

BY EMAIL

July 21, 2011

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission
Saskatchewan Financial Services Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut
Superintendent of Securities, Prince Edward Island
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^e Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C.P. 246, tour de la Bourse
Montréal, QC H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

Dear Mesdames/Sirs:

**RE: PROPOSED NATIONAL INSTRUMENT 23-103 *Electronic Trading and Direct
Electronic Access to Marketplaces* ("NI 23-103")**

We appreciate the opportunity to comment on the CSA's Notice of Proposed National Instrument 23-103, dated April 8, 2011.

Jitneytrade Inc. is an agency broker that has retail, institutional, professional trader, direct market and sponsored access clients. In an environment where global market regulation is becoming increasingly harmonized, it is important to not only take specific national considerations into account when considering new regulation, but to fall in step with international standards in order to both avoid regulatory arbitrage and maintain a high reputational standard. That being said, first and foremost, we would like to commend the CSA for carefully considering the international standards set out by the International Organization of Securities Commissions' (IOSCO) *Principles for Direct Electronic Access to Markets*, the US Security and Exchange Commission's Rule 15c3-5, and the European Commission's *Review of the Markets in Financial Instruments Directive* (MiFID) in order to formulate truly global standards for Canada. Currently, under IROC's Universal Market Integrity Rules (UMIR), many of the proposed rules for Direct Electronic Access (DEA) clients can be found in principal. Any market participant who has been following these guidelines should not find the CSA's new proposals overly onerous, Jitney being among them. That being said, there are three areas in particular that Jitney would like to comment on with respect to the current proposal: third party technology independence, DEA client identifiers and individual DEA permission.

Third Party Technology Independence

*"We note that under the Proposed Rule, a marketplace participant would be able use the technology of a third party when implementing its risk management or supervisory controls, policies and procedures as long as the third party providing such services **is independent of any DEA client** of the marketplace participant and the marketplace participant is able to directly and exclusively manage the controls, policies and procedures including the setting and adjustment of filter limits."*

This caveat has many unintended business consequences and in our view would not strengthen the risk mitigation that the CSA is trying to achieve. Most DEA clients who are also HFTs have spent exorbitant capital on their technical systems, whether it be for order entry, latency sensitivity or for risk management purposes. With the recent SEC Rule 15c3-5, these same entities have developed sophisticated systems to address the same regulations being discussed in Canada. With the lag time that has passed in the US in finalizing its rule, the capabilities are already available and easily applicable to the Canadian capital markets. Yet if that entity is a market participant's DEA client, and it hasn't set up a separate company under which to license the software, then the market participant cannot use that system, even if it has complete control over it. It also disallows the DEA client from using a system which may in fact be the fastest and most comprehensive among its competitors and which fulfills all the client's/market participants' and regulator's requirements. Further, all of the market participant's competitors are able to license this software and offer it to their own clients – who are also competitors to the DEA client. The market participant is effectively being penalized for having a sophisticated client with top rate technology. The DEA client is being penalized for having a sophisticated system which all its competitors may then have access to but they themselves cannot use.

The consequence of this inability to utilize their own systems will force DEA clients to become market participants themselves in the Canadian capital markets which directly eliminates current revenue streams from Canadian broker dealers as their services will no longer be required and more importantly,

still has the end client participating in the Canadian capital markets using their own risk management system. There is no indication that technology independence from DEA clients has any net ability in strengthening risk controls as long as the market participant retains complete control over it.

DEA Client Identifiers

*A participant dealer that assigns a DEA client identifier pursuant to subsection (1) must immediately provide the DEA client identifier **and the associated client name to:***

(a) all regulation services providers monitoring trading;

(b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client has access; and

(c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Instrument and that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client has access.

The ultimate responsibility for a trade lies with the market participant whose number is utilized. The DEA clients that stand behind that market participant are differentiated by their trader ids at each marketplace. There is no regulatory reason for the marketplace to receive the client name associated with that trader id. Clients' names are a matter of competitive advantage and are highly confidential. We do not believe that there are any circumstances, even under the assurance of strict confidentiality, that the marketplaces should, or need to, receive this information. With the regulators, on the other hand, competition is not a concern, but the same principal still applies. IIROC knows who the market participant is. If they request the information on the trader id than the market participant will provide it for them. Since they do not have jurisdiction over the end client, there is no foreseeable reason to have the associated client's name.

If, on the other hand, the CSA would like a DEA client identifier attached to the trader id that is generic and simply identifies that the trading executed under that trader id is a DEA client for purposes of monitoring DEA trading in the capital markets in order to propose future rules that are based on actual DEA trading patterns, Jitneytrade would be amenable to supporting it.

Individual DEA Permission

We would like specific feedback on whether individuals should be permitted DEA or whether DEA should be limited to institutional investors and a limited number of other persons such as former registered traders or floor brokers.

Jitneytrade would like to submit that the decision about whether individuals are sophisticated enough to be provided with DEA should be left solely to the participant dealer who would be providing said access. Through KYC practices, they are the best judge of whether or not their risk tolerance will allow it. With respect to the standards set, whether they be higher than for institutional investors, this should also be left to the discretion of the participant dealer.

Thank you for the opportunity to comment on the proposed regulation. If you have any questions or wish to discuss these comments further, please feel free to contact me at 647-343-4542 or by email at lida.preyma@jitneytrade.com.

Sincerely,

A handwritten signature in purple ink, appearing to read 'Lida Preyma', is positioned above the typed name.

Lida Preyma
Head of Global DMA
Jitneytrade Inc.

Cc: Francesco Pasin, CEO & CCO, **Jitneytrade Inc.**
Jean-Francois Sabourin, Chairman & CBDO, **Jitneytrade Inc.**