September 19, 2014

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

c/o - by email

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
consultation-en-cours@lautorite.qc.ca

Re: **CSA NOTICE AND REQUEST FOR COMMENT - PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-101 - TRADING RULES**

Dear Sirs/Mesdames,

Scotia Capital Inc. ("Scotiabank") appreciates the opportunity to comment on the proposed amendments to National Instrument 23-101.

We are generally very supportive of the proposed changes to the OPR framework and believe that they start to address some of the concerns we have with our existing market structure. If we have one issue with the proposals it is that they may not go far enough in terms of addressing some of the issues. They are however a good start and put in place a framework that should serve out market well.

We believe that the proposed pilot study may actually have a more dramatic and immediate impact on our market than the proposed rule changes. We are supportive of the elimination or significant reduction of maker/taker fee models, however as we note in this letter we have some concerns about the proposed scope of the pilot study and would prefer to either see a smaller study scope or the full elimination of maker/taker fees in our market.

The following are our responses to the specific questions posed in the RFC:

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.

We are supportive of the proposed set of trades that should be included in the threshold metric calculations. It is reasonable that protected status be determined based on trades resulting from displayed orders during continuous auction trading. These orders contribute meaningfully toward the price discovery process and are the ones that enjoy protection by the OPR framework.

We do not believe that protection should be extended to any market that disadvantages a subset of participants. For example, the higher fee and speed bump applied by the proposed Aequitas Neo order book for Latency Sensitive Traders. We believe that only markets that provide open and equitable access to all participants should be eligible for protection and that only trades on those equitable markets should be included in the threshold calculations. One possible exception to this would be differential access provided as part of a market making program which involves balanced benefits and responsibilities for the market maker.

We do not believe that volume is the most meaningful measure for this purpose and would prefer that the weighting scheme to be predominately based on value traded. (see further comments in Question 3)

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

Yes, we believe that this is a reasonable threshold, given the goal of protecting 85-90% of the market. Though it is possible that best execution responsibilities may be triggered for a participant to consider a marketplace that has less than a 5% market share, it is reasonable to limit the extension of full protected status to this threshold.

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?

With respect to the current concentration of market share, the proposed market share threshold is adequate to capture the targeted 85% to 90% of the total volume and value.

We believe that capturing 85% to 90% of continuous traded market share is a reasonable goal and would result in protection for an appropriate percentage of orders. We would recommend that value traded be used rather than volume traded in calculating market share percentages. Volume is a less meaningful number in terms of accurately measuring liquidity in this context. We recognize that there may be a concern that junior markets may be disadvantaged by the focus on value traded, however we would note that the TSX-V and CSE would be protected based on being the listing market for their symbols. Other market centers do not separate TSX and TSX-V listed names into different marketplaces and so their entire set of symbols would be protected if they met the value traded threshold.

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.

In our opinion, the effects of the market share threshold for existing competition will be rather muted during the initial phase of adoption, as participants will not have much incentive to disconnect existing but newly unprotected exchanges. However, as new entrants are introduced, each will need to demonstrate a value proposition that outweighs the participant's cost to connect. This will prevent new entrants whose business plans rely solely on protected status and the mandated membership, connectivity and market data that it guarantees. New entrants will now need to convince the marketplace of their value in order to gain members and build volume.

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 believe it is appropriate to grant protection for securities on non-qualified listing exchanges. This would reward the listing exchange for bringing the company to market. However, we would also like to acknowledge the potential incentives for unprotected markets to list securities to gain protected status. In particular, if an exchange were to list a security already listed on another exchange, we do not believe it would be appropriate to extend protection to that second exchange based on the secondary listing.

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.

Our view of bundled access is that as long as the total cost for the package would be reasonable for the listed securities (including falling within the new market data fee framework), it would not be necessary for exchanges to unbundle their market data.

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

We would support shorter time frames for ‘protected market’ status. If, for example, a market were launch and achieve 5% market share six months into an evaluation period, it would take 21 months of trading before it received protected status in the next period. To avoid prolonged periods of markets waiting for protection entry, we believe statuses should be re-evaluated every 6 months with 3 months of transition period. We do not expect a significant number of changes in protected status so we do not believe this would be an onerous time frame.

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 don’t think an allowance is needed for this short period of time and that a dealer would be able connect to the market in question using commercially available systems and this would not represent an unreasonable requirement.

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

There are various implementation issues associated with the protected market approach. For one, trade through detection used by compliance and the consolidated feed distributed by market data vendors needs to correctly exclude unprotected markets after transition periods. As well, market data vendors may need to create additional consolidated data feeds showing only the protected markets.

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 initial transition period should be 3 month, which should give enough time to resolve the initial technological hurdles. As noted, we do not expect a rush to disconnect from the newly unprotected markets so for many participants there will not be any immediately required changes.

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

The proposed approach is appropriate.

Best Execution Obligations and Disclosure

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

The guidance is reasonable and we do not believe it represents a significant departure from the existing best execution requirements.

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

We are supportive of the dealer disclosure requirements. Most of the information required is already part of what we disclose to our clients through various methods. We strongly believe that the best way to address real or perceived conflicts of interest is though clear disclosures.

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

Transition period of the proposed disclosure requirement should be adopted in parallel with the OPR Amendments.

Consolidated Data

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

The IP should offer both a fully consolidated and 'protected-only' feed.

Question 16: Please provide your views on the proposed trading fee caps as an interim measure. Please describe any proposed alternative.
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 are supportive of this measure but do not view it as a significant change since it essentially caps fees at a level close to the highest current fees in our market. We do not think it needs a significant transition period beyond the notice usually given for fee changes.

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

Yes.

We have long expressed our concern that high maker/taker fee structures are causing a number of problems in our market. In particular we believe that these high rebate levels incent an unnecessary amount of intermediation in our market and that there is ample room to reduce or eliminate rebates without seriously impacting the available liquidity in our market.

Looking at the issue in another way, we believe that regulations are holding stocks to artificially wide spreads in liquid securities. Having the same 1 cent notional spread for stocks ranging

from a price of $0.50 (2 percent spread!) to $100 and up (negligible spread) does not make sense. For low price securities, fractions of a cent are economically significant, but liquidity providers are prevented from displaying the true price at which they are willing to trade. Instead they select the venue that offers a fee or rebate that, when combined with to the actual trade price, translates to their desired execution price.

This is a very inefficient way for price discovery to operate. It has driven the proliferation of trading venues as new trading books are created with the sole purpose of creating new 'real' trading increments. This has created large technology costs across the street and encourages latency arbitrage.

In addition, as noted in the RFC, industry practice of having the broker absorb the rebate or fee creates perceived conflicts of interest in routing decisions where there may be a trade-off for the broker between obtaining the best result for the client and controlling trading fees. While cost-plus models can ameliorate this problem, they are complicated to implement due to each marketplace having a different fee schedule for fees across price levels and security types and lead to unpredictable execution prices for the client.

Regardless of any other changes, marketplaces should follow Omega's lead in stamping the fee/rebate being applied to a trade on each fill message in real-time.

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 supportive of the prohibition or significant reduction of rebates, whether done immediately or following a pilot study. If a pilot is to be performed our feeling is that one third to one half of securities seems like an excessively large sample size for a study. Particularly at one half we would prefer to just make the change for all symbols – while this would not generate as clean a data set for study, it would greatly simplify the technology and trading impact.

While we understand that to have all participants modify their trading systems and routing strategies it may be necessary to have a large percentage of symbols included in the study we question whether the benefits of that scale of study justifies the risks. We would suggest that a smaller study involving 10-20% of symbols may achieve meaningful results without the same level of risk and complexity.

We believe that a key result of the study will be an analysis of the behaviour of HFT participants in reaction to the elimination of maker/taker rebates. These are some of the most adaptive market participants and we fully expect them to adjust their trading strategies for whatever set of securities are included in the study.

We recognize that traditional market participants may not fully adapt their routing strategies in reaction to the removal of maker/taker for a smaller set of securities. However we would view their adaptations as reasonably predictable economic responses to a no maker/taker rebate environment and as such not a critical factor in the study results.

Regardless of the sample size, we would also ask that if at all possible the selection of the sample be based on an easily determined rule such as all symbols for an alphabetical range. This would both simplify things technically in not having to maintain a list of symbols, and in explaining to market participants which symbols may exhibit different behaviour than others.

While the fee/rebate model is not a good system, the pilot will remove the ability for liquidity posters to compete based on price. We would like the pilot to also include a test of smaller tick sizes for liquid securities to allow that price competition to occur transparently in the marketplace. This would be more efficient and also a potential advantage for trading in Canada – there are often times now when both Canada and the US have tight spreads on interlisted securities and though we would prefer to trade in Canada, the tick sizes line up such the US offers a superior price. The smaller the tick size the more likely it is that that the best available trade price will be the one shown in Canada.

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

Yes, we believe that all types of securities should be included in the study. The results for interlisted securities will be some of the most interesting and important results of the study. Leaving them out would significantly reduce the value of the study.

Thought should be given to how the results will be interpreted. It is possible that volumes will drop, but we believe most of that drop will be a reduction in HFT intermediation trading. Analysis should be done of the change in SME/HOT/HFT volumes versus those of other participants in reaction to the fee changes. This will also be critical in determining if any drop in volume is explained by traditional participants routing orders to the US market in search of maker/taker rebates, or by a drop in intermediation volume which goes away altogether rather than migrating to another market.

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 are not concerned about overlap with the OPR amendment implementation period. We expect the immediate impact of the OPR amendments to be relatively muted and not cause significant changes to routing strategies.

We agree six months is likely an appropriate amount of notice from the announcement of the study to the commencement to allow for preparation for the handling of affected symbols. As noted however we would encourage simplicity of implementation to be a key consideration in the design of the study.

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

The study should last at least six months. We would look for clarity however on what happens at the end of the study. Would a determination be made to leave the changes in place while the results are analyzed if the initial results appear to be positive? Similarly we wonder about a provision to allow for early termination of the study if it clearly appears to be having a negative impact on the market.

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

We do believe that there can be a place for market-making programs that include both benefits and responsibilities. As we noted in our comment on the proposed Aequitas markets, we believe that the key factor in allowing a market-making program would be the clear disclosure of the structure of the program and the actual trading results of the participants. This is the only way for the market to evaluate the overall fairness of the program.

In looking at the impact of market making programs, we have come to question the traditional method of allocating market makers attractive securities to trade while requiring them make markets on less attractive securities as a balance. The effect of this is that investors trading in more liquid securities effectively subsidize those trading in less liquid names. We would question whether this is ultimately fair and equitable. However, clearly there is a need to pay for liquidity provision on less liquid names. One possibility, which was partially proposed as part of the Aequitas application, is that issuers (and ultimately shareholders) be able to make direct payments to market makers to offset costs associated with making markets on less liquid names. This is obviously not the type of change to be taken lightly and may have significant implication but we do believe that a broader evaluation of market making programs should be undertaken as part of the discussion on the elimination of maker/taker rebate models.

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.

Our suggestion was that in return for the extraordinary regulatory subsidy provided by OPR, protected marketplaces be required to cease charging licensing fees (as opposed to network connection fees) for their market data. A more modest change in the spirit of a transparent marketplace would be to say that trades be treated as public information and quotes may be charged for. Either of these would presumably drive up trading fees to make up lost revenue, but trading fees seem like potentially a more appropriate source of marketplace revenue.

Overall we continue to believe that in aggregate Canadian market data fees are excessive on a global comparative basis. We would encourage an equitable division of fees across marketplaces but our key concern is that the aggregate cost of market data not rise in in Canada and ideally would come down to a more competitive level.

One related change that we believe is overdue is ending to the practice of multiple billing for a single user. In the case that a user consumes the same data through multiple systems we do not believe it is appropriate that they pay for that data multiple times. The NYSE Multiple Installation for Single Users (MISU) policy would be an example of how this could be implemented.

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?

The thinking in the RFC seems reasonable to us and we would encourage the re-evaluation of the appropriateness of non-professional market data fees currently being charged.

**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.**

Yes.

In general we are impressed with the RFC document. It presents a fair summary of the issues involved and reasonable steps to improve them. We would be pleased to see them implemented. As discussed elsewhere, some cases where we would like to see further action would be:

- Smaller tick sizes for liquid securities.

- Marketplace liability has still not been addressed.

- Providing clarity on the rules around the market segmentation issues raised by the Aequitas Neo proposal to discriminate against HFT clients. In particular what types of segmentation of order flow by marketplaces might be allowed in the future.

- More aggressive ideas on market data cost reduction.

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?

For us:

- The OPR amendments would have minimal initial impact on operations. We don't plan to immediately disconnect from marketplaces where we have already done the work to integrate. The amendments will however allow us to evaluate the relative value of any new marketplaces before determining if we will connect to them.
- The fee cap will slightly lower fees at the most expensive marketplace in Canada and as such should slightly lower our trading costs.
- The impact of the market data fee regulations depends on the reference amount chosen. We hope it would be at most neutral and ideally result in a reduction of aggregate market data costs.

The pilot has the most potential impact. If it was applied to all securities, we expect that:

- Canada will become a more attractive destination to trade active flow and trading fees should decrease for the majority of market participants.
- Order routing will be substantially simplified. It's possible that some of the duplicate markets, differentiated only by pricing structures, will eventually fold. This should save us technology resources and/or allow us to focus more on other areas to add value for our clients.
- There may be a small widening in the displayed spread with the removal of the rebate subsidy but a tightening of the real spread (fees included) as more marketplaces have a real one tick spread (as opposed to displayed spread + significant active fee).
- We expect that our passive liquidity capture rates may improve as some HFT market-makers reduce their level of participation in the market.

For our clients:

- Retail clients could see improved market data available if non-professional charges are reduced.
- They should see a somewhat simplified market structure with less needless complexity around competing for passive fills.
- In general, we expect they would see an improved market structure with less gaming and intermediation.
- We do not expect real liquidity available in the market to decrease as a result of these changes and as such do not expect our clients to experience any reduction in execution quality, and in fact would expect improvements in some areas as some of the noise is removed from our market.

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.

Considering the approaches described, we prefer the Proposed Approach to more direct regulation of costs. Wherever possible we would prefer to see a market based solution.

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 do not view membership and connectivity fees as a major issue at this point, though in general we prefer to see lower barriers to participants connecting to a given market. The proposed changes will presumable encourage new marketplaces to minimize the cost and complexity of connecting to their marketplace as they seek grow their market share, which eliminate the need for other regulatory actions at this point.

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?

Yes.

The Proposed Approach by design does nothing to address marketplace liability for markets representing 85-90% of trading activity. We do not agree that this is a commercial and not regulatory issue when are required to deal with the major providers and continue to believe that the lack of any liability by Canadian marketplaces is not desirable from a policy perspective and that a mechanism to better align the risk mitigation interests of market participants and marketplaces is required.

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

The thinking seems reasonable. We would put less weight on metrics 1-3 as we do not feel that every security should be considered equally. We believe that metric 4 should be the main factor. Including multiple levels of the book strikes us as adding significant complexity and cost without materially improving the results.

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

Options 1-3 overvalue the contribution of a marketplace that predominantly trades less liquid securities. We recognize that there is a value to providing quotes on less liquid securities but that it is a lower value than those on more liquid securities. The weighting of factors should represent that.

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.

Similarly, we think that Option 3 should be the dominant post-trade metric. Volume is not a particularly meaningful number for this analysis and number of trades doesn't seem like something to encourage. Another concern with scope of trading would be marketplaces trading less liquid securities (e.g. CSE listings) for no reason other than to improve their market data fees.

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

Aside from 3, they favour marketplaces that predominantly trade less liquid securities. Again we would recommend assigning higher weight to metric 3.

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

Models 2 and 3 are not appropriate for ranking a marketplace's contribution to price discovery, as they are very biased towards trading in less-liquid securities. Model 3 double dips on this – the pre-trade metrics are already ones which require trading a wide range of stocks, and then they are multiplied by scope. Similarly the post-trade counts volume traded equally with value, which gives disproportionate credit to low-priced securities and then scales further by applying scope.

We might leave out the square root and not include the number of trades, but model 1 seems like a reasonable model to us.

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

Method 1. (See question 35)

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

We would prefer an international approach as we feel that Canadian market data is currently overpriced on a comparative basis.

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

As noted elsewhere, we have suggested a more radical approach of providing free market data for protected markets.

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

Annually.

As always, we appreciate the opportunity to comment on these proposed changes and would be pleased to provide any more details if desired.

Sincerely,

Evan Young
Managing Director
Head of Electronic Execution Services
Global Equity, Scotia Capital Inc.
Global Banking and Markets
Scotiabank
(416) 863-7281
evan.young@scotiabank.com

Sean Kersey
Director
Global Equity, Scotia Capital Inc.
Global Banking and Markets
Scotiabank
(416) 863-7295
sean.kersey@scotiabank.com