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Alberta Securities Commission
Financial and Consumer Affairs Authority (Saskatchewan)
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
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RE: CSA NOTICE AND REQUEST FOR COMMENT PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-101 *TRADING RULES* (the “Notice”)

CIBC World Markets Inc. (“CIBC”) thanks you for this opportunity to comment on the proposed Order Protection Rules (“OPR”) amendments. We applaud the regulators for taking the initiative to address known inefficiencies within the marketplace and for taking both a measured and well thought out approach to the proposed solution.

The regulatory framework created through OPR was introduced to the markets at a time when there was a need to foster competition and innovation across marketplaces. Through pricing structures and technological innovation, new liquidity providers were enticed to enter the Canadian markets. With the introduction of a multiple marketplace environment, Canadian equity markets saw increased liquidity, this inflow of new participants, technological improvements by marketplaces and broker-dealers and increased competition for order flow. In addition to positive benefits, increased fragmentation and market complexity continues to challenge the industry. As a result of OPR obligations, inefficiencies within the market have been acknowledged, and brokers have been mandated to connect to a proliferation of marketplaces at significant operational cost.

Through their natural evolution, our equity markets are arguably now at a different stage. This requires a review and fine tuning of market structure policies in order to appropriately manage the structural and behavioural changes introduced to the markets over the past several years. Against this backdrop,

CIBC would agree that a relaxing of the OPR framework is in the best interest of the future development of Canada's market structure.

We are of the opinion that Canada has a strong and well developed market structure, based on transparency, automated real-time regulatory oversight, and fair access to the marketplace. As such, our views are taken from the stance that Canada has done a good job of fostering competition, balancing regulatory oversight, and allowing business concerns to drive innovation in the markets. We are encouraged that the regulators have presented a well-reasoned proposal to address current imbalances in the marketplace, including excessive market fragmentation, complexity and cost. We support an approach that maintains a consistent (OPR) framework, while introducing subtle but meaningful adjustments and we applaud the Canadian regulators for doing so.

Our specific comments to the issues listed in the Notice enclosed hereto.

DIRECT REQUEST FOR COMMENTS

Q1: 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.

We are in agreement with a reduced application of OPR through the inclusion of a minimum market share threshold, prior to a marketplace being protected. Setting this minimum at 5% market share is arbitrary and may not be the perfect measure, but in our opinion, simply having a mechanism to impose a reasonable threshold is a critical first step to address costs and inefficiencies resulting from excessive market fragmentation. This will have the positive impact of requiring new venues to prove real value to the trading community in order to capture a meaningful market share prior to being afforded a protected marketplace status.

In particular, we are in agreement with the flexibility this will provide to dealers when satisfying best execution obligations, while still maintaining a robust framework to appropriately promote market confidence and integrity through the price discovery process. We believe this approach will allow dealers a greater ability to manage implicit and explicit costs associated with trading access to all visible marketplaces.

As a comparison, the European MIFID 1 approach allows dealers to choose which venues to participate on as they see fit. While this lesser standard succeeds in controlling the implicit and explicit costs of trading access, it can neutralize the benefits of a multiple marketplace structure and has potentially negative implications for price discovery. The proposed OPR amendments will in effect take the best of both the Canadian and European frameworks - minor marketplaces which do not reach the minimum threshold will operate in a MIFID-like environment where dealers will choose to trade on a venue based on its (business) merits, but the more rigid Canadian OPR framework will be maintained for the marketplaces which exceed the minimum threshold.

We agree with the inclusion of both a volume and value based calculation in order to appropriately capture the relative value of market share statistics and to account for the lower value securities which may trade in larger quantities. We also support the exclusion of crossed volumes and dark order types, open and close auction volumes which are not currently subject to price protection, and should not be included in the market share calculation.

We do respectfully raise a concern about the imposition of a threshold as it relates to competition in the marketplace, since we believe competition has had a net positive influence on our market evolution. Based on the current proposal, a venue must maintain a market share of at least 5%, averaged over a period of one year, before being considered protected. Threshold calculations will occur annually, meaning that a new entrant may need to wait as long as 2 years before achieving protected status. We

recommend that a balance is found between the time required to maintain the market share minimum and what that threshold is. In other words we suggest reducing either the 5% threshold or the period of time between calculations to continue to promote and foster competition among Canadian marketplaces.

Q2: Is a 5% percent market share threshold appropriate? If not, please indicate why.

As noted above, we believe that a combination of the time between threshold calculations and market share threshold ought to be appropriately balanced such that competition within the industry continues.

Q3: 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?

Based on current calculations, while over half of Canadian marketplaces would lose protection, the proposed amendments will still capture 85-90% of available liquidity. With an objective to protect a majority of passive orders contributing to the price discovery process, this threshold seems to be appropriate to CIBC.

We also note that it will be necessary to continually track these levels since we believe that the large majority of passive orders should be protected in order to retain a market structure which fosters transparency, promotes market integrity and protects investors.

Q4: 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 original implementation of OPR came at a time when Canadian markets had little to no domestic competition. The framework promoted competition resulting in net benefits which we highlighted earlier.

In today's fragmented environment, increasing barriers to entry for new marketplaces which offer little to no value is, in our opinion, a positive development. We would hope this would have the effect of eliminating or at least reducing the introduction of marketplaces which do not offer significant benefit, innovation or other value to the trading community. New entrants will no longer be able to support business operations simply from fees paid by "captive consumers" and will require to offer a strong value proposition in order to survive and incent business their way.

We believe that the implementation of these OPR amendments, with nuanced adjustments, will provide for more MEANINGFUL competition. In doing so, it will also improve the competitiveness of our markets globally.

Q5: 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?

As we understand it, the purpose of OPR amendments is to limit and control the costs and inefficiencies created by mandating dealers to subscribe to all exchanges irrespective of the value they offer to the trading community. We are of the opinion that to introduce protection for a marketplace on the basis of their listings - even though they may not meet a minimum threshold - will perpetuate the challenges the industry faces under the current OPR structure. Much of the cost burden is a result of upfront technology and resourcing costs to connect to a new marketplace. The ongoing costs, though not negligible, are less meaningful.

For this reason we do not believe it is appropriate to protect a market for the securities it lists without it meeting the appropriate market share threshold.

Q6: 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.

Yes. In the event that it is determined that an exchange is also protected for the securities it lists, our strong belief is that services should be unbundled such that dealers and other market participants are paying only for the required services consumed by them. Dealers should not be forced to consume and pay for services that do not add value to them, or those which they do not choose to use.

Q7: What are your views on the time frames under consideration for the market share calculation and identification of 'protected market' status?

As discussed above, our opinion is that the proposed time frame of 12 months and for a sustained period is too long when combined with a minimum market share threshold of 5%. This will ultimately require a competitor to wait as long as two years before being considered a protected marketplace. We believe this will create too high a barrier to entry for new competition. We recommend that the regulators appropriately balance the timeframe to the market share threshold calculation.

Q8: 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?

New dealers' obligations ought to be consistent with those of existing dealers. If a new dealer begins operation in the transition period, it ought to be subject to the regulatory framework in effect at that time.

Q9: Are there any implementation issues associated with the 'protected market' approach?

Yes. Implementation issues will include, but won't be limited to, the necessary technology changes required in respect of order routing, the consumption of market data, and changes required for compliance and supervisory reporting systems.

We would anticipate significant impact on compliance programs, and in particular for large integrated broker-dealers, like CIBC, who support both retail and institutional channels. We recommend that ample time is provided to address any implementation risk and reduce associated costs.

Q10: What should the transition period be for the initial implementation of the threshold approach, if and when the Proposed Amendments are adopted, and why?

We believe that the effective date should occur as quickly as possible, with an acceptable transition period to allow market participants to implement the required technology and infrastructure changes.

The longer the effective date on proposed amendments extends, the greater the cost burden to the street.

Q11: Please provide your views on the proposed approach to locked and crossed markets. If you disagree, please describe an alternative approach.

We agree with the proposed approach on locked and crossed markets.

Q12: Is the guidance provided sufficient to provide clarity yet maintain flexibility for dealers? If not, what changes should be considered?

We believe the general guidance is sufficient and allows for flexibility by the broker-dealer in terms of business approach.

Q13: Please provide your views on the proposed dealer disclosure to clients.

We support transparency for dealer disclosure to clients. We would recommend that this is kept at an appropriate (high) level of disclosure and with some level of uniformity such that it is meaningful to the end clients. We also recommend that this be introduced without imposing additional significant cost to the dealer community.

Q14: What should the transition period be for the proposed disclosure requirements, if and when the Proposed Amendments are adopted, and why?

In our opinion, disclosure requirements ought to be introduced at the same time as all proposed amendments, and inclusive of a reasonable implementation period to adapt reporting technology if required.

Q15: 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?

The information processor needs to be adjusted so that unprotected quotes are separated from quotes which will be protected in the data. This will allow market participants to reliably discern which best priced displayed orders are protected. These adjustments should be implemented in a way that allows clients to select (and only be charged for) the selected and appropriate data stream needed for systems integration.

These changes will be required to properly manage technology including order routing, market displays, compliance and supervisory systems, among other trading infrastructure.

Q16: Please provide your views on the proposed trading fee caps as an interim measure. Please describe any proposed alternative.

In general, we view pricing as a business lever and are reluctant for pricing to become a regulated practice in absolute terms. The current cap of 1 price increment combined with the regulatory review process around marketplace fee schedules are sufficient to prevent abusive pricing.

In addition to opposing absolute caps, we also note that, if applied, the proposed cap of 30 cents per 100 shares would not be a significant improvement over current marketplace pricing. We also note that once we start applying absolute caps other issues like the US/CAD exchange rate will come into play – the proposed rate would be equal to a 28¢ cap in the United States. In our opinion the proposed cap would not be very meaningful, and if is only intended to apply for an interim period, perhaps there is no need to introduce it.

Q17: What should the transition period be for the proposed trading fee caps, if and when the Proposed Amendments are adopted, and why?

Timelines should be consistent with all proposed amendments.

Q18: Is action with respect to the payment of rebates necessary? Why or why not?

We believe the introduction of maker/taker pricing was originally undertaken at a time when global liquidity providers were being enticed to trade in Canada, and was consistent with the competition Canada faced from US markets.

In today's market, this may no longer be the most important factor in exchange pricing structures. We do not believe that rebates are necessary, as we are of the opinion that they are simply a pricing model that marketplaces choose to employ. As a consequence, we do not believe that further action with respect to the payment of rebates are necessary.

Q19: 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?

While we do not believe there is a need to prohibit rebate, in our opinion a pilot study will allow for data driven evidence of potential and unintended consequences of payment of rebates that can be analyzed and presented to the marketplace. This is a superior approach to simply imposing regulatory change without any relevant analysis or metrics, and this will provide for some ability to evaluate whether the outcome is desirable. We support the approach as it will allow for an informed decision making process when implementing proposed regulatory change.

We recommend that clear measures be defined in advance of completion of the study to determine what is a successful outcome of the pilot study.

Q20: Should all types or categories of securities be included in the pilot study (including interlisted securities)? Why or why not?

In the event that this is a Canadian markets only study, then we strongly recommend that interlisted securities be removed from the pilot or this may have the negative consequence of shifting interlisted order flow to execute in the US markets. In other words, we believe it is only appropriate to include interlisted securities if the US markets are also participating in the pilot study.

When determining which subset of securities is to be included in the pilot, it may also be appropriate for the regulators to consult with the issuer community. Canadian public corporations may be wary about participation in a pilot study which could impact the liquidity of their stock.

Q21: 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?

Any pilot study ought to be delayed for a meaningful time after the full implementation of the proposed amendments. Implementing the pilot study too close to the proposed OPR amendments will not allow for an accurate impact analysis as OPR amendments will be significantly impacting the markets. It may be too difficult to ascertain impacts resulting from the removal of rebates and those impacts resulting from the overall OPR amendments. For this reason we recommend that a full year be allowed to pass following the implementation of OPR amendments prior to the initiation of the pilot study.

Q22: What is an appropriate duration for the pilot study and why?

To provide for meaningful data and credible conclusions we are of the opinion that the duration of the pilot study ought to be for at least a 12 month period in order to properly capture the natural seasonality and cyclical nature of market conditions.

Q23: 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?

No. While we do not see a need for the prohibition of rebates, we believe that if this occurs then market making rebates should also be prohibited. We acknowledge that market makers provide value for which they should be compensated/supported, but there are other mechanisms which can be employed to incent liquidity provision, such as trading rights. If it is determined that rebates are detrimental, the prohibition should be applied fairly across all participants.

Q24: 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.

The methodology for reviewing and managing data fees is a critical component to address the cost burden faced by dealers today. Because OPR creates regulatory compulsion to consume data, it is imperative that regulators also involve themselves with data fees to prevent exploitation.

Tackling the current data (cost) issues faced by the industry is not a trivial undertaking and we recommend that the necessary expertise, including consultation with industry participants, be engaged in any proposed solutions.

Q25: 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?

A separate assessment methodology for non-professionals is appropriate specifically to address the relative value of the data to these users. As noted in the proposal, compared to the global industry, Canada's charges to non-professional users - though discounted relative to professional users- are still significantly more expensive than in other regions. We note that this is not necessarily an OPR issue, yet agree that it needs to be addressed.

We agree with the suggested approach of introducing a cap that will only allow a marketplace to charge non-professional rates based on relative ranking of their contribution to price discovery and/or other select market metrics.

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.

High trading fees and data fees are the undesired byproducts of OPR. Although we do not believe that it is mandatory to address all issues at the same time, we appreciate the challenges of addressing them in phases as all of these issues are interrelated, and support the proposed approach of dealing with issues 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?

This will result in a long term reduction in costs for CIBC and its clients. We also expect that it will result in greater business control over appropriate best execution obligations for our clients which will allow us to better serve our customers.

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.

Faced with small brokers being unable to continue operations and perceived market integrity confidence issues, we believe that measured changes need to take place now. We do not think it is in the best interest of our markets to eliminate OPR altogether. As such, we support the proposed approach as a rebalancing of marketplace and dealer obligations to better Canadian markets.

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?

Changes to existing marketplace operations force a great deal of cost on broker dealers and their clients. We have previously commented on protected marketplaces' ability to force technological change and risk on participants through regulatory compulsion. For example, the recent Quantum XA migration introduced little benefit to the market community but the associated cost was substantial.

In addition to operational and technological expenses, a very real cost burden we face today is opportunity cost. While challenged with mandatory marketplace or regulatory change, dealers are less able to manage and apply resources to pursue business opportunities. At a minimum, we recommend marketplaces scheduling of technology changes be based on a cycle that is consistent and published so the industry can implement those changes accordingly, and not at the whim of marketplaces.

Not only would we recommend that marketplace changes be adequately controlled to allow participants the requisite time to adapt to these mandatory changes, but we also recommend that there be a mechanism to provide comments or other on unnecessary change and/or cost recovery for mandated technology changes.

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?

Marketplace contracts continue to carry liability provisions which are inappropriate and very one-sided. In the existing regulatory regime, brokers are forced to connect to these marketplaces and therefore forced through regulatory compulsion to sign these contracts without the power to negotiate more suitable terms. As a result, even in a “competitive” environment many terms still existing in marketplace agreements which are based on outdated legacy contracts that are no longer reflective of the current competitive landscape.

Marketplaces must be required to take on increased level of liability for their actions and align their interests in favour of risk reduction. If a reduced OPR means that marketplaces will be required to negotiate on commercially reasonable terms, we view this as a positive and necessary outcome of these amendments. We encourage the CSA to continue to monitor this issue and to consider the need for regulatory solutions to this issue. Certain key terms and conditions must be standardized and managed by regulators to ensure fairness for both marketplaces and dealers if they are to be accepted under regulatory compulsion.

(Question 31 – 39) DATA FEE REVIEW METHODOLOGY

We appreciate that the regulators recognize that the captive consumer issues for market data consumption will not solely be solved by the implementation of a minimum market share threshold. Although the industry will reserve the right to determine consumption (or not) of unprotected marketplace data, the protected markets will retain the ability to charge for their data with little incentive to reduce these excessive costs.

We are in agreement that market data charges ought to be reasonable, based on each marketplace's contribution to the broader market and through a transparent methodology for assessing relative value of each marketplace. We also believe that equal access to market data on equal terms should continue to be a guiding principle. We support transparency of data charges and would encourage a regulatory review process of marketplace data fees to the regulators on an annual basis.

In terms of the appropriate market data allocation methodology, we believe that, at a minimum, calculations for a marketplace's relative contribution ought to include top-of-book measurements, including size and price at or better than the national Best-Bid-Offer, and also ought to recognize an appropriate value for depth of book as well as executed trading statistics measured through market share.

We believe that the proposed metrics are, for the most part, appropriate and support the initial use of blended metrics and bands rather than singular, absolute splits. While we support market data metrics in principle, we caution that any metrics are subject to manipulation. In the proposal, we note that the use of “square root of dollar volume” in the SIP value and SIP Equal models results in too much weight being placed on the number of trades and substantially incents order fragmentation. “Model 3” offers a

much more balanced approach, but is compromised by the use of the Scope metric which creates the possibility for marketplaces to manipulate by adding tradable securities at no cost.

Notwithstanding these concerns, we support the proposed approach and the explicit recognition that the metrics used will probably not be perfect at the outset.

We believe the market data fee management process will require an annual review which includes the relative ranking of marketplaces, and with a mechanism to do so on an ad hoc basis to account for any unanticipated or significant shifts in market share distribution.

CONCLUSION

Competitive marketplaces have led to better technology, innovation in product and more efficient trading. However, the protection of 100% of orders has had the unintended consequence of misaligning costs to benefits and the misalignment has increased over the last several years. To correct the “captive consumer” issue in current Canadian market structure, the OPR proposal reduces the almost guaranteed stream of business to de minimis markets. This will also create greater barriers to entry for new marketplaces as it will no longer be enough to simply launch a marketplace and collect data fees in perpetuity. New venues will need to prove real value to the community in order to capture a meaningful market share and thus be included as a protected quote.

Cost implications of OPR, including excessive trading and data fees has had a direct impact on the dealer business model. With the proposed amendments, we are cautiously optimistic that these concerns will be addressed.

These are issues which have been under discussion for many years. We applaud the Canadian regulators for addressing the current imbalances and thank you for the opportunity to provide our comments on the proposed amendments to NI 23-101. Please feel free to contact us with any questions or requests for clarification.

Sincerely,

“Thomas Kalafatis”

Managing Director and Head, Execution & Prime Services
CIBC World Markets Inc.