September 19, 2014

BY EMAIL

British Columbia Securities Commission
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
Superintendent of Securities, Nunavut

The Secretary
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20 Queen Street West, 19th Floor, Box 55
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and

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

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

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to comment on the Proposed Amendments and wishes to respond to the following specific questions relating to the Proposed Amendments.

[1]The CAC represents the 13,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

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 proposed market share threshold metrics are reasonable. We do not have any recommendations with respect to an alternative set of benchmarks.

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

We do not object to the 5% market share threshold, and note that it appears that capturing 85-90% of volume and value appears to be the binding threshold in the long term. We would be interested in additional transparency regarding the method of ensuring volume and value traded are captured under the OPR, in particular the notification process for changes to the market share threshold and associated timelines. Based on the information provided in the notice, three marketplaces would currently fall below the 5% threshold. We note that those marketplaces will be incentivized to cross the threshold, which could aggravate concerns already associated with the maker-taker model. Specifically, these markets will have strong incentives to offer additional rebates and/or features to attract order flow, with acceptable order types (specifically lit, standard lot, non-market maker limit orders) being highly desirable.

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?

The market share threshold will help ensure an appropriate degree of continued protection for displayed orders, and the target of capturing at least 85-90% of volume and value of adjusted trades is reasonable, with the caveats set out in our response to Question 2 above. We note that additional information on the process by which the yearly value within the volume and value range will be determined would be helpful.

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[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 119,000 members in 147 countries and territories, including 112,000 CFA charterholders, and 143 member societies. For more information, visit www.cfainstitute.org.

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 market share threshold may increase the barriers to entry for new entrants, as they will be required to meet the 5% threshold to gain OPR protection, but we do not consider the potential impact to be unreasonable. Additional attention post implementation would be useful to gauge the size of this threshold effect. Different and especially non-incumbent marketplace venues will be incentivized to differentiate themselves and prove that they are adding value to the Canadian marketplace as a whole. Some differentiating factors (other than fees/rebates) could include, for example, order book structure/priority, routing features and order types.

We note that participants could potentially try to penalize marketplaces by not placing trades on that marketplace if, in their view, the fees charged are unacceptably high. As an example, dealers could stop posting limit orders which could theoretically drive the volume on a marketplace below the 5% threshold. If such action were to occur it is possible that participants could have the power to remove the OPR protection and associated revenue streams from smaller marketplaces. This process could improve competition by providing price discipline to marketplaces attempting to charge fees disproportionate to the value inherent in the services they provide but also provides a method for incumbents to dissuade new entrants. This is particularly true if a participant is affiliated with one of the protected marketplaces.

In addition to the possibility of manipulation, we are uncertain about the specifics of the application of the threshold at year end. If a particular marketplace is close to the threshold (e.g. a 4.99% market share), will it be excluded from the OPR or will the figure be rounded up? Similarly, if a marketplace is within range of the threshold throughout the year (e.g. fluctuating between 4% - 5%), would the point in time threshold of 5% be applicable?

In order to determine the effect of the Proposed Amendments on competition, it would be helpful if the best execution policies of dealers could be compared to both pre and post amendments. We note the proposal already contemplates transparency in best execution policies and suggest these policies be made available both pre and post-change. If the effects of the Proposed Amendments are to be isolated, it will be important to be able to analyze trading data and related best execution policies on a step change and close to real time basis, rather than after any collective decisions have been made and implemented.

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?

We acknowledge that the OPR regime must be extended to all listed securities. While it may be appropriate for a listing exchange to be considered a protected market solely based on listing, we question the activities such designation would incentivize. Without the proposed dual fee structure contemplated in the notice marketplaces will be able to ensure

their protection under the OPR by listing a single security. We believe this would negate the majority of the benefits of the proposal. We recommend that should the CSA implement OPR protection for all listing exchanges that a tiered pricing model also be adopted. We note that as connection costs would still need to be incurred under this approach, net benefits may be reduced.

We note that this issue cannot be separated from the issue of fees, since it may not be possible for marketplaces to lower their connectivity costs. For marketplaces with multi-tier pricing, considering the listing exchange to be a protected market for the securities it lists might be acceptable, however there could be situations where certain markets are protected for only one or a small number of securities (which could be related issuers to the marketplace).

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.

Please see our response to Question 5 above.

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

The annual review period appears to be appropriate. However, to the extent that a marketplace is close to the 5% threshold at the end of the year, and such information is widely disseminated, we query whether that could lead to market gaming in order to keep a marketplace above or below the threshold.

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?

As the Proposed Amendments are not intended to affect a dealer's best execution obligations, we believe no allowances should be made as these would result in an uneven playing field. However, our understanding is that many of the costs for a new dealer occur on an up-front basis, and thus the appropriateness of allowances will depend in part on the length of the transitional notice period.

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

We query to what extent dealers will be transparent with respect to their best execution obligations and their explanations for choosing to trade on a market that is not protected.

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?

While a year appears to be reasonable, additional research aimed at the specific timeframes that would be required to permit the requisite changes to be made to a dealer's procedures and systems (including training) should be examined. The time frame should be long enough to give potential new entrants the ability to be up and running and provide incumbent dealers enough time to implement the amendments.

Question 11: 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 to locked and crossed markets.

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

Additional clarity on how the CSA expects dealers to implement their best execution obligations on a day-to-day basis (in practice) would be welcome. It would be helpful for dealers, as well as the end-investor, to better understand what to expect from their dealer's trading activities. Investors require better transparency and justification of the execution decisions made by their dealers, particularly in situations where dealers do not access particular markets.

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

We believe the proposed dealer disclosure is appropriate. We note that it remains difficult for retail clients to get information from their brokers as to how orders are executed. For instance, we would be supportive of measures with objectives similar to those of the Securities and Exchange Commission Rules 605 and 606 that mandate firms publish specific data relating to order execution and order routing practices.

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

While we believe it may be difficult for dealers to implement both the changes to the OPR and their disclosure documents, it is important that they be subject to increased transparency on their execution decisions. Ideally, the increased disclosure rules would come into effect prior to any changes to the OPR rule, so that the impact of the OPR rule could be better tracked. We recognize that dealers might then be required to amend their disclosure policies more than once. Please see our response to Question 12.

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?

Some differentiation with respect to the tagging of orders (protected vs. non-protected) will be required to be sent to the IP and vendors, and should become part of the standard data points.

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

The trading fee caps should result in decreased fees on at least one venue. We note that 30 mils in the context of the average price of a Canadian security relative to the relative fees of other jurisdictions on the same basis is still fairly expensive, and additional information with respect to the quantitative basis for this number would be of assistance.

As a for-profit enterprise, it is important that any regulation, including regulation of trading fees, balance investor protection with the potential revenue stream from operating a marketplace/exchange. To the extent that trading fee caps are set at a level that is uneconomical, there could be unintended consequences. We expect such marketplaces would simply find other revenue drivers and growth opportunities from its participants to recover such lost fees.

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 do not have a view on the transition period for the proposed trading fee caps, but note that implementing multiple changes simultaneously makes it more difficult to judge the impact of any one individual change, including the OPR changes as well as the proposed revised dealer disclosure on best execution.

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

Action with respect to the payment of rebates is necessary, as there appear to be some marketplaces whose entire business is related to rebates. If payment of rebates is not addressed, then the amendments relating to the OPR will not be as effective.

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?

It will be important to co-ordinate with marketplaces with cross-listed securities, to avoid providing dealers with a disincentive from trading in Canada. We note that should trading migrate due to a pilot study, it may not return at the study's completion.

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

In order for the pilot study to be effective, all types and categories of securities, including inter listed securities, should be included, except in the instance where the cooperation and coordination of regulators in other listing jurisdictions for a joint study is not possible.

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?

Any change to OPR should be implemented prior to the beginning of the pilot study. We do not believe a concurrent implementation would be beneficial, as it would not be possible to track the impact of either one particular initiative.

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

One year is likely the minimum appropriate duration for the pilot study, to ensure seasonal volume effects are caught and a comparable observation period for the data gathered has elapsed.

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?

It is appropriate to continue to allow rebates to be paid to market makers, contingent on the proper identification of market makers and ensuring that any liquidity they provide is not "false liquidity". Market makers must have appropriate obligations relative to the benefits of rebates, subject to the proposal and approval of market making programs by regulators.

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.

The implementation of a methodology for reviewing data fees is a well reasoned approach and is helpful in addressing some of the issues related to data fees. Any attempt to regulate this area will be met by skepticism, and thus it is vital that the methodology be subject to a rigorous examination and justification.

One concern about potentially utilizing the domestic reference is that it is generally acknowledged that Canadian market data fees are higher than international comparison would suggest. It would be useful to review information on Canadian traded value compared to international traded value, as well as the costs of providing data (many of which are fixed costs) and the resulting economies of scale. This comparison should occur

across several international markets. Our understanding is that many fixed costs in Canada are not comparable to international markets. Innovative markets that require high, up-front set up costs should not be discouraged from setting up in Canada as a result of the difference in fixed costs across jurisdictions.

We believe a blended approach incorporating the domestic reference and the international reference would be most appropriate. The size of the domestic fee pool could be used as a starting point, with the international reference providing an end goal. Should this approach be adopted, the length and slope of the glide path towards the international reference would be very important.

We agree that determining an appropriate reference amount is vital, and support the CSA's suggestion that they retain an industry expert to analyze and determine an appropriate reference amount.

We note that it is unclear how allocations will be made to new exchanges without any trading history. If a marketplace has no share of the pool at the best bid/offer, we do not believe that the data provided by such a marketplace should be provided at low/no cost.

The allocations should be reviewed on an annual basis.

Additionally, we believe that multiple instance single user (MISU) pricing models should be considered for both professional and non-professional data subscribers. This opinion is expanded upon below in the context of non-professional subscribers.

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?

Non- professional market data fees should not be one of a marketplace's primary revenue sources, and the examination of market data fees charged to non-professional data subscribers compared to that charged to professionals is valid. We note that Canada appears to be one of the only jurisdictions that does not have multiple instance single user (MISU) pricing, with the result that a single non-professional user in Canada will be charged for utilizing the same data through multiple data access points/vendors/applications. Implementing multiple instance single user (MISU) pricing could result in broader adoption of more granular data among non-professional participants, better informed investors and reduced barriers to new forms of market intelligence and participation.

We also believe it is a reasonable approach to review non-professional subscribers cost as a percentage of the cost to professional subscribers. In our view, it is healthy for the vitality of the Canadian capital markets for retail investors to have easy, cost effective access to data information. Increased access to information could lead to more sophisticated

investors, and add to the tools available for price discovery. It is important that capital markets have informed participation and access from a wide variety of investors.

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 we support the review of both the OPR regime and trading fees and data fees, we are not of the view that amendments related to those items must be implemented at the same time. The fee issue relates to the appropriate size of fees across marketplaces. One would expect the fees charged by marketplaces to fluctuate as a result of the amendments to OPR, and it will be interesting to examine whether marketplaces change their structure as a result of either rule. It would be easier to measure the impact of the initiatives if they were implemented separately, with a gap between implementation of at least a year.

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?

While the Proposed Approach is not directly applicable to the CAC, if it contributes to a decrease in non-professional subscriber data fees and an increase in investor participation in the capital markets, we believe that would be a beneficial outcome.

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.

The Proposed Approach provides some incentives to innovate, and it will be helpful if markets are required to justify their percentage of the pool. However, it would be disadvantageous if the regulations disincentivized innovation by requiring across the board fee decreases in the first year of implementation which would create fierce competition and potentially adverse outcomes for the broader marketplace.

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?

As a result of the fee externality, marketplaces could be expected to seek to find profitability in other parts of their business. We do not believe it is possible to successfully regulate all fee aspects of a for-profit business. That said, regulators should maintain awareness of these fees and the possibility of new captive consumer issues.

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?

It is necessary to take additional steps to address issues relating to marketplace liability as a principled matter, and we believe this issue requires greater attention than received in this notice. Additional research is required with respect to the current exculpation of liability in marketplace contracts. In order to satisfy their best execution obligations, dealers will still be required to subscribe to a number of exchanges, all of whom could attempt to absolve themselves of liability in an unacceptable manner. Additionally, the Proposed Approach would still leave dealers captive to the subscriber agreements of protected marketplaces and their exoneration of liability clauses as applicable.

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.

The delineation between liquid and non-liquid securities is important, and some provisions should be made for less liquid securities. In that light we are interested in the percent square-root dollar volume metric proposed. We wonder if the number of trades should be included in the metric, with additional weight given to securities that trade less frequently.

As a general alternative, only examine the number of trades in the context of a market where some dealers are consistently trading in the same issuers. A potential metric would involve a concentration restriction, where dealers that dominate trading are reviewed. For example, if one security had 100 trades / day and one dealer was responsible for 50% of those trades, that is the value that should be rewarded for illiquidity; a type of measurement that involves the trades per security over time.

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

Directional change plays an important role in determining an appropriate reference amount. It is important to review fees charged in the past, to determine if there have been any unusual movements. If there has been a large increase in fees, it may have been a result of a one-time marketplace structuring change or other innovation, in which case the increase may have been entirely appropriate. It may be useful to examine an option where fees are not permitted to increase more than a stipulated percentage increase per year.

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

The selected reference amount for data fees should be reviewed on an annual basis.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Cecilia Wong*

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