



Asset Management

Kevin LeBlanc, CFA, Chief Operating Officer

TD Asset Management Inc.

Canada Trust Tower

161 Bay Street, 35th Floor

Toronto, Ontario M5J 2T2

T: 416 944 6949 F: 416 308 9916

kevin.leblanc@tdam.com

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Alberta Securities Commission

British Columbia Securities Commission

Manitoba Securities Commission

Autorité des marchés financiers

New Brunswick Securities Commission

Superintendent of Securities, Government Services of Newfoundland and Labrador

Superintendent of Securities, Department of Justice Government of Northwest Territories

Nova Scotia Securities Commission

Superintendent of Securities, Nunavut

Ontario Securities Commission

Superintendent of Securities, Consumer, Corporate and Insurance Services, Office of the Attorney General, Prince Edward Island

Saskatchewan Financial Services Commission

Superintendent of Securities, Yukon

c/o 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

M^{re} Anne-Marie Beaudoin

Corporate Secretary

Autorité des marchés financiers

Tour de la Bourse

800, square Victoria

C.P. 246, 22^e étage

Montréal (Québec) H4Z 1G3

E-mail: consultation-en-cours@lautorite.qc.ca

James Twiss

Vice President, Market Regulation Policy

Investment Industry Regulatory Organization of Canada

Suite 1600, 121 King Street West

Toronto, Ontario

M5H 3T9

E-mail: jtwiss@iiroc.ca



Kevin McCoy
Senior Policy Analyst, Market Regulation Policy
Investment Industry Regulatory Organization of Canada
Suite 1600, 121 King Street West
Toronto, Ontario
M5H 3T9
E-mail: kmccoy@iicroc.ca

Dear Sirs and Mesdames:

Re: Request for Comments on the Joint Canadian Securities Administrators (“CSA”) / Investment Industry Regulatory Organization of Canada (“IIROC”) Position Paper 23-405 – Dark Liquidity in the Canadian Market (“Position Paper”)

We are pleased to submit our response to the request for comments on the Position Paper regarding Dark Liquidity in the Canadian Market.

TD Asset Management Inc. (“TDAM”) is a wholly owned subsidiary of The Toronto-Dominion Bank and is one of Canada’s largest asset managers. As of December 31, 2010, TDAM and its affiliates managed approximately over \$183 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 \$67 billion in mutual fund assets on behalf of more than 1.4 million retail investors as at that date.

Our response is separated into three parts. In the first part, we provide our general comments. In the second part, we respond to certain specific questions raised by the CSA in the Position Paper. The final section summarizes our conclusion.

We are responding in our capacity as an investment adviser.

I. General Comments

As one of the largest asset managers in Canada, TDAM represents the interests of several institutional and individual investors. It is important for large asset managers to have a variety of tools at their disposal, including Dark Pools and Dark Orders, to trade large blocks of securities without information leakage to the marketplace. In this regard, Dark Pools and Dark Orders benefit investors and our markets generally in many important ways such as providing market participants more choice in determining optimal execution strategies and spurring competition among trading venues, which ultimately helps in seeking to lower trading costs.

TDAM also has a strong interest in ensuring that the Canadian securities markets are competitive, efficient in facilitating risk transfer and transparent for the benefit of all market participants. We recognize on the one hand, that Dark Pools and Dark Orders, clearly bring certain benefits to investors that trade in large sizes, but on the other hand, raise concerns that they may impede price discovery and transparency - both important elements of an efficient market structure. However, it is important to recognize that real-time post-trade transparency of Dark Pool and Dark Order executions (which is currently mandatory in Canada) also contributes significantly to the overall price discovery process.

As well, in our view, the likelihood of a significant surge of institutional reliance on Dark Pools to the detriment of the visible market and the price discovery process is low as (i) trading in Dark Pools or using Dark Orders is not always beneficial as it is opportunistic, in that there are no guarantees of execution and these trades involve time-delay related costs; (ii) traders will hesitate to trade in a Dark Pool if price discovery through quotes in the visible markets is questionable; and (iii) portfolio managers behind the trading decisions have different strategies – in many instances, they would want to trade aggressively to seek an exposure and are willing to incur a higher market impact cost. Such orders are more likely to be traded on a visible market seeking liquidity and crossing spreads, where appropriate. After all, best execution for an investment manager is not only about achieving the best price; it also includes maximizing the embedded value of the manager's investment ideas by minimizing overall trading costs.

On this note, although the Canadian market structure has become more complex as part of its evolution over the last several years, it is important to recognize that investors have experienced lower spreads, increasing volumes, and lower volatility, which has led to an overall decline in trading costs in Canada, as has been noted in several research publications, including the July 2010 publication by the Investment Technology Group on the Canadian Market.¹

Therefore, we believe that any new regulations affecting Dark Liquidity should be carefully considered and implemented only if it is clear that Dark Liquidity inhibits the overall functioning of the markets in a material and quantifiable manner. In the event that any amendments to existing legislation are proposed, these should be principles-based, striking a healthy balance between price and liquidity discovery, as any prescriptive rules could result in significant unintended consequences.

II. Specific Questions in the Position Paper

Question 1: Under what circumstances should Dark Pools or marketplaces that offer Dark Orders be exempted from the requirements of pre-trade transparency under NI 21-101?

¹ http://www.itg.com/news_events/papers/ITG-Canada-Market-Microstructure-Q2-2010.pdf

The Position Paper provides the current CSA and IIROC view on this topic, which is that exemptions to the pre-trade transparency requirements should only be available where an order meets or exceeds a certain minimum size. In our view, there should not be any minimum size requirements to post Dark Orders because it could result in significant unintended consequences, some of which are detailed below.

- (i) Risk of information leakage: The minimum size threshold for posting limit orders increases the potential for other participants trading actively in smaller size (in particular, professional traders who seek to profit from information regarding large trading intentions) to become alerted to potentially large sized orders being resident in a Dark Pool. Such information leakage could result in these participants trading ahead and moving prices against the large orders. Where a minimum size threshold is not in play, the risk of such information leakage is reduced.
- (ii) Lower overall liquidity in the marketplace: Due to the significant risk of information leakage from minimum size parameters, large orders will likely remain on the institutional trading desk without being exposed to the market in any shape or form for a longer period of time, which will not only increase trading costs related to the delay, but also reduce overall liquidity in the marketplace.
- (iii) Reduced fills for retail orders in Dark Pools: Due to the significant risk of information leakage from minimum size parameters, Dark Orders will likely specify higher minimum fill requirements, which will cut opportunities out for smaller retail-type order flow from interacting with Dark Orders and achieving any potential price improvement.
- (iv) Liquidity migration to other jurisdictions: Any new regulation related to Dark Liquidity should be considered in tandem with other international jurisdictions. If not, it may lead to the risk of regulatory arbitrage and liquidity migrating to other markets, especially in the case of inter-listed securities.

Investors and providers of Dark Pools and Dark Orders should have the ability to determine the minimum size parameters when optimizing execution strategies and positioning offerings to the marketplace, respectively. The structure of the market should be primarily driven by market forces based on the needs of market participants, and should not be limited prescriptively by regulation. Furthermore, real-time post-trade reporting of Dark Pool and Dark Order executions does contribute to price discovery in the overall marketplace.

We believe that new regulations respecting Dark Pools and Dark Orders should not be implemented at this time until empirical evidence is presented demonstrating any negative effects created by the use of Dark Pools and Dark Orders on the Canadian

market. As well, any new regulation in this regard should be considered along with other related market structure issues such as broker internalization and broker preferencing.

Question 2: Should Dark Orders be required to provide meaningful price improvement over the national best bid or best offer (“NBBO”), and under what circumstances?

We support the proposal that Dark Orders meeting a minimum size threshold should not be required to provide any price improvement over the NBBO. A meaningful price improvement should be required in all other circumstances.

Question 3: Should visible (lit) orders have priority over Dark Orders at the same price on the same marketplace?

We support the proposal that visible orders on a marketplace should execute before Dark Orders at the same price on the same marketplace on the basis that an exemption is available where two Dark Orders can be executed at that price. We believe this will encourage posting of limit orders on the visible markets promoting price-discovery, while allowing Dark Orders to interact with each other without significant hindrance. However, regulatory clarification is required in the application of this rule where the same marketplace operator has more than one order book.

Question 4: What is a “meaningful” level of price improvement?

We generally support the proposal that ‘meaningful price improvement’ means that the price is improved over the NBBO by a minimum of one trading increment as defined in the Universal Market Integrity Rules (“UMIR”), except where the NBBO spread is already at the minimum tick, in which case, ‘meaningful price improvement’ would be at the mid-point of the spread. However, an unintended consequence that needs to be carefully considered is whether this would provide greater impetus for active orders that would otherwise be routed to a visible market, to be routed through Dark Pools in seeking to realize the meaningful price improvement, which would discourage posting of limit orders on the visible markets.

III. Conclusion

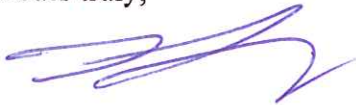
We commend the CSA and IIROC for addressing the important market structure issues outlined in the Position Paper. In our view, Dark Pools generally benefit investors by reducing trading costs, providing additional trade execution alternatives, and encouraging innovation and competition among trading venues. At this point, there is no evidence of which we are aware, of any systemic risk to the market on account of Dark Pools or Dark Orders. Absent any substantive evidence, we urge the CSA and IIROC to take a deliberate and measured approach to regulating Dark Pools and Dark Orders as otherwise, unintended consequences could fundamentally alter or potentially eliminate the Dark Pool alternatives. Dark Liquidity should be permitted to play an important role

in balancing the price and liquidity discovery process, as well as meeting specific investor needs.

In addition, we would welcome transparency on how the Dark Pools or Dark Orders operate. As presented in our comment letter on this topic dated December 18, 2009, we recommend the introduction of a *Simplified Standard Client Disclosure* document for all Dark Pools and marketplaces that offer Dark Order types. We believe such disclosure would enhance a client's understanding and improve the effectiveness and efficiency of the due diligence process, leading to more informed decisions in the marketplace.

We would be pleased to provide any further explanations or submissions with respect to matters described above and would make ourselves available for further discussion.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Kevin LeBlanc', with a stylized flourish at the end.

Kevin LeBlanc, CFA
Chief Operating Officer