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July 8, 2011

Dear Mdme. Beaudoin and Mr. Stevenson:

**Re: Proposed National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (the “Proposed Instrument”)**

Thank you for the opportunity to comment on the Proposed Instrument 23-103 (“Proposed Instrument”).

TriAct (a wholly-owned subsidiary of ITG Canada Corp.) is an Alternative Trading System that operates MATCH Now<sup>SM</sup>, Canada’s leading dark pool for Canadian listed securities. MATCH Now is a broker-neutral, fully confidential trading book where order information is not visible to other traders, and buy and sell orders are matched using a combination of frequent call matches and continuous execution opportunities.

Overall, we support the initiative to move the rules relating to electronic access to marketplaces under the CSA umbrella as a National Instrument, and agree that a more uniform approach from the CSA ensures equal and fair application across multiple markets. Below we provide further commentary on the Proposed Instrument.

### **Scope of the Rule**

The proposed rule appears to limit its application to “all electronic trading” which implies that there would be some trading that is excluded from this definition. Since all equity marketplaces in Canada are fully electronic books with only electronic order entry and matching, we are unclear as to what type of trading would be exempt from this rule. In an environment where there are multiple protected markets, an electronic order router is essential to compliance with the regulatory requirements and best execution. Could you please provide more details about what types of trading would be exempt and why they would not need some or all of the proposed controls and requirements.

## **Requirements Applicable to Marketplace Participants**

### **Risk Management and Supervisory Controls, Policies and Procedures (the “Policies and Procedures”)**

The proposed controls and requirements appear to be appropriate as minimum standards for electronic orders routed to marketplaces. It should be noted that many Canadian dealers use third-party vendors for some or all of the technology required for trading, so there should be a discussion in the companion policy on outsourcing these controls and requirements.

### **Allocation of Controls, Policies and Procedures**

As marketplaces proliferate and the costs to connect and maintain the technology to ensure best execution becomes more expensive, we do not believe the regulators should increase restrictions or barriers for investment dealers to outsource their trading requirements to other regulated participant dealers. We think the Proposed Instrument should not set a policy approach where the outsourcing of trading be constrained to “certain limited situations”. Section 4 provides significant burden in addition to the fact that both parties are regulated and the executing party regularly undergoes IIROC Trading Desk Reviews. We would suggest that this section be drafted as a principle-based outsourcing rule. For each situation the scope of the services would be unique and would require its own relevant policies and procedures.

## **Requirements Applicable Providing Direct Electronic Access**

### **Provision of Direct Electronic Access**

We recommend that the CSA review the full impact and potential unintended consequences of restricting DEA to a very limited group as defined in the Proposed Instrument. Specifically, we believe that foreign affiliates of Canadian Investment Dealers (including those affiliates that may be registered as exempt market dealers) should be permitted to have DEA to Canadian Marketplaces so long as they are sponsored by their Canadian affiliate.

We also support allowing Participant Dealers to determine if a potential client should be permitted to have DEA to Canadian Marketplaces. With the broad acceptance of order execution brokers (discount brokers) offering more sophisticated tools to retail investors, it only makes sense that sophisticated investors, such as former registered traders or floors brokers, should have access to the best DEA technology available to continue to apply their skills in investing and trading to earn a living. The Participant Dealers will, in turn, need to develop appropriate risk controls and supervision systems to monitor this activity.

### **Written Agreement**

In principle, we support the requirements outlined in the proposed instrument, but have reservations when regulators are too prescriptive in the terms and conditions of a commercial contract. We suggest that this section be moved into the companion policy and be treated as guidance and not prescriptive requirements.

### **Training for a DEA Client**

We agree with the new approach taken in the Proposed Instrument.

### **DEA Client Identifier**

Although we agree that each DEA client should have their own trading identifier(s), we do not see a business reason for marketplaces to know the identity of the DEA clients. The marketplaces should only be collecting information about their direct clients, subscribers or members – which in most cases would only be participant dealers. The marketplaces have no connection with the underlying clients to ensure or verify the integrity of the information. In addition, it is unclear how the privacy legislation would apply to this requirement and may put the participant dealers at risk as they share private information with third parties. IIROC should source the underlying client identity from the participant dealer as part of their regulatory entitlements.

#### Trading by DEA Clients

As noted above in our comments relating to restricting access, we believe the CSA should allow participant dealers to have flexibility with their DEA business models as long as they demonstrate that they have the appropriate risk controls outlined in the Proposed Instrument.

#### **Specific Requirements Applicable to Marketplaces**

Although we agree with the additional requirements proposed, we have some concerns with regulators setting standardized thresholds across all marketplaces. In particular, the application of a threshold that makes sense for a lit marketplace may not make sense or be the appropriate size for a dark pool. We believe that lit and dark orders may require different types of risk controls. The proposed instrument should include language that allows for alternatives other than force participants to submit an application for an exemption. Please note that this suggestion does not diminish our support for a standardized approach to industry wide regulatory halts, such as a single-stock circuit breakers.

#### Clearly Erroneous Trades

We believe the cancellation of clearly erroneous trades should always be at the direction of the regulation service provider and not at the discretion of a marketplace.

#### Effective Date

We believe that some of the proposals may require significant technological development and the purchase of new systems, and therefore recommend that the CSA conduct a staged roll-out based on consultation with all relevant industry stakeholders.

Thank you for the opportunity to comment, and if you have any questions, please do not hesitate to contact me.

Sincerely,

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