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August 17, 2015

Dear Sir/Madame:

**Re: Proposed Amendments to the Companion Policy to National Instrument 23-101
Trading Rules: Application of the Order Protection Rule to Marketplaces Imposing
Systematic Order Processing Delays (the “Proposed Amendments”)**

The Investment Industry Association of Canada (the “IIAC” or “Association”) appreciates the opportunity to comment on the Proposed Amendments.

General Procedural Concerns

Association members are concerned that the decision to designate the Alpha Exchange as an unprotected market was not specifically set out for comment when the Notice of Proposed Rule Amendments and Request for Comments on the Alpha Exchange Trading Policies was published in November 2014. Although several commenters did address this issue in their submissions, a more fulsome and representative response to this

significant issue would likely have resulted if question was asked directly, and earlier in the process.

The issue of designation of protected versus unprotected markets under the Order Protection Rule (OPR) has significant consequences to market participants. Although the timing of the recognition and operation of the Alpha Exchange have accelerated the discussion, the development of the criteria and thresholds for protected and non-protected marketplaces should have been undertaken as a single project, and not on a piecemeal basis.

Order Protection Rule – General Comments

As stated in our previous submissions relating to the multiple marketplace regime and the OPR, we are of the view that the protected market component of the OPR has unnecessarily increased costs, added complexity to the market and provided a regulatory subsidy for unproven and underperforming markets by effectively requiring dealers to subscribe to all protected markets. While the OPR has achieved its primary objectives of stimulating the launch of competitive marketplaces, and investment in sophisticated smart order router technology, the cost to the industry has been excessive, and the regulatory subsidy that persists under the current protected market regime should be discontinued or altered by significant fee restrictions.

We do not believe that removal of the protected market element of the OPR would damage market integrity or prejudice client outcomes. The existing rules relating to trade-throughs, best execution, client/principal trades and order exposure are sufficient to ensure that clients obtain the best outcomes in relation to their trades. The implementation of the proposed disclosure in respect of routing practices would further ensure appropriate outcomes. Dealers operating under a regime without protected markets would be obligated to obtain the best price and execution for their clients, and be able to justify their trading choices to the regulators should there be any question. This would allow the industry participants to avoid the unnecessary (and often significant) costs of connecting to marketplaces, and paying for data in situations where there is no business need to do so.

Recognizing that there may be a significant challenge to repeal the OPR, we suggest prohibiting marketplaces operating below a certain threshold from charging for market data. This would address a significant part of the problem, although the issue of connection fees and ongoing membership fees would continue to create inefficiencies.

Issues with the Hybrid Model

We do not necessarily object to the concept of a hybrid model allowing for some protected and non-protected markets as it gives discretion to dealers to not connect to

certain markets, and pay for data where it is not appropriate from a cost and client service perspective. However, the hybrid model conceived in the Proposed Amendments, without the changes suggested below, may create a number of problems that certain of our members believe, put the industry and their clients in a worse position than requiring that all lit markets be protected or a fully non-protected scenario.

Definition - Intentionally Introduced Processing Delays

While the intent of the Proposed Amendments is to differentiate markets that provide immediately executable orders from those that have “intentionally introduced” processing delays for the purpose of determining whether a marketplace should be protected or not, the definition of an intentional systematic order processing delay is unclear and may result in confusion unless the situations to which it applies, and does not apply are made explicit.

For example, there are a number of situations where processing delays occur, which one could argue, are intentional. For instance, the TMX “long life” order type introduces an intentional delay on the cancellation process. While this is not a barrier to those accessing the quote, it appears to fall within the definition of an intentional processing delay, and should be clarified. To be clear, we would not expect TSX’s long life order as it currently exists to result in an unprotected market status.

In determining whether a marketplace meets the criteria of providing immediately executable orders, the guidance should address certain barriers which may or may not be “intentional”, and delay access to quotes, or otherwise affect the ability of a user to immediately execute at the displayed price. Such delays include:

- Slower than normal market data updates
- Slower than normal order entry and/or order entry responses
- Slower than normal processing of certain order types
- Remote geographic location (where high speed connectivity to the venue may be limited for the majority of the participants)

In order to ensure marketplaces are not unintentionally designated as “non-protected”, the effect of these types of processing delays should be addressed.

CSA Questions

Question 1: What are your views on whether OPR should apply to marketplaces that impose an order processing delay? If OPR should apply to marketplaces that impose an order processing delay, should it apply to some or all of them? What factors should be considered in determining whether OPR should apply to marketplaces that impose an order processing delay?

It is appropriate that marketplaces subject to a systematic and intentional order processing delay be categorized as non-protected markets. However, the CSA must clearly define the elements of an intentional order processing delay, and ensure that it does not capture activity and order types that are not intended (such as long life order cancellations and processing delays caused by decisions made around technology costs and geographical location of trading engines).

Question 2: In an environment where not all displayed orders on visible marketplaces are protected under OPR because marketplaces impose an order processing delay, what are your views with respect to the outcomes for protected and unprotected visible marketplaces and for trading on those marketplaces? In responding, please consider the impacts on:

- (a) various market participants including retail and institutional investors, and liquidity providers;**
- (b) liquidity on both protected and unprotected visible marketplaces;**
- (c) price discovery;**
- (d) complexities and changes you anticipate from participating in both protected and unprotected visible marketplaces, including costs and effort; and**
- (e) the provision and use of consolidated data.**

The flexibility and potential cost savings to members as a result of designating certain markets as unprotected may provide benefits to those dealers that have determined that such markets do not provide sufficient value in relation to their connection and ongoing costs. However, as currently drafted, the Proposed Amendments raise a number of questions, which if unresolved, would add uncertainty and complexity to the trading environment. While members generally support the elimination of the protected market status for markets with systemic order processing delays, the issues noted in this letter must be addressed in order to allay the uncertainty in relation to available liquidity, timing, volume and pricing.

In respect of best execution when trading client and agency orders, we noted in our response to the IIROC Notice dated July 12, 2015 relating to this topic, that:

In the May 15, 2014 request for comment on proposed amendments to National Instrument 23-101 ("NI 23-101"), the CSA stated that it would be deemed a violation of best execution to post agency orders on a non-protected market if the same Dealer Member had a similar order on a protected market for its propriety trading book. Some Dealer Members have organizational structures which logically and practically separate agency trading functions from proprietary trading functions. Where these separations exist, it is logistically impractical for agency desks to check what proprietary orders are currently in the market and on which venues before posting themselves. The difficulties are compounded when aspects of monitoring orders over their lifetime is taken into consideration in the event the proprietary desk posts a new order on a non-protected market. This is extremely onerous from a compliance and supervision perspective. In

order for agency desks at firms with proprietary trading, to avoid these compliance issues, they will not post on non-protected markets. As such, any benefits given to passive flow on non-protected markets is not fairly accessible by most agency orders. This issue is not addressed in the Proposed Amendments.

The IIAC understands the CSA concerns that clients could be disadvantaged if the proprietary order could obtain a better price, or have an increased likelihood of trading, at the expense of the client. However, if the Dealer Member has differentiation between the agency and proprietary trading branches, and there are policies and procedures in place whereas the proprietary branch has no knowledge of the client orders, then similarly to the current trading environment, there would be no intentional disadvantages to the client.

In addition, we are concerned about the determination of the NBBO and how that will be clearly determined how quotes on unprotected markets will affect the NBBO. It is critical that there be no uncertainty as to how the NBBO will be determined, such that there must not be different interpretations as to what it is at any given time. The NBBO should be based on protected markets only. Commercial solutions developed to accommodate the Proposed Amendments must clearly reflect this position.

Question 3: A key objective of OPR is to recognize and support the role of retail participation in the market. If the Proposed Amendments are finalized, what changes if any, do you expect will be required for dealers handling retail order flow? What changes if any, do you expect in terms of outcomes for retail clients?

If not clarified as requested, certain members are concerned that the Proposed Amendments potentially create a complex system that could be difficult for retail investors to understand. The trading outcomes may not be what clients expect, depending on the data available, based on whether the executing firm subscribes to the unprotected markets. However, if the issues identified are addressed, the existing rules relating to trade through, best execution, order exposure and client-principal trading will continue to protect the retail investor. It should be noted that many market participants regard the OPR as a constraint to brokers' ability to achieve best execution for their clients. Granting market participants discretion on whether to connect with certain markets may enhance their ability to achieve best execution where the value of such a marketplace is not clear.

Question 4: Are there implications that have not been addressed above that should be considered? How do you suggest they be addressed?

As noted above, the particular uncertainties introduced by the Proposed Amendments must be addressed, or they will lead to uncertainties in achieving best price and best execution.

Although members anticipate benefits in terms of cost savings and flexibility in introducing additional non-protected markets, the details regarding which markets will have such status, the obligations to consider the quotes on such markets, and how the structure interacts with the IIROC Order Disclosure Rules, the trade through and best execution obligations must be articulated clearly in order to have orderly, predictable and consistent outcomes for clients.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Copland', with a stylized, cursive script.

Susan Copland