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Since 1936

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September 19th, 2014

To whom it may concern,

First, and foremost, we would like to thank the CSA for all of the effort that has been put into this call for comment and for the opportunity to express our opinion in this forum. We are supportive of the intent and purpose of the current review of the Order Protection Rule (OPR) by the CSA. Many of the proposed changes are welcome regarding market data fees, pass-through fees, and the value of maker taker arrangements to price discovery and market liquidity. However, we are concerned with the proposal in its current iteration with regards to applying an arbitrary percentage threshold in order to separate protected marketplaces from unprotected marketplaces.

As it stands, the solutions proposed may lead to consequences that are detrimental to competition in the Canadian marketplace. The original intention of OPR was to incentivize innovation and investment in technology while promoting competition in a highly concentrated marketplace – we were essentially operating under a monopoly prior to OPR. While the rules were created with the best of intentions, it is clear that they have only promoted fragmentation and unnecessary intermediation without the intended benefit of innovation and cost savings. Specifically, the proposed creation of a two tiered marketplace is worrisome as it provides advantages to some marketplaces regardless of whether or not they are providing actual net benefits and innovation to the end investor. Since the adoption of multiple marketplaces the Canadian structure has maintained full price exposure and fairness by maintaining that all orders would be protected on every approved lit marketplace.

We believe that the present system is costly and overly complicated. Although the strict dollar cost of execution has dropped since ending the monopoly, and spreads have decreased, the cost of those changes have been borne solely by the dealers. The individual client has enjoyed access to the financial marketplace at a lower average cost, but the compliance and technology costs have skyrocketed for dealers both large and small. The increased cost of the current system has forced many small and mid-sized dealers to close their doors as a result. The proposal in its current iteration will only serve to further increase the burden of compliance and technology on dealers, likely forcing more brokers out of the business altogether. In the end, it is the individual client that will eventually feel the impact of reduced competition among a few large dealers and costs for the end investor will undoubtedly rise. It is a lesson in economics we cannot afford to ignore.

We are in favour of open competition and minimal regulation while ensuring that clients receive best execution in the context of the Canadian market. Similar to Europe, we propose that the regulators eliminate OPR altogether and let the market decide which marketplaces provide value add. If all marketplaces are competing on an even playing field, real innovative markets that cater to client order flow have a chance of succeeding without having to rely on intermediaries. Best execution obligations will ensure that dealers are making routing decisions that benefit their clients. Combined with disclosure requirements and fair access rules, we believe that eliminating OPR is not unmanageable. If best execution rules are not sufficient to ensure that brokers act in the best interest of their clients then perhaps it would be an opportune time for regulators to re-visit best execution guidance.

Related to best execution and client protection, we also believe that this is an appropriate time to address the issue of Canadian dealers sending domestic flow to US dealers for execution. There is no reason why Canadian domiciled client orders should be permitted to flow south unless clients are being significantly price improved. Any financial enrichment obtained by dealers engaged in this type of behaviour should be transparent and disclosed in a suitable manner to clients. Payment for order flow is an issue currently being debated south of the border and it is a topic we can ill afford to ignore as it contributes to the degradation of the Canadian market. This arrangement also creates a conflict of interest as dealers are incentivized to behave in a manner that may not necessarily benefit their clients but rather their own bottom line.

It is our opinion that the broker/dealer community, who has been largely responsible for the costs associated with every new venue that gains OPR status, should have the ability to vote when confronted with the possible inception of a new exchange or ATS. A minimum critical mass of subscribers should be required by any such new venue before that venue is considered OPR Protected. This requirement would ensure that the broker/dealer community views the proposed new venue as a significant value-add, and should therefore be considered part of the protected quote by all other member firms.

OPR was created in order to incent meaningful competition and ensure that marketplaces competing for order flow continue to innovate, invest and meet the needs of all its stakeholders. We believe three out of the four proposed amendments will be beneficial to the Canadian marketplace. Specifically, we are in favour of the fee cap, pilot study and the data fee initiative. We have strong reservations around the proposed 5% threshold to achieve protected status. We believe that keeping OPR as it exists now or eliminating it altogether with an emphasis on best execution would be preferable to a two-tiered market.

We look forward to the interesting debates that are sure to follow in the coming weeks. Thank you again to the CSA for initiating the discussion and allowing us the opportunity to help shape the future of the Canadian markets.

Sincerely,

Sesto Deluca

President & CEO

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.

The methodology by which proposed market share is calculated seems reasonable and appropriate.

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

The 5% market share threshold appears to be arbitrary and more clarity on how this number was arrived upon would be helpful. The question remains, as opposed to 5% – why wouldn't it be 3% or 7%.

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.

The proposed market share threshold will undoubtedly have a dampening effect on competition amongst marketplaces. Instead of an arbitrary percentage that will be difficult to agree on, we are in favour of eliminating OPR completely and having a free market system with emphasis on best execution to ensure client order protection. Economics dictate that viable markets will continue to exist while markets with no added value will undoubtedly disappear.

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 do believe it is appropriate for a listing exchange to be a protected market for the securities it lists whether or not it meets the market share threshold.

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

We believe a year is too long for market share calculation and identification of protected market status. Existing marketplaces should be re-evaluated every quarter, while new entrants should gain protected status immediately after reaching the threshold regardless of the current evaluation period.

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?

We believe that new dealers should be closely monitored by the governing body through participation in their best execution committee meetings. These meetings should be audited in order to ensure the protection of the end investor.

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

Implementation issues around the protected market approach will likely come in the form of increased compliance burden. Operating under a two tiered market for the purpose of client trading makes daily, weekly and monthly compliance checks more cumbersome and time consuming. Proprietary trading will likely be unaffected with regards to implementation issues.

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?

The transition period for the initial implementation of the threshold approach should be at least a year to allow dealers to get up to speed on compliance issues as well as for vendors to adapt to the change in market structure.

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

Locked markets are bound to happen with a two tiered market. Crossed markets should never happen in a sophisticated market such as the Canadian market. The onus should be on the marketplaces themselves to ensure that there are safeguards in place to maintain market integrity.

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

Dealer disclosure to clients should be as transparent as possible especially with regards to how some dealers are financially enriched as a result of their decision to route to specific venues. Clients, both retail and institutional, should be provided all the necessary information to make educated decisions. Conflicts of interest (i.e. ownership in a marketplace) should be fully disclosed in a clear and concise manner.

We can look to our counterparts in the US when contemplating this issue. The regulatory body in the US is very clear on disclosure requirements to clients and requires all dealers to publicly publish their routing decisions and subsequent performance on a monthly basis.

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

The majority of dealers already provide disclosure to their clients, some above and beyond what is required. The transition period for disclosure requirements should be six months

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?

Consolidated data products should still include data from both protected and unprotected marketplaces, especially for the purpose of compliance and ensuring best execution. The TMX should not be able to control access to quotes of their competitors.

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

While the fee caps are a step in the right direction, we don't believe that the caps as they stand will provide enough net benefit to dealers. It is our understanding that the goal in the end is to reach a fee cap of $0.0015/share or unit above $1.00. This lower fee cap would have the desired result of reducing unnecessary intermediation in higher priced securities and help dealers with cost cutting.

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

Transition period proposed fee caps can be short, no more than 30 days should be sufficient given that it will not require dealers or vendors to change their technology nor will there be additional compliance checks that have to occur as a result.

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

Rebates should be paid where necessary; in less liquid securities a higher maker/taker fee is required to stimulate trading since the risk of trading in these names is substantially more. Rebates on names that are very liquid (trade > 1 million shares/day) are unnecessary and create a situation that encourages intermediation where it is not needed. Innovation by marketplaces that promote intermediation when required would be a welcome addition.

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 are strongly in favour of a pilot study for the prohibition of the payment of rebates on non - interlisted names. A study on inter-listed securities will undoubtedly cause flow to move southbound unless the US is planning a similar study. Considering the current state of our markets, we can ill afford to lose market share to our US counterparts on Canadian securities. This will cause further degradation of the Canadian capital markets and put the whole system at risk.

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

See answer to question 19.

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?

We believe that the maker/taker pilot study should be fast tracked and initiated before any changes to OPR are implemented in order to conduct a one variable study. If both the study and OPR amendments are initiated concurrently it will be difficult to draw appropriate conclusions from the data generated due to lack of control.

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

Six months to a year would be appropriate for the pilot study.

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?

Yes it would be appropriate to continue paying the minimal rebates currently being paid to market makers as they are providing a service to all dealers and assume risk by doing so. They should be compensated for this risk. Furthermore, we believe that the current level of rebates is not sufficient to sustain the market making community and amendments should be made to remedy that situation. We propose that market makers be able to trade freely on all marketplaces and all securities free of charge.

Market makers are providers of liquidity and a gatekeeper when it comes to preventing events such as the flash crash of May 2010. There is a big difference between market makers and unregulated intermediaries; market makers are obligated to be present regardless of the situation while intermediaries have the ability to turn off their programs, creating an unstable trading environment. Incentivizing market makers to participate in all securities will have the effect of strengthening the integrity of the Canadian market, which is currently at risk.

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 believe that the methodology laid out for reviewing data fees will address the issue of our relatively expensive data fees in comparison with our global peers. On the same vein, we would also like the commission to examine the reason why dealers continue to have to pay two separate market data fees

for TMX and Alpha when they are run under the exact same matching engine and thus the same market data feed.

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?

Market data fees charge to non-professional data subscribers are significantly out of line in comparison with our global peers. Capping non-professional fees as a percentage of professional fees will only work if the overall fees paid by professional traders are set at a reasonable number.

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.

We have no issue with amendments to OPR and dealing with trading fees and data fees simultaneously.

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?

At first glance, while we may initially save some money as a result of the proposed approach in the end the compliance requirements of a two tiered market will negate any benefit. The cost of compliance is infinite in this case while the savings from this approach are limited.

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.

We don't believe that the proposed approach is complete as currently stated. While we appreciate the intent and direction the commission is taking in examining OPR, there will be unintended consequences and costs that arise from implementing this approach as is.

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?

We don't subscribe to the notion that we should be paying membership and connectivity fees to protected marketplaces since we are in essence forced to connect. High membership fees charged by unprotected marketplaces would not occur since dealers would have no reason to connect to those marketplaces in the first place if that were the case. It is our view that OPR venues should have no fees.