the opportunity to provide comments on the Canadian Securities Administrators (CSA) Notice and Request for Comments on the proposed amendments to NI 21-101 Marketplace Operation and NI 23-101 Trading Rules.

BMO is fully supportive of the CSA's objective of promoting competition, fairness and price discovery in Canada's equity markets and therefore we generally endorse the proposed amendments which promote this objective. BMO is also fully supportive of any initiative which results in the consistent application of regulatory requirements across all marketplace participants.

Below are responses to the specific questions posed in the Request for Comments.

Question 1: Should marketplaces be permitted to pass on the trade-through protection obligation to their marketplace participants? If so, in what circumstances? Please provide comment on the practical implications if this were permitted.

No, marketplaces should not be permitted to pass this obligation on to marketplace participants. We believe a marketplace level rule is the optimal solution as it addresses the shortcomings of the other alternatives while providing marketplaces with sufficient flexibility in terms of how they meet these regulatory obligations. That being said, we believe that all participants owe a duty to the marketplace as a whole therefore this obligation is effectively borne by all participants.

Question 2: What length of time should be considered an "immediate" response by a marketplace to a received order?

We would suggest that current technology allows leading-edge trading venues to transact orders in single digit milliseconds, or even microseconds. As such, any trading venue that is repeatedly taking in excess of 50 milliseconds is adding excessive latency to the entire marketplace.

Question 3: Are any additional exceptions necessary?

We believe the exceptions detailed in the Amendments are appropriate. We also recommend that contingent orders and internal crosses be exempted from the trade-through requirements to facilitate the execution of these types of trades. In particular, contingent orders may be executed at prices which are negotiated outside of the time period in which the trade actually takes place and consequently may not represent the context of the market at the time of execution.

Question 4: Please comment on the various alternatives available to a marketplace to route orders to another marketplace.

We believe that marketplaces should be directly linked. We do not expect a trading venue to rest passive orders on another venue but are content to allow them to use IOC orders to trade against any better-priced orders before resting residual balances into their own book.

Question 5: Should the CSA set an upper limit on fees that can be charged to access an order for trade-through purposes? If so, is it appropriate to reference the minimum price increment described in IIROC Universal Market Integrity Rule 6.1 as this limit?

We agree that marketplaces should be prohibited from establishing excessive fee schedules to take advantage of the trade-through protection regime however we would prefer the adoption of a principals-based approach versus one where regulators establish strict fee caps.

Question 6: Should there be a prohibition against intentionally creating a "locked market"?

Yes, we believe that all marketplace participants, including Access Persons, should be prohibited from intentionally locking markets. Marketplace participants who deliberately lock markets to generate fee rebates are acting contrary to the best interests of other market participants and the marketplace as a whole.

We also believe that marketplaces should make reasonable efforts to prevent locked markets. If a marketplace chooses not to prohibit orders that intentionally lock markets, they should be compelled to route these orders away to other marketplaces in the same manner they will to satisfy better-priced orders on other marketplaces.

An exception to this prohibition should exist for “self help” situations in which one or more marketplaces are unable to respond to market participants’ orders in a timely manner.

Question 7: Should the marketplace statistics focus on units of securities traded instead of orders and number of trades?

We believe that for marketplace statistics to be of any value they must include number of shares (units) traded, number of orders (possibly within a set parameter of the presiding quote) and number of trades. This belief is based on the notion that a marketplace with many orders at or near the NBBO has a very different liquidity profile than a marketplace with fewer orders at or near the NBBO. This information would allow participants to better determine which marketplace meets the needs of a given client or strategy. Furthermore, the order and trade data will allow participants to determine the ‘hit rate’ at each trading venue, enabling smarter trade-routing decisions.

We believe that regulators should attempt to find the middle ground where trading venues make available data to better support informed routing decisions while creating the least possible stress and cost.

Question 8: Should the marketplace statistics require separate reporting on specific order types that would include market orders, intentional crosses, and pre-arranged trades?

We believe that the information listed in Question 7 should be adequate for the moment.

Question 9: Should the focus of the liquidity measures be the number of orders or the cumulative number of shares?

We believe the cumulative numbers of shares, placed passively in the book at or near the best quote, is the most appropriate liquidity measure as it offers the truest picture of tradable liquidity.

Question 10: Would it be useful to have information about partially or fully hidden liquidity that is available on certain marketplaces? If so, what measures of that liquidity would be most informative?

We believe that market participants use the various hidden liquidity order types to passively place tradable orders in a non-visible fashion for a variety of excellent reasons. Making this liquidity more visible, even after the fact, can only result in less liquidity being placed in the book, not more. As such we would be averse to such information being made publically available.

We believe the implementation of the bypass order type will provide significant incentive to market participants to provide as much visible liquidity as possible. Passive liquidity which remains hidden is placed that way for valid reasons.

Question 11: Would it be useful to include reporting similar to the near-the-quote orders required by the SEC in the United States? What price increment away from the quote would be appropriate to use for the Canadian market?

We believe that reporting of orders should only include those orders near-the-quote. Ideally the increment would be structured to consider quotes within 3 times the average bid-offer spread on a given issue e.g. a stock with an average bid-offer spread of 2 cents would consider quotes within 6 cents of the bid or offer.

Question 12: Are statistics regarding average realized and effective spreads useful without a consolidated best bid and offer?

We believe the various arbitrage strategies will ensure that average spreads on each of the trading venues will be very similar and such data will be of little value.

Question 13: Are the time frames used to assess speed and certainty of execution on a marketplace in section 11.1.1 of NI 21-101 appropriate? If not, what time frames should be used?

We believe that most trading venues currently have the ability to effect a trade in single digit milliseconds, or even microseconds. As such, we would like to see smaller sub second increments used. The difference between a venue with an average 50 millisecond turnaround and a 3 millisecond turnaround is increasingly large in today's trading environment.

Question 14: In addition to the proposed reporting requirements for marketplaces, would other information, such as the following, be useful to dealers or advisors to assess best execution:

(a) a breakdown of the information by order size (i.e. 100-499 shares, 500-1999 shares, 2000-4999 shares, 5000 or more);

(b) the proportion of time that a marketplace had orders that were at the best bid or the best ask;

(c) the proportion of trades (in number of shares or number of trades based on our decision) executed inside the best bid and ask price?

We believe that all of these data points would be of value.

Question 15: Do you agree that an information processor should disseminate consolidated trade information along with a feed that contains the best bid and best offer and all orders at all price levels (along with the marketplace identifier/marker)? For practical reasons, should the price levels be limited? If so, to how many levels?

We believe that allowing an information processor to disseminate orders to 10 price levels would be appropriate without adding undue latency to the feed.

We hope you find these comments helpful. If you require clarification or any additional information, please do not hesitate to contact us.

Yours truly,

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