



GLOBAL BANKING AND MARKETS

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The Secretary  
Ontario Securities Commission  
20 Queen Street West  
19th Floor, Box 55  
Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
[comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22e étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3  
Fax: 514-864-6381  
[consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

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

Scotia Capital Inc. (“Scotiabank”) appreciates the opportunity to comment on the proposed changes to the National Instruments listed above. We support the efforts of the CSA and welcome changes that will ultimately benefit capital market participants. Our comments are noted below.

**Extending the Existing Exemption from the Transparency Requirements to Government Debt Securities**

Scotiabank is supportive of the course of action that the CSA has chosen and we appreciate the time and effort that the CSA took to meet with the various stakeholders prior to putting forth this recommendation. We also agree that given that no other international jurisdictions have mandated transparency for government debt trading that it would not be appropriate to do so in Canada at this time. Given the impacts that transparency may have on the Debt Capital Market Scotiabank would appreciate if the CSA would engage stakeholders prior to initiating a transparency regime.

## **Marketplace systems and Business Continuity Planning**

### **Industry Testing**

Scotiabank agrees that industry wide business continuity testing should be mandated and should be done on a regular basis including all participants.

In relation to “outage times” we note that in proposed section 12.4 the CSA has added section 2 which requires only those marketplaces with 10% of total dollar value of trading in that type of security on all marketplaces to ensure that their systems and infrastructure can be operational within two hours of declaration of a disaster by the marketplace. Scotiabank does not feel that this is inclusive enough and we would propose that the percentage of total dollar value be lowered to a more inclusive number such as 5%. In regard to sub section 4 of 12.4 we believe that resumption times for marketplaces should be shortened to one hour from the currently stated two hours. While we agree that it is critical to get larger marketplaces running we also believe that the same requirements should be extended to any marketplace that falls within the percentage parameters noted that operates in Canada. This approach would be more in harmony with the proposed changes in the Order Protection Rule and we feel the extension of “outage times” should apply to all “protected market places”.

In the proposed section 14.6 (3) we note that an Information processor must: “ensure that its critical systems can resume operations within one hour following the declaration of a disaster by the information processor.” Timely recovery is necessary to ensure that market participants can see a consolidated view to make informed trading decisions. Scotiabank believes that that one hour recovery seems lengthy and that it should be reduced to no more than 30 minutes.

### **Provision of Data to an Information Processor**

In the CSA notice it was stated that :”We are of the view that this information is not timely if it is made available by a marketplace to any other person or company before it is made available to the information processor, or if applicable, information vendor. We have therefore proposed new subsections 7.1(3) and 7.2(2) of NI 21-101 to codify this requirement.”

Scotiabank agrees that the CSA concern with timely and accurate data is a valid one; one that has been topically highlighted in recent popular non-fiction about high frequency trading. We read of players paying vast sums for millisecond advantage in the high frequency trading space, and gaming of the regulatory best bid/offer (SIP) latency. We should be concerned about the fairness of this lack of contemporaneousness. However, Scotiabank does not agree that the proposed subsections actually meet the CSA’s stated objectives.

We believe the “made available” test of timeliness does not go far enough towards dealing with the timing issues created by market fragmentation. Two issues may arise: firstly, data may actually be received more quickly by a more closely located participant to the data source, even though it has been “made available” on the network simultaneously, and secondly, actual fix message data may receive acknowledgement via a different pathway/mechanism and thus inform certain participants about trading prior to market data release. Thus, we feel that the only fair and monitorable system would require centralized dissemination of trade data and

market data – in other words, the IP releases the data to participants from the trading venues, rather than acting like a participant in the data race.

#### Uniform Test Symbols in Production Environments

Scotiabank agrees that marketplaces should use uniform test symbols. The testing should also include all order types that the marketplace supports and not simply a subset. We agree that the hours each Marketplace makes the environment available could be posted by each marketplace but Scotiabank also considers it to be important for market participants to have adequate time to utilize the environment. The CSA may wish to consider mandating the duration in which an environment is available or change the wording to ensure that “reasonable amounts of time” are provided to market participants for the relevant testing scenario(s). Scotiabank also feels this should be unified for all Marketplaces.

#### Launch of new Marketplaces and/or material changes to existing Marketplaces

Scotiabank agrees with the changes proposed by the CSA which will require the marketplace(s) to certify the completion of the testing and system operational functionality as well as require a period of time for market participants to test and/or connect to the marketplace. However Scotiabank would like to clarify the language used in the Request for Comments in 12.1.3 where the CSA has stated that a market place must not begin operation or implement a material change until the later of “three months after the notification of completion”. If the notification of completion is finalized during a period of the year where a reduction in business days occurs for statutory holidays this could be impactful on the successfulness of the testing. Scotiabank would appreciate if the language could be changed to 90 business days to accommodate such time frames.

#### **Use of Marketplace Participants’ Trading Information for Research**

While Scotiabank fully supports the use of trading information for research purposes we do not agree that a Marketplace should be allowed to enter into an agreement and provide confidential data without the appropriate controls. This data could provide interested parties with a great deal of understanding of specific trading strategies that, if known, could be detrimental to the capital markets. Scotiabank suggests that following controls be considered for this section:

1. Notification: Should a marketplace consider providing trading data to an interested party, (other than a Regulator through normal channels), they must provide notification to the marketplace participant of the request and the information that will be provided;
2. Opportunity to Comment: Marketplace participants should be provided with a comment period. We suggest a 45 day comment window.
3. Oversight: A regulatory body such as the Ontario Securities Commission should provide oversight for each type of request for trading data to ensure integrity of the request and the information provided is not in dispute.

In the proposed section 5.10.1.1 (a) iii reads “not use the order and trade information or provide it to any person or company for any purpose other than capital markets research.” Does this clause infer and/or allow the receiving party that entered into a contract with a marketplace for specific information, to share this with another party (“third party”) as long as it is for “capital

markets research". If this is correct, Scotiabank would appreciate if the obligations of the National Instrument for confidentiality be extended to any party that receives this information and not just the party that entered into the agreement to receive it.

Again, we thank you for the opportunity to comment. Please feel free to contact any of the undersigned (416) 945-4256 if you have any questions or require clarification of anything noted in this letter.

Yours sincerely,



Myran Faust  
Managing Director, Trader, Global Equity



Evan Young  
Managing Director, Trader, Global Equity



Andy Dickison  
Managing Director and Co-Head Global Fixed Income Sales and Trading