November 16, 2016

To the Canadian Securities Administrators (CSA)

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
Financial and Consumer Services Commission, New Brunswick
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

c/o

The Secretary
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Me Anne-Marie Beaudoin, Secrétaire Corporatif
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Dear Sirs and Madams:

Re: Canadian Securities Administrators (CSA) Consultation Paper 24-402

Please accept this response to the *CSA Consultation Paper 24-402 – Policy Considerations for Enhancing Settlement Discipline in a T+2 Settlement Cycle Environment* ("CP 24-402"), issued on August 18, 2016, accompanying the release of the T+2 Proposals. I thank the CSA members for issuing this thoughtful review, including useful data for purposes of analysis, and the accompanying request for feedback. While I have worked and currently am working in the financial services industry, the comments below represent my views only based on my experiences working for financial institutions, and at a senior level for a utility and several associations.

Question 1: In your opinion, is the existing settlement discipline regime adequate to promote timely settlement and support market efficiency in a T+2 settlement cycle environment? Please provide reasons for your response, including, if available, any quantitative analysis to support your reasons.

Based on the information on the TMX/CDS website, Appendices to CP 24-402 and the CCMA's submission, the existing clearing and settlement model appears to be working 'on average'. Having the high, low and median institutional trade matching rates, and a similar disclosure for fail rates, would be useful. These would seem to be straightforward calculations that could be made public without additional work on the part of registrants and with minimal additional work for the regulator. It would be helpful to know what tools the regulators have available if a firm has the lowest ITM or highest fail rates and/or repeatedly files exception reports late without a reasonable explanation.

Question 2: Given that international research suggests that achieving SDA rates of over 90 percent may be important in delivering greater settlement efficiency and lower rates of settlement failures, is increasing SDA rates in the Canadian markets an important pre-condition to transitioning to T+2?
Question 3: Is a higher degree of automation in the trade confirmation-affirmation processes the key to delivering higher SDA rates? Please provide reasons for your answer.

While ideal and achieved by industries in certain other countries, high-levels of SDA rates are not a pre-condition to transitioning to T+2. Greater automation would likely contribute to SDA, but the biggest factor in SDA would be moving from an overnight batch system to infrastructure that allows multiple intraday batches, or more near-real-time or real-time processing and SDA. This likely could cost materially more than moving to T+2. As well, as a precursor to T+1 settlement, other issues relating to foreign currency, which currently operates on a two-day settlement cycle, would have to be addressed. The costs in moving to T+1, which implicitly requires higher levels of SDA, would have a ten- rather than a three-year payback period according to Boston Consulting Group's (BCG's) Cost-Benefit Analysis of Shortening the Settlement Cycle.

Question 4: What actions could trade-matching parties take to accelerate the timing of the release of allocations and settlement instructions in a T+2 settlement environment?

Given the significant increase in matching by noon on T+1, it is likely that cross-the-board reasons for slow action have largely been addressed except for the batch issue described above that requires some material, and shared, expenditure. There is unlikely to be much movement by choice without evidence of a problem, given some material amounts spent on many new regulatory requirements, no view that the U.S. or European Union will shorten the settlement cycle further in the immediate term, lack of a champion, and uncertainty about the future. Headlines such as "How Blockchain can save the free market" is not something that makes firms want to invest too much in "older technology".

Question 5: Should the ITM deadline be amended, such that the ITM policies and procedures of a registered dealer or adviser would have to be designed to match a DAP/RAP trade no later than midnight on T instead of noon on T+1? Please provide reasons for your answer. If you believe the ITM deadline should be amended, but not to a midnight on T deadline, then please give your views on how the Instrument should be amended.
Question 6: Alternatively, should the ITM threshold be amended, such that a registered firm would be required to complete and file an exception report if it fails to meet a threshold of 95% (instead of 90%) of trades, measured by both value and volume, matched by noon on T+1 during a calendar quarter? Please provide reasons for your answer. If you believe the ITM threshold should be am ended, but not to a 95% threshold, then please give your views on how the Instrument should be amended.

It would not appear to be necessary at this time based on available data. Reporting would be enhanced first by making available the information suggested in the answer to Question 1.

Question 7: Are there other pre-settlement measures that could be taken to encourage prompt confirmation and affirmation of a trade and communication of allocations and settlement instructions by trade-matching parties? If so, please describe such measures in reasonable detail.

It appears, and from what I have heard, there is not a burning need for action. Moreover, there is the problem of what is referred as the "free-rider effect" (referenced in the 2000 Charles River Associates on T+1): that is, when one firm invests to become more efficient and to benefit investors, other firms that do not invest benefit and the investing firm does not get the full benefits of its investment. Regulators might decide to focus first on those firms that fall farthest below the 90% threshold. As well, regulators might share a quarterly or annual summary of trends and findings.

Question 8: Should NI-24-101's current principles-based settlement rule be amended to incorporate a prescriptive T+2 rule? Please provide reasons for your answer.

NI 24-101 stands as the best (some might argue only) example of a principles-based rule of which I am aware, and it is one where regulator and regulated worked effectively together. It has led to high rates of matching that mean that Canadian firms appear comfortable they can successfully make the move to T+2 (a small number of respondents to the U.S. survey on the subject feared that they would not; that so far has not been a concern of firms in Canada). The data presented with CP 24-402 do not suggest that individual or institutional clients are harmed in the current T+3 environment or will be in a T+2 environment. The fact that it is principles-based means that firms have been better able to schedule and implement changes and I commend the commissions on taking this balanced approach.

Question 9: Is the current settlement discipline regime in Canada sufficient to resolve settlement failures expeditiously or are other mechanisms needed? If other mechanisms should be imposed, what should those mechanisms be? To which types of trades, securities or markets should such mechanisms apply? How would a settlement failure be determined or defined for the purposes of such mechanisms? Who should establish and administer such mechanisms (for example, an SRO, clearing agency or CSA regulator)?

I believe that there have been bilateral and functioning remediation tools for many years. The one area related to fails – and this is anecdotal – that may benefit from a review is the extent to which fails are due to the late return of lent securities. I believe no action is required without further data.

Question 10: Are there other aspects of the securities transaction processing chain that may be a source of delay in meeting a T+2 settlement timeline? If so, please describe them and identify any additional settlement discipline measures that could be taken to address such delays. Please describe such measures in reasonable detail.

My answer to this question is based on my views on the investment industry more generally. A general but obvious comment is the significant amount and pace of change around the world and in different industry sectors. There are opportunities, risks and challenges in coping with change, and so there are and will be winners and losers. The financial sector is very much involved in and affected by these changes and, thus, so are retail and institutional investors and issuers, capital markets and investment industry efficiency, as well as regulators and the regulatory framework.

One association said this week that "Thirty-six retail firms have resigned from IIROC since 2011—eight full-service firms and 28 small introducer firms. We estimate at least 30 additional small retail boutiques are under considerable earnings stress. Many of the firms relinquishing IIROC licenses have exited through merger and acquisition, while some introducer firms have simply closed shop." While those liking the "disruptor" model, or thinking that small dealers have no place in the industry, may see this as positive, it is not clear that the resultant loss in competition, choice, access, and availability are in the best interests of investors.

Effective regulation is a balancing act, between investors, issuers and registrants, and between the need for innovation, efficiency and cost-effectiveness, and safety and stability.

A big challenge to achieving efficiencies in clearing and settlement is where the cost for any firm does not justify the investment due to, as mentioned above, the "free-rider" effect. Within the investment

industry, the Canadian Depository for Securities (CDS), one industry utility that used to help in the development or co-ordination of such efforts, has been privatized and has lost – possibly as yet largely unbeknownst to its participants and regulatory stakeholders – a considerable number of long-term staff highly knowledgeable in securities clearing and settlement.

Securities industry associations also are under financial pressure as members decline in number. Below are areas that are directly or indirectly-related to clearing and settlement, that might once have been managed through a utility or association, and that I believe now should move ahead through the commissions. At least some commissions have gone past or are expanding beyond their traditional boundaries through their efforts to help launch fintech companies, facilitate crowdfunding, and organize hackathons, all funded by existing registrants, so it seems logical that the CSA can sponsor efficiencies that will benefit investors as well as the firms and those working in the industry, including the regulators. Examples include:

- **Eliminate physical securities:** While not a showstopper for T+2 settlement, the albeit dwindling number of certificates will continue to add delays and costs for investors, in addition to contributing to an investor protection concern – the potential for fraud – and a public policy issue –the additional confusion that may well arise following the deaths of an older generation of investors who may leave beneficiaries, who have never seen a certificate, with paper evidences of asset holdings. Other countries have taken steps essentially to eliminate them altogether (India, I believe Denmark and France). Regulators could be helpful in identifying how the law could be changed to facilitate this and in sponsoring a bring-certificates-in campaign. Investors holding these (and their successors trying to manage their estates) are indeed poorly served if they must pay tax and estate lawyers and accountants to search hard to deal with these certificates.

- **Always require investments under security legislation to have a security identifier.** Clearing and settlement works best (and presumably good regulation would have helped) if all items were required to obtain a security identifier upfront. This is not in any way a prohibitive expense compared to legal fees, translation, etc. and would be needed for physical securities to enter the depository. It is a good investor protection practice upfront as it would simplify finding out and doing something about investments where people are looking after a loved one's financial affairs or for executors of wills (the alternative would demand considerably more effort as well as search and admin fees charged by estate lawyers and accountants).

- **Permit access equals delivery.** The Securities and Exchange Commission (SEC) consultation on T+2 Rules cited, from among the Boston Consulting Group's list of T+2 enablers, the "access-equals-delivery" rule (a footnote referred to the SEC adopting Securities Act Rule 172 in 2005, which, with certain exclusions, provides an "access equals delivery" model that "permits final prospectus delivery obligations to be satisfied by the filing of the final prospectus with the Commission, rather than delivery of the prospectus to purchasers". See Securities Offering Reform, Exchange Act Release No. 52056 (July 19, 2005), 70 FR 44722, 44783-85 (Aug. 3, 2005)). Access-equals-delivery is a step that Canadian regulators have been reluctant to take, however, with the embrace of technology in some areas, it appears that the commissions can revisit this: for the benefit of investors, it is important that old and new firms can compete fairly. This is a clearing and settlement issue as it is tied to the date of a trade.

- **Push information about the Canadian securities marketplace.** At present, and prior to development and publication of the Canadian Capital Markets Association list of standard securities

settlement time-frames over the past year, including those securities moving to a T+2 cycle, the only place I could find with information on standard settlement dates was http://www.finiki.org/wiki/settlement. Standard government debt settlement cycles were not to be found on the Bank of Canada website. The U.S. took even longer to publish a list of securities that would move to T+2. As there may be pressure to shorten the settlement cycle of some or many products further, it would be practical that some entity keep such a list up to date. Note that the CCMA settlement cycle list is based on the IIAC's asset classification schema. Developed to promote greater consistency among industry participants for clients, this also should be shared more broadly for there to be greater consistency of understanding by investors and improved financial literacy). As well, the commissions and industry should share one glossary and acronym list, also to add to clarity for investors and industry participants. While regulators press for transparency, they may inadvertently contribute to confusion – even among registrants – by naming reports, titles, or other items differently, or using words that are susceptible to misunderstanding. Industry practices that are not regulated per se also should be available through this site, as there is not otherwise funding for a central location of factual, non-"sales" information. The CSA should facilitate an industry-managed page for which the CSA does not take "responsibility" if they so wish, with facts that investors may want or need to, or should, know such as finding out where to find a security's CUSIP/ISIN (surely a public good?), the asset classification schema, securities settlement cycle, etc.

The CSA should prioritize being a single source of e-mail push (or at least not only RSS delivery) of information and all CSA jurisdictions should provide non-RSS options for investor and registrant convenience.

I would be pleased to answer any questions you may have and look forward to the final report on NI 24-402 including, I hope, some of these common-sense, if small, suggestions included here.

Yours truly,

Barbara Amsden