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

Omega Securities Inc appreciates the opportunity to comment and respond to the issues created by the proposed changes to NI 23-101, and the regulation of exchange pricing models.

As the Canadian Financial Market environment has declined from its peaks, demands for the limiting and curtailing of competition under the guise of cost control has been louder and louder. We believe that while data fees and fixed costs should be addressed, the creation of a two tiered market structure with enormous barriers of entry would be a mistake. The creation of an arbitrary de minimis volume level for the protection of a marketplace will reward monopolistic activity and leave the equity markets exclusively in the hands of the institutions that control order flow.

Omega Securities Inc has responded to the questions posed in the CSA NOTICE AND REQUEST FOR COMMENT PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-101 *TRADING RULES below.*

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 value/volume calculation negates the value provided to retail clients and small firms in markets that are most useful to CSE and Venture shares.
- It is an original definition of volume, that seems to overvalue the TSX 60
- All trades are of equal value and importance to the client executing them.
- The exclusion of crosses denies the value of large crosses in price discovery and the huge role played by crosses in the Canadian market, often a cross re-sets a market and creates a new price paradigm in a sluggish square.

Question 2:

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

- No the five percent threshold is arbitrary, it is an original definition of volume, excluding the enormous cross market.
- It does not reflect the value added by small markets to mid and small size brokers, it overweighs the value of the trading of large cap TSX 60 stocks which are both high value and high volume. Grossly enlarging the TSX Volume. These stocks benefit less from multiple market systems for they are little hindered by trading costs nor requiring incentives to incite liquidity.
- It creates a slippery slope, why not 7% why not 3%.
- Instead we would propose the creation of a system based on the will of the participants, if a market can get a certain plurality of participants to subscribe, they would then be extended order protection. Rather than depending on an arbitrary volume threshold, marketplaces will then be empowered to collectively select who will be a protected marketplace. Smaller broker dealers would then have ability to collectively select markets that serve them best.

  New markets with innovative and exciting new ideas can then be embraced as protected marketplaces upon opening, moreover marketplaces that do not belong to large liquidity providers will have a fighting chance to “sell” there new idea to the participants.

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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?

- Yes but that may not be necessarily a good thing, the proposed policy guarantees that volume presently traded on markets destined to lose protection will shift more and more towards the remaining protected markets or groups of markets. What plans or policies do the regulators have for greater than 95% of volume traded on the protected platforms? Or is the eventual demise of all the smaller marketplaces part of the agenda?

- *Undermining Market Integrity;*

  The value of a robust trade through regime cannot be understated, As Ian Bandeen said in the Financial Post on May 29, 2014 "...take note of what happened in Canada [at the time of the U.S. Flash Crash] to see the beneficial impact a more intelligent depth of book regulation had. We have an order protection rule that honours all orders and that promotes strong liquidity and market integrity."

  The Proposal's own analysis indicates that between 10% to 15% of trading volume, calculated by volume and value, will not have trade-through protection (37 OSCB 4890-1). Footnote 49 even makes the surprising statement that unprotected trading volumes may actually decrease as a result of no longer being protected! Since we cannot assume liquidity providers will simply shift the exact same volume of quotes from these unprotected marketplaces to the remaining protected marketplaces, this means diminished liquidity and wider bid-ask spreads on less liquid stocks.

- *Complaints about Trade-throughs and Investor Perception*

  Institutional and some retail customers will quickly start to notice inferior fills on the protected markets. Moreover, the resulting trade-throughs will not be uniform – a professional trader specializing in a particular sub-set of stocks and wishing to get higher rebates for supplying liquidity on an unprotected marketplace, may post a significant number of quotes that will be traded-through in a very noticeable manner. In other words, the 10% to 15% of trading volume on the unprotected markets may represent 30% or 40% or more of the trading in particular stocks – especially less liquid ones. Will the regulators, particularly IIROC, be prepared to explain to the industry and investors at large why these trade-throughs are permissible?

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.

- It would depend how competition is defined? We have been repeatedly told that price structure competition is an inadequate measure. This is despite the fact that execution costs have plummeted since the introduction of multiple marketplaces.
- The smallest marketplaces are who are most likely to lose protected status are not linked with volume providers. Once driven out it would put an end to the independent competitor. The 5% limit will discourage the entry of new marketplaces, with no access to the OPR, a new market would have to be prepared to run at a loss for a number of years as it gains traction.

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?

- This is a two sided question, should this policy be approved it would seem unfair for a market that does not meet the arbitrary 5% to maintain its protected status, some of these markets have the lowest volume unadjusted for value, but the stripping of the protected status of the listed securities would unfairly penalise those firms that have listed with said exchange. Moreover the listing exchange would lose its ability to attract new listings, rendering their exchange status moot.

- What of small markets that trade considerable quantities of a listing exchanges shares. should they gain the protection derived through the listing exchange. If a market trades only 3% of all market share, but trades 10% of the volume of all the shares listed on a small protected listing exchange, should not that volume remain protected?

- A new exchange listing its own universe of equity symbols will, by the current definition, neither trigger nor suffer any trade-throughs. Whether that new exchange results in trades of 0.1% of the total daily volume/value in equity securities in Canada, or 5%, or 50%, it will simply be its "own universe" and so never activate OPR on its own. Moreover, dealers would join it only if clients demand it or there is otherwise value in doing so.

  OPR would only activate if a second marketplace then begins to trade such new universe of symbols. Our proposal above would also address this scenario. If those marketplaces can sign up enough participants who trade these novel securities, then OPR should apply to that universe of symbols.

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.

- If all data is kept bundled the listing exchange has achieved a great boon by the loophole, They will remain a de facto protected marketplace.

Question 7:

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

- One cannot help but sense the unhealthy haste in passing and enforcing the new proposed regulation. Using backdated data seems contrary and misguided. Omega ATS placed itself in the “inverted” market and thus believes it has always participated in a submarket that served about 10% of the marketplace. It is inherently unfair to tell a successful and profitable company that they have not met a standard that will not exist until sometime in in the future.

  A period of at least two years from approval would be the only fair standard. Allowing the markets to build towards the new standard.

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?

- This is a question of Best Ex and not OPR. Any new dealer should be required to fulfil their client obligations regardless of the future status of any venue. At present all protected marketplaces would and should remain protected.

Question 9:

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

- *Cost of Compliance;*

  By shifting from a simple rule – all markets are protected – to a more involved and complicated rule (yearly qualification and disqualification, and attendant Best Ex obligation to review connectivity to unprotected markets), dealers' overall compliance costs and risks will go up. Estimates for testing and integrating a new marketplace have been grossly overstated by some and underestimated by others. However, for those participants that hold regularly scheduled router committee meetings and correspond regularly between their compliance, finance and trading management departments, will see a significant rise in overall costs due to the conflicts between the guidance on Best Ex and new bifurcated market structure, IIROC will have to spend more time during trade desk reviews examining compliance – an opportunity cost borne by both the IIROC examiners and the firms being examined.

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?

- How can marketplaces be justly regulated with retroactive regulation. We are being informed that a new and original definition of volume is to be used to decide if a marketplace is worthy of OPR protection. Moreover marketplaces will be judged on past performance and informed that they do not meet a standard that has yet to exist.

  A period of at least two years from approval would be fair. Marketplaces that are presently designed to serve the smaller niches of the financial market would then have time to adjust, in order to attract the high volume high frequency trading community exclusively.

Question 11:

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

- Allowing only one environment to cross or lock goes against fair competition. The issue is regarding the captive consumer when all markets are protected. Allowing locked markets for an unprotected marketplace does not conflict with this as the user can choose whether to route orders.

- Unprotected markets do not contribute to the CBBO and should be able to lock or cross.

Question 12:

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

See comments above in response to Question 9 about the added cost of compliance.

Question 13:

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

- More transparency should ultimately lead to more fair and efficient markets. However, there is a risk that too much disclosure can leave dealers vulnerable to predatory trading strategies.

Question 14:

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

- Omega has no comment on this.

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?

- Staff continue to think that consolidated data from all equity marketplaces, including any unprotected markets, should continue to be made available by the IP for the purposes of the above-stated objectives.
  Are they not still captive? Or will our data be free?

Question 16:

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

- We have enjoyed a de facto cap, the new cap will be slightly lower. Have we not had time to study the data from the de facto cap.

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 believe that there is a de facto cap at present.

Question 18:

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

- Rebates are the bête noir of the moment for the participant community.
- Yet trading costs for the individual are at an all-time low?
- Will any study of rebates include a comparison to traditional market maker spreads?
- Is it not the fact that the rebate is a burden placed on the participant while the spread was always born by the client, and a profit centre for the participants market making desks.
- Would not having a strict flow-through policy where clients receive the credit and pay the fee as they trade encourage the client to take a greater interest in the multiple market system.
- A system like Lynx Dynamic where rebate is adjusted inversely to liquidity would be a better solution. Incentive is rewarded where it is needed, and supressed where it is not.

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?

- Will the issuer be allowed to decline participation in the study, a loss electronic liquidity provider will still be a loss in liquidity.

- Would a loss of liquidity, and an increase in the spread harm participants trading the issues chosen.
- Would the increased trading cost for the client at the benefit of the participant not be a hidden fee or tax to their benefit?

Question 20:

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

- If one is to understand the negative possibilities of suppressing rebates, large cap, high volume interlisted issues should be the focus of the study. The bleeding of volume towards the United States and the increase in spread without the ELPs would be more noticeable.

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 could begin at any time with proper notice. It is the OPR changes that require longer notice. As stated earlier retroactive regulation, based on dated research is wrongheaded and unfair.

Question 22:

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

- We have no opinion on the length of the study, as long as there is the ability to halt it if it is found to be at the detriment of the retail client.

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?

- No, why discourage the ELP community, while turning around and paying a new market maker group. If market making is to be revived by suppressing rebates the profitability will have to be found in the spread.

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.

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?

- Omega has no comment

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 agree that trading fees and data fees do not reflect properly the value offered by the marketplaces. A rational data fee schedule for all marketplaces would improve the multiple market

place community. The creation of multiple tiers of protected and unprotected marketplaces while placing unacceptable barriers to entry will only hurt the market participants in the long run.

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 cost?

- Omega Securities Inc with the other smaller independent markets will be forced into the never before seen category of fully lit unprotected marketplace, burdened with the regulation of a protected marketplace with none of the benefits. A regulatory burden will be placed on our participant base to justify continued use of our venue.

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.

- No, there is no desire to maintain vibrant competition in the proposed changes. The volume calculation rewards the original marketplace. The smaller niche markets are penalized.

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?

- Membership fees offer no service for the fee required.
- A minimum number of connections s/b free
- No dealer is required to be a member of a marketplace, since they can rely on a jitney broker to satisfy their best price obligation, or otherwise use a SOR that cancels their order if it would lock or cross an away market.

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 note that order management system vendors and server hosting/co-location vendors in Canada employ two forms of liability limitation also used by marketplaces: (a) exclusion of all lost profit/opportunity cost claims in the event of the vendor`s malfunction, and (b) a limitation of damages caused by the vendor to some ratio of fees paid (*eg*., one year's fees).

  The London Stock Exchange employs a very similar, dual limitation clause (see section 12 at http://www.lseg.com/sites/default/files/content/documents/Trading%20Services%20Terms%20%26%20Conditions%20effective%2030%20September%202013_0.pdf See also the very extensive disclaimer and limitation of liability clauses in sections 7 and 8 of the NYSE CAP agreement: http://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_cap_agreement_april_2014.pdf

  The reasons for these industry-standard liability limitations are simple: a technology-based vendor supplying a small, value-added component to transactions involving numerous counterparties and whose underlying notional values may be in an order of magnitude greater than the value of the service provided, is thereby exposed to the theoretical risk of loss many times greater than what it earns in gross revenue.

  Moreover, the principal concern about marketplace systems causing harm – stuck quotes, and loss of connectivity causing stranded orders – are routinely managed by marketplaces in co-operation with vendors and dealers. Of the potentially more serious problems, we are not aware of any marketplaces failing to upload end-of-day trade files to CDS (whereupon such trades become "locked in" by the early hours of T+1), or systemic issues with trade details drop copied to dealers

differing from what is reported to CDS at the end of trade date. From a risk management perspective, the process of trade matching and reporting that is done by Canadian marketplaces evidences an extremely low failure rate as compared to other network-based industries such as telecommunications, cable television, electricity distribution or natural gas distribution.

Accordingly, we do not understand why limitation-of-liability clauses that are standard among vendors in the industry, and common to marketplaces around the world, ought to be changed by regulation.

Richard J.A. Millar
Chief Compliance Officer

416-646-2764
416-624-6386
Richard.millar@omegaats.com