OMERS

Capital Markets
900 - 100 Adelaide St W
Toronto, ON M5H 0E2 | Canada
T +1 416.814.4100

January 23, 2019 **Due: March 1**

VIA EMAIL

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

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario M5H 3S8
Email: 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
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Staff Notice and Request for Comment 23-323, Trading Fee Rebate Pilot Study (the "CSA Staff Notice")

OMERS Administration Corporation ("OAC") appreciates the opportunity to comment on the Trading Fee Rebate Pilot Study that would apply temporary pricing restrictions on marketplace transaction fees applicable to trading in certain securities.

The Ontario Municipal Employees Retirement System ("OMERS") Primary Plan is the defined benefit pension plan for almost half a million members from municipalities, school boards, emergency services, and local agencies across Ontario. OAC, as the administrator of the OMERS Primary Plan and trustee of the pension fund relating to the Primary Plan, is a statutory corporation without share capital, continued pursuant to the *Ontario Municipal Employees Retirement System Act, 2006*. OAC is a global investor, responsible for managing over $95 billion in net assets across a range of public and private market investment strategies, including substantial holdings of Canadian and US/CAD inter-listed equities. OMERS values reflect integrity, service, teamwork, excellence and stewardship.

OAC has been a strong advocate of studying trading fee rebates and their impact on market quality, execution quality and order routing behavior.[1] We are supportive of the collaborative, data driven approach proposed by the Canadian Securities Administrators and the Securities Exchange Commission. What follows are comments on what we believe to be the key aspects of the proposed pilot.

Scope, timing and Duration

We generally agree with regulators regarding the timing, duration, and scope of the proposed pilot. Given the interconnected and porous nature of Canadian capital markets, we believe that it is reasonable to align the timing and duration of the Canadian pilot with the US pilot for interlisted securities to prevent any unintended consequences disproportionately harming Canadian liquidity. We see no issue with a proposed staggered start date for non-interlisted securities and we concur with regulators that such an approach may help to mitigate the potential for market-wide confounding events. As proposed, the universe of "highly liquid" and "medium liquid" securities is sufficiently broad and would capture over ninety percent of the Canadian listed market capitalization[2]. Such scope should create a representative sample of securities. By leveraging IIROC's Surveillance Technology Enhancement Platform (STEP), we believe that regulators ought to be able to capture a consistent, cross sectional view of all trading, occurring on all exchanges and ATS marketplaces.

Pilot Design

A matched pairs design based on market capitalization, share price and trading volume seems intuitive and our own trading experience supports the inclusion of such characteristics as meaningful drivers of securities trading behaviour.

---

[1] Letter from Rob Gouley and Brent Robertson, OMERS, to Mr. Brent J. Fields, Secretary, Securities and Exchange Commission, May 15, 2018, available at https://www.sec.gov/comments/s7-05-18/s70518-3647325-162406.pdf.

[2] CSA Staff Notice 23-322, *Trading Fee Rebate Pilot Study*. March 2018, available at http://www.osc.gov.on.ca/en/SecuritiesLaw_sn_20180316_23-322_trading-fee-rebate-pilot-study.htm

Empirical Measures

As stated, the purpose of the proposed pilot is to better understand how the prohibition of rebates may affect dealers' routing practices, the level of intermediation and standard measures of market quality. We believe that understanding the impact of rebates on execution quality measures, such as implementation shortfall, time-to-fill and other delay cost metrics, should also be considered with equal emphasis. More specifically, from an institutional investors' perspective, often the costliest order is the order that is delayed, or never completed at all. We encourage regulators to examine passive order placement and to measure the delay cost of marketable, passive orders that are canceled or subsequently repriced.

Responses to Questions for Market Participants

You will find below our response to each question set forth in *Appendix II: Questions for Market Participants* to the CSA Staff Notice. For ease of reference, we have reproduced each question in italics preceding the applicable comment.

1. *We propose to define a security as medium-liquid if it trades at least 50 times a day on average and more than $50,000 on average per trading day over the past month. Do you believe that this definition is appropriate? If not, please provide an alternative definition and supporting data, if available, to illustrate which securities your definition captures.*

   We support the proposed definition of medium-liquid securities in the pilot.

2. *We propose to introduce the Pilot in two stages, with non-interlisted securities first, followed by interlisted securities. Do you believe that such staggered introduction will cause material problems for the statistical analysis and the results of the Pilot? If so, please describe your concerns in detail.*

   No. We support the staggered start date between Canadian listed and inter-listed securities.

3. *Several Canadian marketplaces offer formal programs that reward market makers with enhanced rebates in return for liquidity provision obligations. On the one hand, such programs may benefit liquidity. One the other hand, one of the primary objectives of the Pilot is to understand if rebates cause excessive intermediation. In your opinion, should exchanges be allowed to continue using rebates or similar arrangements for market making programs during the Pilot? Do you believe any constraints on such programs during the Pilot to be appropriate?*

   We believe that rebates and any liquidity or market making incentive programs that are effectively similar to rebates should be constrained during the duration of the study. In particular, we remain concerned that firms qualifying for market maker incentives benefit in ways that materially impact the economies of their agency-facing businesses and overall order routing behaviours. While we understand the goals of promoting market making by market makers, in practice, the implementation may be difficult and may undermine the utility of the pilot.[3]

4. *We propose to compute price impacts at the one- and five-second horizons. Do you believe that we should consider other horizons? If so, which ones?*

   We would recommend 50 millisecond and 500 millisecond horizons as well as those proposed.

5. *We propose to compute time-to-execution for limit orders posted at the CBBO prices or improving these prices. Do you believe that we should consider different price levels? If so, which ones? Please provide supporting data and analysis, if available, to demonstrate the empirical importance of order postings at other levels.*

   We believe that computing time-to-execution for limit orders posted at the CBBO is sufficient.

6. *We propose a number of market quality metrics. Do you believe that we should consider additional metrics? If so, please outline these metrics and provide supporting data and analysis, if available, to demonstrate their empirical importance.*

   We encourage regulators to measure the delay cost of marketable, passive orders that are canceled or subsequently repriced.

7. *We have had extensive discussions with a number of market participants on whether to include exchange-traded products (ETPs) in the Pilot, and some participants suggest that such an inclusion is warranted. Nevertheless, others point out that trading characteristics of ETPs are substantially different from those of corporate equities and including ETPs will present significant challenges in the matching stage and will likely confound the results in the analysis stage.*

   These participants and our own research identify the following concerns:

   - *most liquidity in ETPs is determined and provided by contracted market makers, and the ETP creation/redemption process represents its own source of liquidity;*

---

[3] Letter from Ty Gellasch, Healthy Markets Association, to Mr. Brent J. Fields, Secretary, Securities and Exchange Commission, May 24, 2018, available https://www.sec.gov/comments/s7-05-18/s70518-3704495-162465.pdf

- *matching characteristics that we propose to use for corporate equities do not have the same meaning for ETPs. For instance, ETP fund size is not a relevant metric, and ETP trading volume is usually not correlated with quoting activity or liquidity;*

- *spillover effects of two types may confound the results. First, liquidity in ETPs relates to liquidity of the underlying basket of securities, and if the basket is significantly affected by the Pilot, the ETP will be affected too. Second, ETPs that follow the same baskets may be viewed not only as good matches, but also as substitutes for investment, hedging, and trading purposes. If one of them is selected to be treated, and the other is not, market participants may move between products, potentially confounding the results of the Pilot.*

The above-mentioned concerns make finding matched ETP pairs a uniquely challenging task. To the best of our knowledge, there is no established procedure for matching ETPs to study their trading costs.

As such, in relation to ETP inclusion, we ask that market participants consider the following questions: Given the challenges that ETP matching presents, can the goals of the Pilot be achieved without including ETPs in the sample? If ETP inclusion is important, can you propose a way to construct a matched sample that addresses the concerns identified above?

We believe that ETPs should be included, and that the exclusion of ETPs from the proposed pilot would be problematic. If the empirical evidence gathered from the pilot suggests that regulators should take a policy action on trading fee rebates, regulators will need to extrapolate the results observed from equities and apply them to ETPs. The trading behavior of ETPs is similar, but also distinct from equities and notwithstanding the concerns raised above, it would be better to avoid any extrapolation and observe the impact of trading fee rebates directly on ETPs.

We acknowledge that market capitalization and trading volume are not meaningful characteristics driving the trading behavior of ETPs. We suggest that regulators look through the ETP structure and instead focus on the market capitalization and trading behavior of the underlying securities. An examination of the underlying securities held within the ETP structure should permit the application of the matched pairs approach.

Regarding the concern that ETPs tracking similar holdings may be viewed as substitutes for investment, hedging and trading purposes, we argue that the impact of trading fee rebates on such perfect substitutes is precisely what regulators should be studying.

Concluding Remarks

In financial markets, it is rational to assume that incentives drive behaviour. Trading fee rebates are an economic incentive designed to subsidize the provision of liquidity on a marketplace. Well-structured incentives may contribute to better execution outcomes for investors. Similarly, less well-structured incentives may lead to suboptimal outcomes for investors. If, at the conclusion of the pilot, it is found that trading fee rebates promote better outcomes for investors, then we would generally be supportive of the maker-taker pricing regime and the status quo. If, however, it is found that trading fee rebates have no observable benefit on market quality or execution quality, then we would encourage regulators to consider such data along with the agency concerns referenced in the IOSCO report and to act on such empirical evidence.[4]

* * * * *

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.

Yours truly,

Brent Robertson
Managing Director
Trading

Robert Gouley

---

[4] IOSCO, *Trading Fee Models and their Impact on Trading Behaviour: Final Report*, Dec, 2013, available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD430.pdf