

Goldman Sachs Canada Inc. | Royal Trust Tower | 77 King Street West | Suite 3400, P.O. Box 38
Toronto Dominion Centre | Toronto, Ontario | Canada M5K 1B7
Tel. 416 343 8900

**Goldman
Sachs**

January 18, 2011

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

and

M^{re} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

Re: Joint CSA/IIROC Position Paper 23-405 – Dark Liquidity in the Canadian Market

Ladies and Gentlemen:

Goldman Sachs Canada Inc. and Goldman Sachs Execution & Clearing, L.P. (together, “Goldman Sachs”) welcome the opportunity to provide the Canadian Securities Administrators

("CSA") and the Investment Industry Regulatory Organization of Canada ("IIROC" and, together with the CSA, the "Regulators") with comments on Joint CSA/IIROC Position Paper 23-405 – Dark Liquidity in the Canadian Market (the "Position Paper"). We believe that an objective of regulatory initiatives should be to ensure that investors and other market participants have the necessary information, tools and flexibility to trade quickly and efficiently through the exercise of their own judgment, including having access to both non-displayed liquidity and displayed liquidity. Maintaining this objective is critical to ensuring that the Canadian equity market continues to perform in a fair, efficient and orderly fashion. In this regard, we appreciate and welcome the efforts of the Regulators to explore the impact of non-displayed liquidity in the Canadian market.

For consistency, where not otherwise defined herein, we have used the same capitalized terms in this letter as are used and defined in the Position Paper.

I. Foster Competition, Investor Choice and Innovation in the Canadian Marketplace

A regulatory framework that encourages access by new participants, competition between marketplaces as well as innovations in order types, matching logic and pricing models, ultimately benefits all participants. Implementing the proposals in the Position Paper would limit the ability of existing and new marketplaces to offer such new features and would restrict innovation and competition between marketplaces, since the only basis for differentiation between orders submitted to displayed markets versus Dark Pools or Dark Orders offered by displayed marketplaces would be in the fees charged to subscribers.¹ Any investor who chooses to enter a non-displayed order in any marketplace foregoes trade-through protection today. Accordingly, we believe that, if a particular marketplace achieves significant market share, it is because participants perceive that there is value to be gained from the features offered by that marketplace, whether in the form of best execution, size discovery, lower trading fees or otherwise, that outweighs the disadvantages.

In our view, the minimum size threshold and the meaningful price improvement requirement for Dark Orders that do not meet the minimum size threshold would have the effect of decreasing options available to investors for executing their investment strategies and decreasing competition and innovation amongst marketplaces. Accordingly, while we support the Regulators' efforts to update and adapt the current regulatory framework relating to marketplaces for non-displayed liquidity and other alternative trading systems, we do not support the proposal to create a minimum size threshold for Dark Orders. Similarly, we believe that all non-displayed liquidity should be permitted to trade at or within the NBBO, irrespective of size. All investors and marketplace participants should have the opportunity to interact with all available liquidity, including non-displayed liquidity, at or within the NBBO if they so choose.

Further, given the number of interlisted securities (over 160 issuers listed on exchanges in both Canada and the United States) and the significance of the volume of trading in both markets of such interlisted securities, we believe that the Regulators should consider the potential consequences of the proposals in the Position Paper if implemented in Canada without similar requirements being implemented in the United States. In those circumstances, trading in the Canadian marketplace could become less attractive to certain market participants and create an imbalance in the competitive

¹ One of the original stated objectives in the original release of the current trading and marketplace rules was to foster innovation and competition and let competitive forces drive the evolution of market structure. See the July 2, 1999 release of the Alternative Trading Rules Proposal, (1999) 22 OSCB (ATS Supp), at page 28, in which the CSA stated that the regulator should not try to define the perfect market structure but should allow healthy competition among participants to foster innovative developments that will benefit investors.

landscape. For example, when the Canadian marketplaces had to compete for inter-listed trading volume with U.S. marketplaces that were not subject to a comparable “tick” rule for short sales after it had been repealed in the U.S., amendments to the UMIR were made to level the playing field for Canadian marketplaces.

II. Acknowledging the Benefits of Both Displayed and Non-Displayed Liquidity

Consistent with previous comments made by GSEC and its U.S. affiliate, Goldman, Sachs & Co., to the U.S. Securities and Exchange Commission (“SEC”) relating to the benefits of displayed and non-displayed liquidity², we emphasize here that the mere existence of non-displayed liquidity should not be viewed as inherently disadvantaging displayed liquidity. As the Regulators have previously noted, although the emergence of electronic Dark Pools is new in Canada, the existence of non-displayed pools of liquidity is not, since the “upstairs market” existed as a non-displayed “matching” venue for listed securities.³ Based on empirical evidence to date, the emergence of Dark Pools as a significant source of liquidity has not been at the expense of displayed liquidity. Rather, the emergence of Dark Pools reflects an overall evolution and expansion in trading venues supported by numerous developments over the last several years, including the adoption of trading and marketplace rules in Canada, amendments to those rules, and technology advancements, which have lowered barriers to entry, fostered innovation and competition, and lowered overall trading costs.

Indeed, investors and other market participants always have treated displayed liquidity and non-displayed liquidity as valuable options to choose from in their efforts to seek best execution and have seamlessly moved between venues offering both types of liquidity. As noted in the Goldman Sachs U.S. Comment Letter, displayed liquidity has traditionally had the advantages of establishing a reference price and increasing certainty of execution by attracting contra-side trading interest. Recent regulatory and market structure changes in Canada have added further benefits to displayed liquidity, including by changing trade-through protection from a dealer obligation to a marketplace obligation. Non-displayed liquidity, on the other hand, has the advantages of reducing market impact and increasing the potential for size improvement. These benefits apply not only to large size orders, but also small size orders for less liquid securities and small orders that are part of a trading strategy involving execution of a larger “parent” order over time. Based on the U.S. experience, investors and other market participants have long exercised their judgment in balancing these different benefits, shifting their level of interaction with the market from more passive (non-displayed) to aggressive (displayed) and vice versa as market conditions change.

Non-displayed liquidity also should not be viewed as detracting from the price discovery process. Price discovery does not occur only through displayed quotations, but also through last sale reporting, indications of interest and other mechanisms that provide information about supply and demand. Investors and other market participants use all of these mechanisms to determine the prices at which to buy and sell. Accordingly, in our view, the value of non-displayed liquidity only can be evaluated accurately by taking all of these mechanisms into consideration. Viewed from this broader perspective, it is clear that displayed and non-displayed liquidity each make important contributions to price discovery.

² See letter to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, from Greg Tusar, Managing Director, Goldman Sachs Execution & Clearing, L.P., and Matthew Lavicka, Managing Director, Goldman, Sachs & Co., February 17, 2010, available at <http://www.sec.gov/comments/s7-27-09/s72709-48.pdf> (“Goldman Sachs U.S. Comment Letter”).

³ See Joint CSA/IIROC Consultation Paper 23-404 – Dark Pools, Dark Orders, and Other Developments in Market Structure in Canada, (2009) 32 OSCB 7878.

III. Limiting the Proliferation of Non-Displayed Orders

Some concern was expressed in the Position Paper for the proliferation of non-displayed liquidity, which could have a negative impact on price discovery and the availability of visible liquidity. In our opinion, such concern is not justified for lack of empirical evidence. Alternative trading systems operating as Dark Pools or marketplaces that accept Dark Orders only have been active in Canada for a little over two years and have not captured a significant portion of executed volume from displayed marketplaces. There is no statistical evidence suggesting that investors are likely to skew their order routing practices favoring non-displayed venues simply because they continue to be given a choice to do so.


That said, to the extent the Regulators are concerned that non-displayed liquidity will increase in use, and therefore negatively impact price discovery and available visible liquidity, we suggest that consideration be given for imposing pre-trade price transparency requirements on an individual marketplace that provides access to non-displayed liquidity if the market share of that marketplace were to exceed a certain threshold of overall market share. This would continue to allow for innovation and competition since marketplaces would be free to offer differentiating features that provide investors with greater choice, but would impose limits on the market share that those venues would be able to capture from doing so without triggering pre-trade transparency.

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Goldman Sachs appreciates the opportunity to comment on the Position Paper and looks forward to working with the Regulators on these issues. We would be pleased to discuss any of the comments or recommendations in this letter with the staff of the Regulators in more detail. Please feel free to contact the undersigned with any questions.

Sincerely,



John P. Curtin Jr.
Chairman and Chief Executive Officer
Goldman Sachs Canada Inc.

Greg Tusar
Managing Director
Goldman Sachs Execution & Clearing, L.P.