



Via: Email: comments@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

September 17, 2014

The Secretary
Ontario Securities Commission
20 Queen Street West
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Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment Regarding Proposed Amendments to National Instrument 23-101 Trading Rules (the "Proposal")

RBC Global Asset Management ("RBC GAM") thanks you for the opportunity to provide our comments regarding the above Proposal. With offices in Canada, the United States, Europe and Asia, RBC GAM provides a comprehensive range of investment solutions and services to both individual and institutional investors. RBC GAM group of companies manage CAD \$335 billion in assets worldwide (as of April 30, 2014).¹

Calculation of the market share threshold:

Question 1: Please provide your views on the proposed market share threshold metrics, including the types of trades to be included in and excluded from the market share calculations, and the weighting based on volume and value traded. Please describe any alternative approach.

Question 2: Is a 5% percent market share threshold appropriate? If not, please indicate why.

Question 3: Will the market share threshold as proposed help to ensure an appropriate degree of continued protection for displayed orders? In that regard, will the target of capturing at least 85-90% of volume and value of adjusted trades contribute to that objective?

Question 4: Will the market share threshold as proposed affect competition amongst marketplaces, both in relation to the current environment or for potential new entrants? Please explain your view.

¹ RBC GAM is owned by Royal Bank of Canada. The comment letter has been prepared without any involvement from RBC or RBC Dominion Securities.

We applaud CSA for its summary of the current inefficiencies of the order protection rule (OPR). We agree that market participants have become a captive audience of certain marketplace services. This increases operating costs for most market participants through connectivity costs, market data and lack of sufficient competitive forces. At the same time we believe that the objectives of the rule, which include fairness, investor protection and market confidence, remain important. In this respect we have a couple of concerns with the proposed market share threshold: First, we believe that a 5% market threshold may be a large hurdle. It appears that markets that may lose their protected market status could find it very difficult regaining the market share. Given that the market share ranking will be calculated only once a year, it may take years before some markets can re-gain their protected status. As a result, we are concerned that over time, the percentage of the volume and value of adjusted trades occurring on what is considered to be protected markets could decrease from 90%, (which is the current estimate found in the CSA report) and erode market confidence. This could happen if we get several new entrants that attract market volumes just below the 5% threshold. In addition, we predict that any new entrants would likely need some time to gain the required market and protected status. A lack of protected status and of connectivity could diminish their growth potential. This can have a negative impact on market innovation and protect current marketplaces from highly needed competition for years to come. In response to those challenges, we propose, as a possible solution, lowering the market share threshold (to perhaps 2% or 2.5%) for any new entrants for a period of two years. After year two, the threshold goes to 5%. The intent should be to foster competition and innovation, not limit it. Fewer protected markets may create unintended monopolies, while too many protected markets may create additional fragmentation. The timeframe for calculating market share should also be twice a year instead of once.

Finally, we need to be mindful of possible unintended consequences of the proposed rule. We are concerned that the current proposal may result in an uncomfortably high percentage of unprotected market trades causing further erosion of market confidence. We must avoid a situation where existing marketplaces are protected by increased barriers to entry and reduced competition. A lack of competitive pressures would allow protected marketplaces to increase connectivity fees, in which case one of the key benefits of the OPR rule change could be lost.

Treatment of Listing Exchanges

Question 5: Is it appropriate for a listing exchange that does not meet the market share threshold to be considered to be a protected market for the securities it lists? If not, why not?

Yes we find this appropriate. From an investor's perspective, it is very important that there is a designated market for each listing which will provide order protection for all visible trades. If not allowed, this could also potentially limit competition.

Question 6: If the Proposed Amendments are approved, should an exchange be required to provide unbundled access to trading and market data for securities it lists and securities that it does not list? Please provide details.

We agree with most industry participants that marketplace fees are high. We expect that this proposal will reduce fees and we support it. This will provide traders/brokers more choice as to what data they want to subscribe to.

Process for setting the market share threshold and identifying the protected markets

Question 7: What are your views on the time frames under consideration for the market share calculation and identification of 'protected market' status?

Please see our answers to questions 1-4.

Question 8: What allowances should be made for a new dealer that begins operations during the transitional notice period with respect to accessing a marketplace for OPR purposes that no longer meets the threshold?

Sufficient time should be allowed for all dealers to transition. Consider allowing a grace period, possibly the first year of operation. We think that the dealer community will be in a better position to comment on this question.

Question 9: Are there any implementation issues associated with the 'protected market' approach?

Same as above.

Question 10: What should the transition period be for the initial implementation of the threshold approach, if and when the Proposed Amendments are adopted, and why?

Sufficient time for transition should be provided to allow for consolidated data products changes, unbundling of services and time for updating existing agreements between marketplaces and other market participants. We recommend allowing a grace period, possibly one year.

Locked and crossed markets

Question 11: Please provide your views on the proposed approach to locked and crossed markets. If you disagree, please describe an alternative approach.

If new marketplace thresholds are introduced, locked and crossed markets have to be allowed. This will give dealers a choice to exclude unprotected marketplaces from their trade routing processes. We would like the regulator to consider the following: if all markets are locked, should not all orders be protected? We worry that if markets are locked, and only OPR exchanges are protected, connectivity costs may increase at OPR exchanges.

Dealers achieving best execution

Question 12: Is the guidance provided sufficient to provide clarity yet maintain flexibility for dealers? If not, what changes should be considered?

We welcome the increased regulatory requirement for dealers' best execution and commitment to transparency. Every dealer should be able to document in their policies and procedures that they have a process for following client instructions and achieving best execution. We recommend adding language

which will require dealers to make their best execution documentation readily available at the request of each client.

Dealer disclosure to clients

Question 13: Please provide your views on the proposed dealer disclosure to clients.

We strongly support the requirements that dealers document how they are handling and routing clients' orders. RBC GAM is currently in the process of collecting this information from dealers individually. So far we have found that there is no sense of urgency among some dealers to provide such information. There is also a lack of standardized data and sometimes misunderstandings of the basic requests. We think that this initiative will make it easier for the buy side to evaluate and monitor their dealers. Regulators should direct broker-dealers to provide institutional clients with standardized venue execution analysis reports. Examples of the type of information that should be incorporated in these reports include both routing and fill (execution) data such as: percentage of orders executed, average ordered and executed, fill rates (overall, taken, added and routed) and percentage executed displayed and undisplayed, % of time brokers received rebates vs. paid rebates. Additional information like venues accessed, order types used on exchanges, order types supported by the dealer's ATS (if applicable), fill rates, locations of ATS and whether they use SIP data feeds or not, should also be displayed. A reporting time period should also be considered. For example, data should be readily available to clients as of the tenth business day following month-end.

Question 14: What should the transition period be for the proposed disclosure requirements, if and when the Proposed Amendments are adopted, and why?

We hope for a short transition period as we believe all dealers should have developed the client disclosures long ago.

Consolidated data

Question 15: Are changes to the consolidated data products provided by the IP needed if the amendments to OPR are implemented? If so, what changes are needed and how should they be implemented?

If amendments to the OPR are implemented, then consolidated data products provided by the IP need to be modified as well. For example, non-protected market information will not necessarily be included in the IP.

Caps on active trading fees

Question 16: Please provide your views on the proposed trading fee caps as an interim measure. Please describe any proposed alternative.

As we have been concerned with the level of trading fees in the industry, we are pleased with the proposal to put caps on trading fees. We see this as a first step and hope to see additional fee reductions. The cap placed on stocks trading below \$1 (4 mills) seems appropriate. However, a trading

fee cap of 30 mills for stocks trading at or above \$1, seems high even though it is equivalent to the U.S. fee level. On average, stock prices in Canada are lower than in the U.S. and the Canadian marketplace landscape is different so we recommend lowering this fee cap. We note that in the U.S., current fee caps are being debated. The CSA should consider working with other regulators (SEC) to coordinate fee caps.

Question 17: What should the transition period be for the proposed trading fee caps, if and when the Proposed Amendments are adopted, and why?

We favour introducing new trading fee caps as soon as possible.

Prohibition on payment of rebates by marketplaces

Question 18: Is action with respect to the payment of rebates necessary? Why or why not?

We support the view that the payment of rebates by marketplaces changes the behavior of market participants and creates conflicts of interest for the broker community that are difficult for the buy side to monitor and understand without relying on reports from dealers. It appears that the rebates drive the implementation of predatory trading strategies and increase the unnecessary intermediation of the most liquid stocks. We agree with the attempt to conduct a pilot study and find out whether the markets would continue to function in an orderly fashion without rebates. As rebates and incentives influence trading activity, our markets are increasingly becoming removed from true price discovery – where buyers execute because they think an asset will appreciate and sell when they think the opposite. High speed technology and techniques flood markets with a large number of messages. It's during times of stress that the real dangers of these rebates and incentives can hurt investors the most. We encourage regulators to also examine the practice of payment for order flow. Does it really benefit retail clients?

Question 19: What are your views on a pilot study for the prohibition of the payment of rebates? What issues might arise with the implementation of a pilot study and what steps could be taken to minimize these issues?

We think this study is a good idea. We could see challenges with inter-listed securities. Should Canada decide to ban rebates on all securities included inter-listed ones, we can foresee trading volumes moving to the U.S. We therefore encourage CSA to co-ordinate any such study with the SEC and include Canadian-based inter-listed securities. Also consider the impact on retail execution. Does retail currently benefit from payment for order flow in terms of speed of execution, availability of research, etc.? Also consider if volume would become further fragmented as a result of the pilot.

Question 20: Should all types or categories of securities be included in the pilot study (including interlisted securities)? Why or why not?

Canadian-based inter-listed securities should be included in the study. See our answer to Question 19 for details.

Question 21: When should the pilot study begin? Is it appropriate to wait a period of time after the implementation of any change to OPR or could the pilot start before or concurrent with the implementation of the OPR amendments (with a possible overlap between the implementation period for the OPR amendments and the pilot study period)? Why or why not?

The study should begin once co-ordination with U.S. regulators has been achieved. The result of the study will not be conclusive without including Canadian-based inter-listed securities.

Question 22: What is an appropriate duration for the pilot study and why?

The study should cover a period of at least one year in order to account for any possible seasonal anomalies.

Possible credits for market makers

Question 23: If rebates were to be prohibited, would it be appropriate to continue to allow rebates to be paid to market makers and, if so, under what circumstances?

We believe that a balance between market makers' obligations and benefits should be established in all marketplaces. Perhaps rebates can be paid to market makers, but only on the condition that they have an obligation to provide liquidity under all circumstances. We see rebates as a privilege that market makers would continue to enjoy. Privileges must be accompanied by obligations. We believe that under current rules, market makers are not given sufficient obligations which provides a risk to market stability in the long run. In the context of market making, more emphasis should be placed on market maker obligations and incentives than on rebates. Real liquidity and volume may not be the same thing. If an obligation exists with the right incentives (rebates), real liquidity may result.

The methodology for the review of professional market data fees

Question 24: Will the implementation of a methodology for reviewing data fees adequately address the issues associated with data fees, or should other alternatives be considered? Please provide details regarding any alternative approach.

We welcome CSA's proposal to require all equity marketplaces to submit their professional market data fees on an annual basis and justify these fees in the context of the relative value assessment methodology. Ranking marketplaces based on their contribution to price discovery and trading activity is a good starting point for establishing a link between fees and value provided by individual marketplaces. While this approach will address the relative level of fees charged by marketplaces and prevent smaller or less efficient marketplaces for overcharging clients, it's not clear how this approach deals with the overall level of fees. In other words, we, like many other market participants, are concerned with the high level of fees charged by marketplaces in Canada compared with other countries. If the level of fees remains high, then the proposed methodology only solves a part of the problem. This is why we believe that either some cap on data fees should be introduced or the data services should be set up as a utility, based on a cost-recovery fee structure.

Further action under consideration for market data fees

Question 25: Do you have concerns with respect to market data fees charged to non-professional data subscribers that securities regulatory authorities need to address? If so, how should the concerns be addressed?

No comment.

Alternative Approaches Considered

Question 26: Is modifying OPR by introducing a threshold, and at the same time dealing with trading fees and data fees, an appropriate approach to address the issues raised? If not, please describe your alternative approach in detail.

While the proposed OPR changes may help with the captive customer issue that exists in the Canadian marketplace today, it will likely not solve other issues such as the challenges of market fragmentation or the existence of predatory trading practices. The proposed changes should be approached very carefully and with due analysis so as to not create further unintended consequence or prevent competitive innovation. While the Staff paper recognizes some of the key issues in today's markets, it is not clear that the proposed changes will successfully deal with what we view as the key issue: the existence of predatory trading activity (by some HFTs) which is helped by the speed, functionality and fee differentiation that now exist. We are concerned that those that benefit from implementing predatory tactics will find ways around any regulatory changes and that therefore the only effective and long lasting remedy would be eliminating the motivation for such behavior. This can only happen through support for innovation and the introduction of new ideas into the marketplace. Regulators should also conduct reviews to determine whether certain order types contribute to or create activity that otherwise should be discouraged (e.g., excessive message traffic, routing based on rebate capture). Exchanges should be encouraged to provide transparency on available order types, including fill rates and typical usage of each order type offered. Further, proposals should not limit competition, but rather allow for choice, transparency and best execution.

Question 27: What is the expected impact of the Proposed Approach on you, your organization or your clients? If applicable to you, how would the Proposed Approach impact your costs?

We don't see a significant direct impact on our organization or our clients. Even though the Proposed Approach represents a move in the right direction, the proposed transaction fee caps are currently not significant enough. However, should the regulators continue to influence the marketplace to lower the fees, we may see more meaningful reduction in our trading costs down the road.

Question 28: Is the Proposed Approach an effective way, relative to the other approaches described, to support a competitive market environment that encourages innovation by marketplaces? Please explain your view.

As we have mentioned above, this may not be the optimal way to encourage marketplace innovation. There is the potential that some requirements, such as threshold requirements for new marketplaces, actually reduce competition going forward. Additional measures such as a reduction in the number of

order types should also be considered as well as limiting the speed where no value to natural investors can be demonstrated. Consider introducing a pilot study to test the impact of a 'wider tick' initiative on the market structure, similar to the SEC/FINRA initiative underway in the U.S. Also consider ways to standardize data across dealers, increase data transparency, coordinate with other regulators (SEC), address predatory trading practices, consider "a one size might not fit all" strategy, determine sound market maker obligations and incentives and establish anti-disruptive trading rules.

Membership and Connectivity Fees

Question 29: Considering the Proposed Approach, is it necessary to take additional steps to regulate membership and connectivity fees charged by marketplaces? If so, why, and if not, why not?

Even if changes to the OPR rule are implemented, and we end up with fewer marketplaces in Canada, there is no guarantee that those marketplaces that remain protected wouldn't continue to increase the already-high membership and connectivity fees. In that respect, we would like to see those fees regulated and capped.

Marketplace Liability / Compensation

Question 30: Considering the Proposed Approach, is it necessary to take additional steps at this time to address issues relating to marketplace liability? If so, why, and if not, why not?

We recommend that CSA marketplace liability provisions become a part of regular marketplace agreements.

Appendix A-2 Data Fee Review Methodology

Pre-Trade Metrics

Question 31: Taking into consideration how these pre-trade metrics will be used within the various ranking models, are these reasonable proxies for assessing a marketplace's contribution to price and size discovery? Are there other metrics we should consider? Please provide details.

Question 32: Are the pre-trade metrics described appropriate for a marketplace that predominantly trades less liquid securities? Please indicate and describe what pre-trade metrics would be appropriate to use for such a marketplace.

Post-Trade Metrics

Question 33: Taking into consideration how these post-trade metrics will be used within the various ranking models, are these reasonable proxies for marketplace liquidity? Are there other metrics we should consider? Please provide details.

Question 34: Are the post-trade metrics appropriate for a marketplace that predominantly trades less liquid securities? Please indicate and describe any additional post-trade metrics would be appropriate to use for such a marketplace.

It appears that the metrics taken into consideration to measure marketplaces' contributions to price and discovery are reasonable and comprehensive. Advantage should be given to those metrics that are

less likely to be manipulated. For marketplaces that predominantly trade less liquid securities, some adjustment may be appropriate to provide a more reasonable comparison. For less liquid securities, measures like trading volume or the number of quotes may be much lower than for the rest of the universe. However, for maintaining overall market integrity it's important to set a level playing field for these types of stocks. "Percent of BBO" methodology should consider the average time of the quote at BBO in calculating pre-trade metrics. This may reduce the amount of gaming or quote stuffing if participants decide to rest BBO quotes less than one millisecond. Consider also the average quote resting time. Again, it is important for regulators to consider if real liquidity and volume are the same thing. It might also be important to consider the number of quote changes, fill rates, the opportunity cost of unexecuted fills and average trade size. For post-trade metrics, it might also be worth studying reversion rates as well as on time intervals and compare results across exchanges.

Ranking Models

Question 35: Are the ranking models described appropriate for ranking a marketplaces' contribution to price discovery and liquidity? Are there other ranking methods we should consider? Please provide details.

Emphasis should be placed on the method that would prevent gaming by market participants.

Question 36: If you had to choose one of the three ranking methods described, which method would you chose and why?

Advantage should be given to the method that is most likely to not change the behavior of marketplaces or market participants in an undesirable fashion. More thought should be given to which method is least likely to be gamed by marketplaces in an attempt to rank favorably and increase their revenue. We would especially welcome such an analysis if it is done by an independent research organization.

Assigning an estimated fee or fee range

Question 37: Please provide your views on the reasonableness of the two approaches for establishing an appropriate reference amount for data fees to be used in applying the data fee review methodology?

Given a choice between the two approaches, each of which has advantages and disadvantages, we would favour the International reference. It's important that the Canadian marketplace remains competitive. Moreover, this methodology will result in a larger sample to compare our results with.

Question 38: What other options should we consider for identifying an appropriate reference amount? Please provide details.

Another option is to use a cost plus methodology where marketplaces will be allowed to cover the costs of their data and add to it some reasonable margin. We expect that costs would be lowered using this methodology

Question 39: How frequently should any selected reference amount for data fees be reviewed for their continued usefulness?

At least annually.

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact me at dan.chornous@rbc.com or 416.974.4587.

Yours very truly,

A handwritten signature in blue ink that reads "Daniel E. Chornous" followed by a stylized flourish.

Daniel E. Chornous, CFA
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