



October 16, 2006

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland & Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division, Department of Justice, Government of
Nunavut
Ontario Securities Commission
Prince Edward Island Securities Officer
Saskatchewan Financial Services Commission
Registrar of Securities, Government of Yukon

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, ON M5H 3S8

- and -

Anne-Marie Beaudoin
Directrice du secretariat de l'Autorité
Autorité de marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3

**Re: Proposed Amendments to National Instrument 21-101 – Marketplace
Operation, Companion Policy 21-101CP, NI 31-101 – Trading Rules and
Companion Policy 23-101CP**

Perimeter Financial Corp. and its wholly owned subsidiary, Perimeter Markets Inc., thank the Canadian securities regulatory authorities for the opportunity to comment on these proposed amendments. As operators of two marketplaces – BlockBook™ for the trading of equities and CBID™ for the trading of fixed income instruments – we have invested

Investment Innovation
www.pfin.ca

Perimeter Markets Inc. is a wholly owned subsidiary of Perimeter Financial Corp.
2 Queen Street East, Suite 1800, PO Box 12, Toronto, ON M5C 3G7
T 416 703 7800 F 416 862 2243

significant resources in creating trading facilities through which multiple buyers and sellers of financial assets can interact in an organized, public manner. We strongly believe that robust marketplaces enhance the overall integrity of Canadian capital markets and that clear and coherent rules governing marketplace operations and trading are critical to this component of our capital markets infrastructure. We are encouraged that the proposed amendments look to improve on the successes of the regulatory regime governing marketplaces to date and commend the CSA for pursuing these issues for the improvement of the Canadian capital markets.

We are responding to the CSA's specific questions (appearing in bold), followed by comments on three of the other proposed amendments.

Specific Requests for Comments

Question #1: Should there be a mandatory requirement to report and disseminate information related to designated government debt securities? What are the benefits and disadvantages of this and the alternative approaches?

We believe there are compelling policy reasons for mandating an increased level of transparency for designated government debt securities. We also agree with the recommended approach for a phased-in implementation. However, we would like to respectfully submit several important suggested changes to the current proposal, which we believe would accomplish the stated regulatory objectives with fewer of the potential negative consequences that may be associated with such a requirement.

The CSA proposal would require marketplaces and IDBs to report order and trade information for designated benchmark securities. Order information would be reported in real time and trade information within one hour, subject to volume caps of \$10 million for securities issued or guaranteed by the government of Canada and \$2 million for all other government securities.

We would propose the following changes:

- Dealers should be required to report as well as IDBs and marketplaces
- The requirement should be limited to the reporting of trades (i.e. post-trade transparency), at this time
- There should be no mandated pre-trade (order or indication) transparency, at this time
- Trades should be reported in real-time, or with the least time delay supported by the trading infrastructure
- The volume cap for non-federal government securities should be increased from \$2 million to \$5 million
- An exemption for those participants with less than 0.5% of total government bond trading (similar to the existing exemption for corporate bond reporting specified in IDA Bulletin #3289) should be instituted

Mandated versus Voluntary Reporting

While transparency levels have increased over the past several years, the current situation still reflects a data set that is inconsistent across providers and covers only a small portion of the total market. Perimeter Markets Inc. has been an important catalyst to the market forces contributing to this increased level of transparency. Our fixed income marketplace, known as CBID, is completely transparent. Orders and trades in all securities, both government and corporate, are fully transparent to all participants, whether buy-side or sell-side. In addition, we distribute our data through our website and the Globe and Mail.¹

Notwithstanding these efforts, the competitive response one might have expected from the rest of the industry has not materialized and we have not seen a meaningful change in the industry's willingness to provide an increased level of transparency. Based on the evolution to date, it would therefore appear that without a regulatory mandate we will continue with the current piecemeal solution at best. It is even possible that if the current exemption were to be extended, or granted permanently, there could be a regression from the current, inadequate levels of transparency. Market participants could infer that the CSA no longer agreed with the policy arguments in favour of increased transparency thereby removing this incentive to comply with the existing voluntary regimes.

Benefits versus Costs

We agree that investors, whether retail or institutional, would benefit from access to a single source of reported and disseminated trade information that is both complete and produced with consistency and integrity. Further, we agree that SROs, provincial regulators and internal compliance personnel would be better able to perform their oversight duties if they had access to such a data source. While we agree that, for the most part, the institutional market is self-policing, we also know that without an accepted benchmark against which to measure execution quality, there will be undetected abuses and market inefficiencies and the retail investor will have no basis to complain of suspected misdealing.

This initiative is timely as it is generally accepted that fixed income securities will form a larger proportion of investment portfolios, for both retail and institutional investors, in the future.² The creation of a comprehensive data source for this security class will be an important contributor to investor confidence and should enhance the willingness to invest. Just like large blue-chip equity securities, there is and will continue to be significant demand for government debt, which should, in our view, remain as liquid or become more liquid with greater transparency.

¹ PMI publishes live intraday and closing offer prices for the most active government, provincial and corporate fixed income securities daily on its corporate website (www.pfn.ca) and closing offer prices in the financial market pages of the Globe and Mail.

² "Issues in Fixed Income Market Regulation – Part I", Paul Bourque, Senior Vice-President, Member Regulation, IDA Report, Special Feature, Summer 2006.

While many submitting comments will focus on the potential for adverse consequences related to increased levels of transparency, we would like to identify some of the benefits which we foresee would accrue to the market as a whole as a result of an increased level of transparency.

Investor Fairness and Market Integrity

Large investors and dealers often have an information advantage over retail investors and smaller institutions as a result of their position at the centre of the majority of trade executions. Those who are consistently in the “deal flow” will have a better picture of trends and market conditions than those who trade occasionally. Transparency reduces this information asymmetry in the market and facilitates informed trading.

Investors are increasingly taking control of their own execution decisions in all markets. The ability for investors to gain control of their orders delivers operational efficiency and improves the ability to make best execution decisions. Adequate information that is fairly distributed is a necessary condition for investors or their agents to trade in their best interests. Transparency is critical to enhancing fairness for all investors, particularly retail and small institutional investors.

We would expect that an increase in the quantity and quality of trade information will boost investor confidence, contributing to increased appetite for investing in this asset class, thus contributing positively to liquidity.

Efficient Capital Markets

The amount outstanding of government fixed income debt has been in steady decline since the late 1990s. As the supply of this financial commodity continues to decrease, it will be important to ensure that the benchmark securities that form the government yield curves be well-priced in the secondary market and form a stable curve to support the efficient operation of the Canadian capital markets. In a declining supply environment, every trade contributes a more important level of information to investors and dealers in the price formation process.

We believe that a single source of consolidated trade data would contribute to the robustness of the government yield curve. A strong yield curve provides many benefits, including:

- The risk-free Government of Canada yield curve forms a basis for pricing a vast array of financial products and therefore an efficient and liquid market curve has collateral benefits to the cost of capital across the economy.
- Management of financial risk in the capital markets relies heavily on the secondary market for benchmark government bonds. Interest rate hedgers, regardless of credit, use government bonds to manage risk and collateralize financial obligations.

- Longer-term investment management strategies rely on government securities for management of actuarial liabilities that extend far in the future. Non-governments are less capable or efficient at providing liquid and risk-managed long-term investments.
- Government monetary policy is best served through a well priced yield curve that continuously reflects the government's cost of capital. On a well priced curve, the government can predict and plan funding with greater confidence.
- A strong secondary market for government bonds maintains a 'safe haven' reserve position for institutions and individual investors. At times of crisis, a certain capacity to absorb capital in the debt market leads to a higher level of stability in the market.
- A weak yield curve compels issuers to raise funds in foreign markets where a more stable and better priced yield curve can be used as a basis for pricing financial products.

New Products and Innovation

Another benefit to mandated trade disclosure resulting in a single, consolidated data source is the possibility of the creation of new and innovative products to better serve the fixed income market. We have seen an explosion of products in other assets classes which are priced or somehow derived from the trade data of the cash market. Currently, the lack of a credible data source is a major impediment to the creation of these types of products in the fixed income market. This weakness results in these strategies occurring only in customized, off-marketplace form for large institutions, effectively excluding smaller investors from benefiting from a more appropriate product set for their specific needs.

Costs/Disadvantages

All new regulations carry with it an explicit cost component as well as the risk of unintended consequences. We fully recognize these realities and are supportive of a regulatory process that achieves the best balance between the benefits to important policy objectives and the costs to the market from implementation. In this case, we believe that the recommended approach of a phased implementation, along with our proposed amendments, accomplishes this goal.

By limiting the reporting requirement to benchmark government securities and to trade (not order) information, the implementation costs are much reduced without sacrificing the principal benefits of increased transparency. The addition of an exemption for smaller dealers and marketplaces would further reduce the burden of compliance, without unduly harming the integrity of the data source.

The potential for an increased level of transparency creating an adverse impact on the willingness of dealers to supply liquidity is also reduced by limiting the requirement to benchmark securities only. These are the most frequently traded securities where

liquidity is not an overriding concern in the market and is unlikely to be affected by post-trade reporting.

It is important to note that the threat of reduced liquidity as a result of increased transparency has been detected exclusively in high-yield or other less liquid sectors of the fixed income market. GovPX has been operating in the US since 1990, publishing trade price and volume information in real time without any discernable decrease in liquidity in the marketplace for government securities.³

While we will continue to support the CSA in pursuing higher levels of transparency for both pre and post-trade information in the government securities market, we believe that a more limited implementation of post-trade transparency for benchmark securities at this time would be an important first step. This would create an appropriate infrastructure and will build on the increasingly electronic transaction processing that is already occurring in the fixed income market. This infrastructure could then be expanded in the future to support further reporting requirements, including order information, when desired. In the meantime, even this more limited implementation will provide important learning on the impact of such initiatives in the marketplace without undue risk to the existing market structure.

Question #2: Should dealers be subject to order and/or trade transparency requirements for government fixed income securities? If so, should they be required to report order information, trade data or both?

We believe that all market participants, including dealers, marketplaces and IDBs should be subject to the same reporting requirements. However, as indicated in response to question #1, we recommend that only comprehensive post-trade transparency be mandated in the first phase and order information be implemented in a later phase. We will address first whether dealers should be subject to transparency requirements and then share our reasons for recommending no order transparency at this time.

Trade Data - Dealers versus Other Market Intermediaries

Whatever transparency levels are mandated should apply equally to all market participants. This is important for two reasons. First, it is the only way to ensure that the data is, in fact, comprehensive and has integrity. Second, it is consistent with both the fundamental principle of fairness and the stated policy objective of creating a level playing field amongst market participants.

³ “TBMA U.S. Response to European Commission Call for Evidence on Price Transparency in Non-Equity Markets,” The Bond Market Association, September 18, 2006.

Data Integrity

Dealers should be subject to the same transparency requirements as other intermediaries in the debt markets. Unlike equities, which are largely captured within formal marketplaces, trading in government fixed income debt is largely captured by dealers with only a portion of their trade activity occurring through an IDB or an ATS. We estimate that in the first quarter of 2006 trading on IDBs represented approximately 1/3 of all trading in government of Canada securities.⁴ ATS's represent an even smaller proportion of trading activity.⁵ It is easy to see, therefore, that any data source which did not include dealer trades would have a significant deficiency in comprehensiveness and integrity.

Concentration in the secondary trading market for government securities increases the information asymmetry in the market. The top dealers in the market derive an informational advantage from seeing a greater share of the order flow in the currently non-transparent Canadian fixed income market. The top dealers have a concentration of informed traders that relegate lower tier dealers and customers to trading liquidity only. All dealers have the ability to see the trade flow in the IDB market, however, this market represents only a portion of the daily trades, as noted above, and IDB trades are often for a different business purpose than customer business (e.g. laying off inventory risk among others). If dealer trades outside of marketplaces and IDBs were not included, the resulting data source would have much less integrity.

Some dealers have argued that mandated transparency will lessen incentives for dealers to make markets: tighter bid-ask spreads will reduce the opportunity for dealers to profit, leading to lower levels of liquidity. This does not recognize the fact that the current lack of transparency may discourage the active participation in fixed income markets from some sectors. We anticipate that investors, both domestic and foreign, would be more willing to invest in a market that is demonstrably fairer and more transparent. Therefore, while some dealers may change decrease their activity, other investors may more than compensate for that decrease by increasing their own. As intermediaries in the market with significant position management responsibilities of their own, dealers would benefit from increased or maintained (in the case of declining government debt) liquidity. Finally, from a public policy perspective, there seems little principled basis for allowing dealers the opportunity to profit at their customers' expense in a largely non-transparent capital market structure.

Level Playing Field

Given that dealers play the role of marketplace in the fixed income market it should be expected that they have the same requirements for data transparency as other marketplaces, especially if the information is limited to trades. Dealers would need to

⁴ Source: Bank of Canada Banking and Financial Statistics (September 2006).

⁵ Estimated 15% of dealer to client trades are conducted electronically. This would translate to approximately 8% of total government trades. "The Future is Now: Canadian Fixed Income Trading Going Electronic," Phillip Wright, The Analyst, December 2005.

inform the market of trades executed, so that a complete picture is formed. Otherwise, structured marketplaces like ATS' and IDB's may be at a disadvantage. They would be required to bear greater costs associated with data distribution which may make them less competitive. Some marketplaces, such as CBID may choose to exceed mandated levels of transparency, but the base level requirements should be the same for all. In addition, some investors may prefer to not publish their trades, thus creating an incentive to use a dealer rather than an ATS or IDB. This would introduce an element of regulatory arbitrage into the execution decision making that should not be supported by the CSA.

An important element to this recommendation is the continued exemption for smaller dealers or marketplaces which do not capture 0.5% market share. This will be critical to achieving the right cost/benefit balance for the new regulation. The harm to the data integrity by excluding these smaller players is de minimis, but the cost consequences of them being forced to comply with an increased transparency regime may be substantial.

Alternatively, if dealers are to be exempted from all transparency requirements for government fixed income securities, consideration should be given to client order exposure requirements and off-marketplace trading restrictions comparable to those found in Sections 6.3 and 6.4 of the Universal Market Integrity Rules.

Order Data versus Trade Data

As a practical measure, consistent with the phased-in approach recommended by the CSA, mandated order data reporting should be excluded from the reporting requirements contemplated by the CSA at this time.

The traditional lack of a central organizing marketplace in the government fixed income market means that the workflow surrounding order management in the dealer community is heterogeneous and does not lend itself to a homogeneous, timely and electronic order reporting solution. Whereas displayed orders make up a large proportion of activity in the equity markets, displayed orders represent a small proportion in the fixed income market.

The challenge of reporting order data in any meaningful way is further complicated by the complexity of the data set of quoting conventions, linked trades, contingent orders and other special terms. Fixed income orders are valued not only on price but on combinations of prices and yields such as switches, rolls, and boxes having unique price properties at the order level that are not conventionally captured in the pre-trade non-IDB dealer market.

Notwithstanding our view that order data be excluded from the CSA requirement at this time, evolving marketplaces such as those operated by Perimeter Markets Inc., will continue to develop pre-trade transparency in the market. As a consequence of their trade execution models, electronic trading networks build and enhance market transparency through a greater degree of pre- and post-trade transparency. However, in the absence of

client order exposure requirements and off-marketplace trading restrictions (such as those found in the UMIRs), requiring a marketplace to disclose its subscribers' order information to non-subscribers creates a free-rider problem that is, in our view, manifestly unfair and prejudicial to marketplace development.

We believe that a mandated post-trade transparency only at this time accomplishes the principal policy objectives of the CSA, is relatively cost effective to implement and does not carry with it the same risk of unintended or adverse consequences as pre-trade/order transparency.

Question #3: What type of pre-trade information should be disseminated? Should it include indications of interest?

As discussed in response to Question #2, pre-trade information requirements should be excluded from the CSA requirement at this time.

Question #4: Are the reporting timelines appropriate – i.e. order information in real time and trade information within one hour of the time of the trade?

We would prefer that immediate disclosure of trade information be considered as a requirement, if not now then in the next phase. The information value of trade points diminishes the greater the time lag. Therefore the time lag should be the minimum possible. This is particularly relevant if, as we have proposed, there is no mandated pre-trade transparency and the trade executions will be a primary input to the price formation process. Market knowledge of traders' positions would be protected by the volume caps and the anonymous reporting of the trade information.

We agree that, based on the experience in corporate bonds, reporting of trades within one hour will allow an acceptable level of compliance to be achieved, and would provide a starting point for reductions in the time lag in the future. Based on the heterogeneous dealing environments of Canadian dealers, the different levels of automation and the time pressures in fast paced markets, short reporting time requirements may be challenging as a first phase requirement.

However, we do not believe that immediate reporting of trade information would pose a significant operational burden once disclosure is a mandated. If all participants must report trade information, as we propose, an automated solution will be required. Once this is in place, there will not be any workflow impediments to the immediate dissemination of trade data and future phases can reduce the time lag and enhance the value of the data.

If the CSA retains the one-hour time lag, we would stress the importance of including significant data elements to the reported trade information in addition to the price and quantity. The trade time will be very important to enable an investor to understand the

trade flows as well as other conditions that may cause the trade to be out of the current market context, such as settlement differences or linkages with other trades.

Question #5: Are the volume caps applicable to government fixed income securities set out in the Companion Policy to NI 21-101 adequate? Should there be further tiering of volume caps for the different types of government bond securities?

Government of Canada volume cap of \$10 million is satisfactory. The volume cap for other government securities should be raised from \$2 million to \$5 million to better reflect a standard trade size for that sector.

Question #6: Should we require pre-trade transparency for corporate fixed income securities? If so, should the requirements be applicable to marketplaces only or should they also apply to dealers?

For the same reasons discussed in response to Question #2, pre-trade information should be excluded from the requirements.

Question #7: Should the time for reporting the trades be reduced (for example, should all trades be reported and disseminated in real time)?

For the same reasons discussed in response to Question #4, the time for reporting trades should be reduced to the minimum possible, if not in this phase then in subsequent phases.

Question #8: Has the process for designating benchmark corporate fixed income securities been effective? Please explain your response/

We have identified some weaknesses in the current implementation of the transparency requirements for corporate debt on CanPX. Whereas in its other markets CanPX consolidates feeds from the inter-dealer brokers to display a composite view of live orders and resulting trades, the lack of activity and absence of corporate bond market making on the IDB screens created the need to establish indicative price feeds from dealers for a select list of corporate securities. These market prices are not tradable and therefore have less information value. Furthermore anyone that is not also an IDB customer (i.e. a dealer) cannot act directly on the information to achieve the price levels that are displayed or join in trade activity.

In addition, the information value of the data displayed on CanPX could be improved by adding some key data points. Corporate bonds are priced as a spread market against the government curve. Indicative cash quotes are insufficient for properly informing the market as to trading levels. Viewers are left to imply spreads against comparable government bonds. The addition of the benchmark information or the actual spread at the time of trade would greatly enhance this data.

The process for designating benchmark securities on CanPX has been cumbersome and unresponsive to changing market conditions. The list of bonds available to subscribers to the CanPX service does not change in response to trade activity flowing from the supplying dealers or inter-dealer brokers. Because the list is fixed, and only updated on a quarterly basis the last-trade reported can be many months old. In the corporate bond market, the active securities can change from day-to-day. If the list of corporates does not change in timely response to market activity then it will fail to pass the post-trade transparency information available in the market.

In addition, we note that the CanPX does not include representation from all areas of the Canadian capital markets which have an interest in fixed income. As a joint venture of the IDA member firms represented on the IDA Capital Markets Committee and the Primary Dealer Money Market Committee (along with certain IDBs), the contribution to the debate surrounding benchmark formulation is restricted. Important constituents, including retail investors, ATs and institutional investors are not represented.

We strongly believe that any process for designating benchmark securities should be as inclusive of all market participants as possible. Further, we believe that the requirement for all industry participants to report trade data, as we are proposing, will provide the best source of information for defining benchmark securities on a timely basis. Thus, the reporting requirement will facilitate the benchmark formation process, creating a virtuous circle of improving information dissemination.

Question #9: Has there been sufficient progress, both regulatory and industry-driven, regarding fixed income transparency to date? For retail investors? For large and small institutional investors?

The 2002 IDA/CSA Market Survey on Regulation of Fixed Income Markets is often cited to support continuation of the status quo with regard to transparency in the institutional market and ongoing need for transparency in the retail fixed income market. The questions posed in the survey, the selection of respondents and the age of the survey are no longer contemporary to the current and evolving market conditions.

Progress has been made in expanding access by large institutions to quoted government securities markets. However, there remains a general lack of post-trade transparency in the Canadian fixed income market. Institutional investors are increasing demands to control their own order flow and seek best execution. Further improvements in transparency are consistent with providing the necessary price discovery to satisfy investor information demands.

There has been insufficient progress in delivering transparency to retail customer channels. Single provider markets dominate the retail landscape. Notwithstanding the goals of IDA Policy 5 to place a burden of fair dealing on market providers, it is left to the provider, not the customer or regulator to make the determination of value to the

investor. Faced with an offer from a single dealer to which a retail customer is typically captive, the customer has limited ability to judge the fair value. In addition, without a credible external benchmark price against which to measure executions, there is little basis for ascertaining the quality of the execution achieved.

For these reasons, we are strongly supportive of the CSA's stated intention to advance the evolution of transparency in the Canadian fixed income markets.

E. Clarification of Best Execution and Other Obligations in a Multiple Marketplace Environment

We agree with the CSA that a mandated solution for marketplace integration is inadvisable, now or in the future. Our experience with developing a new marketplace in the Canadian equity market confirms our previously expressed belief that such a requirement would impose a severe impediment to the establishment of competitive marketplaces. We believe the fact that subsequent to the repeal of this provision many new marketplaces have been announced, is compelling evidence of the soundness of this approach.

Over our first year of BlockBook's operations, we have experienced first hand the difficulty of engaging incumbents in the required technology, data and business discussions required to create a mutually acceptable arrangement. Without a proven product, a new entrant is unable to compel others to integrate resulting in the classic "chicken and egg" scenario. A market cannot operate unless it is integrated, but cannot integrate unless it has a proven operation. This problem is particularly acute when the dealing models or structures are very different than the existing structures, as is the case with BlockBook. However, now that we have a successful track record and are achieving recognition as a reliable execution venue for blocks, we are making great progress on integrating our marketplace with third party vendors and other marketplaces.

We would support the CSA in continuing its current position of not requiring market integration as a pre-requisite to launching a new marketplace.

With respect to a dealer's best execution obligations, the CSA is proposing to add the following subsection to the Companion Policy to NI 23-101:

In order to meet best execution obligations, we expect that a dealer will take into account order information from all marketplaces where a particular security is traded (not just marketplaces where a dealer is a participant) and take steps to access orders, as appropriate. This may include making arrangements with another dealer who is a participant of a particular marketplace or routing an order to a particular marketplace, where appropriate.

We heartily embrace the CSA's position that all marketplaces must be considered, not just those marketplaces to which a dealer has chosen to have access. The anti-

competitive potential of any other interpretation is obvious – a dealer would be able to ignore better executions by limiting access to different marketplaces.

In certain situations, such as trading large blocks, a requirement for full pre-trade transparency can create an adverse impact on the trade results as the knowledge of a large order can affect negatively the price of the security. The CSA has reflected this understanding in NI 21-101 by differentiating between the requirements for marketplaces that generally provide pre-trade order information as a part of their operation and those marketplaces that “...only display orders to its employees or to persons or companies retained by the marketplace to assist in the operation of the marketplace.”⁶

However, that fact that a dealer does not have full visibility into the order book of a marketplace should not alleviate their duty to consider that marketplace when fulfilling their duty of best execution for their clients. Post-trade information regarding securities traded, size and price may present sufficient information such that a dealer would be well-advised to test the non-transparent marketplace with the client order in order to ensure the best possible execution.

For this reason, we would suggest amending your proposed amendment to the Companion Policy to NI 23-101 to include post-trade as well as pre-trade (order) information on all marketplaces.

“...we expect that a dealer will take into account order and trade information from all marketplaces...”

F. Requirements for and Status of Information Processors for Debt and Equity

We agree that data consolidation is an important element of providing the right information to investors such that they can make informed decisions on where and how to execute their trades. We too have been frustrated with the slow development of consolidated data in the Canadian market.

Since BlockBook launched in August of 2005, we have been providing our execution data through an agreement with TSX Datalinx, who in turn provides it to all market data vendors as a wholesaler. Unfortunately, while the data vendors have access to our execution data, none to date have displayed our trade data along with other executions occurring on the TSX.⁷ This represents an important weakness in market integrity as, despite our best efforts to the contrary, some market participants have access to this information and others do not.

The importance of this lack of trade visibility is easily demonstrated by highlighting the relative importance of our trade sizes and the impact the exclusion of these trades has on the quality of the data provided. For example, since inception trades on BlockBook have

⁶ Section 7.1(2) of NI 21-101.

⁷ Reuters has created a page showing BlockBook executions, but they are not consolidated with other marketplace executions for easy reference.

averaged 49,591 shares while order sizes have averaged 109,468 shares. In addition, BlockBook executions have, on average, represented 18% of the average daily trading volume in that security on the TSX. The fact that these large transactions were not included in the consolidated data viewed by the market means that all investors were not equally informed about the size and nature of trading activity in that security. In addition, calculated measures, such as VWAP, were seriously deficient as a result of the exclusion of these trades, perhaps even misleading investors as to the quality of the execution they received elsewhere.

The challenge, therefore, is to create a regulatory policy that prevents important information distortions, such as described above, without creating the burden on the industry of a regulator mandated solution. In addition, the potential for market data revenues to drive trading inefficiencies needs to be considered, as has been amply shown in the US circumstance.

We would propose a hybrid approach that balances the costs and benefits and assigns the responsibility to the parties best able to perform.

First, we do not agree that there should be an “approved” information processor, but the regulations should continue to encourage a market driven and competitive response to market data needs. This will ensure the most flexible solution with the minimum potential for distortions or unintended consequences.

However, we would also propose that all vendors of consolidated market data be required to incorporate information from marketplaces once a threshold volume has been achieved. This would prevent the situation we have experienced where a marketplace like BlockBook has done everything possible to distribute its data, but has been unsuccessful in persuading the vendors to display the data. This would also have the advantage of ensuring there is no potential for anti-competitive tactics where a consolidated data vendor, such as the TSX Datalinx, is affiliated with a marketplace i.e. the data vendor would not be able to refuse to include the data from another marketplace in its consolidated data. The threshold volume would protect vendors from wasting development dollars on unproven or unsuccessful marketplaces.

G. Other Amendments (Registration Exemptions Not Available to an ATS)

The CSA is proposing to repeal the current section 6.2 of NI 21-101 and replace it with the following:

Except as provided in this Instrument, the registration exemptions applicable to dealers under securities legislation are not available to an ATS.

Corresponding interpretive guidance is proposed to be added to NI 21-101CP as follows:

Any registration exemptions that may otherwise be applicable to a dealer under securities legislation are not available to an ATS, even though it is

registered as a dealer (except as provided in the Instrument), because of the fact that it is also a marketplace and different considerations apply.

We respectfully request that section 6.2 of NI 21-101 be reworded as follows:

Except as provided in this Instrument, the registration exemptions applicable to dealers under securities legislation are not available to an ATS in respect of its ATS activities.

We propose modifying the corresponding interpretive guidance to the effect of the following:

Any registration exemptions that may otherwise be applicable to a dealer under securities legislation are not available to an ATS in respect of its ATS activities, even though it is registered as a dealer (except as provided in the Instrument), because of the fact that it is also a marketplace and different considerations apply to its ATS activities. All dealer activities conducted separate and apart from ATS activities remain unaffected by the Instrument. However, a dealer operating an ATS must take reasonable steps to ensure that its ATS activities are sufficiently distinguished from those of its other dealer activities so that no client becomes confused as to the nature of its particular relationship with the dealer in respect of any given transaction.

Even with the new interpretive guidance, we admit to some difficulty understanding the legal purpose and effect of proposed (or for that matter existing) section 6.2. An ATS registered as a dealer would appear, by definition, to have no need of dealer registration exemptions in its activities, so that removing such exemptions seems to have no legal effectiveness. We assume that the provision is not intended to restrict ATSs from engaging in trades executed by subscribers who are non-registered buy-side institutions, as this is a core activity of our ATS operations and at least one other proposed ATS in Canada.

We note that a dealer operating an ATS may nonetheless conduct dealer transactions outside of the scope of its ATS operations. For example, a dealer operating an ATS may also act as an underwriter of primary distributions – the latter is functionally and legally outside the scope of the secondary market transactions conducted on the dealer’s ATS, and should not be inadvertently impaired by the prohibition in section 6.2. We have not canvassed all provincial legislation in Canada on this point, but suspect there may be local legislation that governs certain dealer activities using the language of “registration exemptions”. Our proposed text changes above clarify that non-ATS dealer activities are not impaired in any way by section 6.2.

In Ontario, it appears section 6.2 would restrict an ATS and its partners, officers and employees from the advisory exemption contained in s. 3.7(a)(v) of National Instrument 45-106 and perhaps from the “non-trading employee” exemption contained in section 3.5 of National Instrument. If so, the application of section 6.2 to our ATS activities is

acceptable to us in this context, as our ATS operations do not involve us providing trading advice to our subscribers or involve trading by our “non-trading employees”.

Our text changes proposed above are consistent with the remainder of Part 6 of NI 21-101, which already describes ATS activities in a way that designates them as being *uniquely* ATS activities (and not generic dealer activities). For example, section 6.11 (which requires disclosure to clients that an ATS is not responsible for best execution) refers to accounts opened for “subscribers”, which are defined as clients accessing an ATS for the purpose of trading on that ATS. Accordingly, a dealer operating an ATS and conducting non-ATS dealer activities remains subject to best execution obligations in respect of the latter.

Finally, we note that U.S. regulations governing ATSs do not require that a dealer conduct only ATS activities. Rather, the SEC sought to regulate the *de facto* exchanges being operated by dealers by superimposing a new regulatory category on such ATS activities.

* * * * *

Yours very truly,

“Judith Robertson”

Judith Robertson
Executive Vice President, *Perimeter Financial Corp.*

“Mario Josipovic”

Mario Josipovic
Vice President, General Counsel and
Chief Compliance Officer, *Perimeter Markets Inc.*