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BY E-MAIL and COURIER

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Dear Members of the Canadian Securities Administrators and Market Regulations Services Inc.,

Re: Trade-through Protection, Best Execution and Access to Marketplaces and Proposed Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules and Related Universal Market Integrity Rules (Proposal)

TSX Group Inc. (TSX Group) welcomes the opportunity to comment on the Proposal published by the Canadian Securities Administrators (CSA) and Market Regulation Services Inc. (RS). We respond generally to the Proposal in this letter. In Appendix I and Appendix II, we respond to the questions asked by the CSA and RS respectively in the Proposal.

TSX Group owns and operates Canada's two largest national equities exchanges – Toronto Stock Exchange serving the senior equity market and TSX Venture Exchange serving the public venture capital market. We believe that it is important to develop a formal Canadian approach to the matters raised in the Proposal as soon as possible in order to provide certainty to Canadian markets. Market participants and marketplaces alike are currently spending significant resources on market structure issues that affect domestic and international business, and they should be able to employ any new infrastructure with the knowledge that future regulatory changes will not render the infrastructure obsolete.

Trade-through Protection

Framework

We agree with the Proposal's framework that all visible, better-priced orders that are immediately accessible should be protected across all marketplaces. Similarly, we believe that any consolidated data feed should not be limited to a certain number of levels as was suggested in the Proposal, but should display full depth-of-book information.

We agree that the industry is best positioned to determine how to implement the changes necessary to achieve trade-through protection, and that having marketplaces develop policies and procedures reasonably designed to prevent trade-throughs is a sensible response to a complex issue. Marketplaces are the appropriate vehicles to set and enforce rules to ensure price protection.

Global Competition

Although it is necessary to formulate a trade-through rule that addresses our unique Canadian market, the CSA must continue to consider regulation within the broader context of international trade in securities. Both Toronto Stock Exchange and TSX Venture Exchange are in constant competition with exchanges, quotation and trade reporting systems, OTC bulletin boards, electronic communication networks, and alternative trading systems in the U.S. and increasingly, around the world. For example, there are currently 204 Toronto Stock Exchange-listed issues that are also listed on the New York Stock Exchange (NYSE), NASDAQ and the American Stock Exchange. These inter-listed issues represent approximately 54.6% of the number of trades executed on Toronto Stock Exchange and approximately 56.2% of the total value of trades executed on Toronto Stock Exchange.¹

In our comments (the September 2005 Submission) responding to Discussion Paper 23-403 – Market Structure Developments and Trade-through Obligations, we advanced the thesis that our global competitors would continue to grow in size and become even more formidable. Although less than two years has passed, this prophecy is being realized. In 2006, NYSE completed its merger with Archipelago and its subsequent initial public offering as NYSE Group, Inc. This year, NYSE Group and Euronext merged to create NYSE Euronext. Also in 2007, The Nasdaq Stock Market, Inc. announced its offer to acquire OMX AB while continuing to increase its holdings in the London Stock Exchange Group plc. Last month, the London Stock Exchange announced its merger plans with Borsa Italiana S.p.A.

Increasing global competition will hasten the pace of growth in our markets, and will force Canadian marketplaces to adapt to meet the changing needs and faces of our customers. We believe that the CSA must embrace the objective of increasing the competitiveness of Canadian markets as against other international markets, particularly the U.S.

Access Fees

Given that a significant technology investment may need to be made by marketplaces in order to fulfill trade-through obligations, the CSA should not impose fee restrictions on trading at this time. Marketplaces must continue to be allowed to compete with each other by differentiating

¹ Based on year-to-date data as at June 30, 2007.

themselves based on factors such as price and cost of execution as well as liquidity and speed of execution. To remove one of the main points of differentiation would discourage the natural evolution that will occur among competitive marketplaces and ultimately reduce the benefits to be realized by customers.

Every marketplace should be able to set its fees to not only cover costs, but to allow for a profit margin to be made where additional value-added services are offered by the marketplace, and to provide incentive to innovate. Marketplaces must be able to apply trading fee structures that reward participants who contribute to the price discovery process and/or add liquidity. The corollary to rewarding such order flow is that marketplaces should be able to charge a premium for orders routed to them that do not participate in the price discovery process or that remove liquidity.

Small Sized Orders

The Proposal states that a decrease in the size of limit orders can lead to a less efficient market because there is less displayed interest in a security in terms of size and depth of the market. We submit that it is important to view all of the limit orders at the bid or ask in the aggregate in order to determine market efficiency. For example, Toronto Stock Exchange has seen an increase in the slicing of large blocks of orders into small limit orders. On Toronto Stock Exchange, despite the fact that the average limit order size has decreased, the total number of orders at the quote has increased which contributes to improved market efficiencies. Toronto Stock Exchange sample statistics show that 95% of trades are being executed at a single price.²

Electronic trading is vital to the Canadian markets. We must acknowledge the contribution of small orders from retail investors as well as from other investors who add liquidity and enhance price discovery on marketplaces by providing small-sized order flow. These investors include portfolio traders, velocity traders, hedgers, pro traders, market makers, and algorithmic traders. Combined, these investors provide considerable liquidity to Canadian markets³.

Best Execution

Framework

TSX Group strongly supports the effort to expand the definition of best execution, making it more reflective of current priorities in a highly competitive electronic marketplace. In an environment that demands continuous innovation from dealers, and where strategies employed by their clients are becoming increasingly complex, there is no single, comprehensive metric for best execution. Instantaneous price is no longer relevant as a metric for the quality of an execution. This statement is made clear when one looks at the myriad buy-side execution management technologies that have appeared in the United States. These technologies allow portfolio managers to monitor the quality of their brokers' executions based on the metrics that they have deemed to be relevant to their order.

It is critical to recognize that different clients have different needs. For example, electronic traders on a sell side proprietary trading desk or a buy side statistical arbitrage desk may be

² Based on a one-day Toronto Stock Exchange sample in Q1 2007.

³ In the first quarter of 2007, approximately 85.5% of all trades executed on Toronto Stock Exchange were for fewer than 1000 shares, and 72.8% were for fewer than 500 shares.

chiefly concerned with latency because speed is critical to the execution of many of their strategies. Retail traders, with limited market power and information, may value certainty of execution as is provided by market makers and the minimum guarantee fill (MGF) facility above all other things. Institutional clients may be primarily concerned with the total cost of executing a large portfolio-driven trade, seeking to minimize the number of individual transactions involved with their fill to control information leakage and per-trade costs. TSX Group believes the Proposal's definition of best execution is flexible enough to allow for competitive innovation among dealers in meeting their best execution requirements.

Elements of Best Execution

The elements of best execution explicitly included in the Proposal's guidance – price, speed, certainty of execution, and overall transaction cost - are comprehensive. However, as the market evolves, it is likely that the definition will need to be expanded further over time. Interpretation of the last element, overall cost of the transaction, must include both explicit and opportunity costs. In addition to hard costs related to commissions, execution, and clearing, the total cost of a transaction includes economic costs that are far more difficult to measure objectively. These include the impact of information leakage causing markets to move against an order, and the cost of missed opportunities. Buy-side managers are increasingly looking to total cost analysis (TCA) and execution management systems to monitor the impact of trades on market prices, shortfalls, and other opportunity costs that affect the value they extract from a transaction. These metrics are highly subjective, and are not exclusive from the other elements of best execution included in the definition. As such, there is no need to include them explicitly in the definition of best execution, but any interpretation of total transaction cost must include opportunity costs.

Impact on Small Dealers

We believe that the wider definition of best execution will impact small dealers positively. It will allow smaller dealers to pursue niche strategies that focus on a single element of best execution, or a combination of elements. For example, a small dealer could focus on low latency executions and pursue a buy side statistical arbitrage client base. The dealer could specialize in executing block trades with minimal market impact cost and pursue an institutional client base. The dealer could also specialize in certainty of execution by internalizing order flow from a retail client base, effectively offering them the services of a liability desk. There are many value propositions for small dealers to pursue, and as in all markets, the ability to innovate and specialize creates room for smaller competitors.

However, we are concerned that the multiple marketplace environment could create a disproportionate burden on these small dealers. The source of this burden is the primacy of the trade-through obligation to the market over best execution obligations to clients. Under the current market structure in Canada, small dealers are obliged to connect to marketplaces regardless of their best execution obligations. Smaller dealers cannot allocate the costs of such connections, and the technology to manage these connections, over multiple business lines. There is a risk that connectivity and management costs will drain the resources of many small dealers.

Marketplace Reporting

TSX Group supports the proposed reporting requirements for marketplaces and dealers. We strongly encourage the CSA to ensure that the information contained in standardized marketplace reporting be fungible with the information contained in similar monthly reports in the U.S. The U.S. "Dash-5" reports are in widespread use. In order to continue to attract northbound order flow from the U.S., and thereby increase the liquidity available to Canadian investors, it would be beneficial to have easily understood statistics that allow U.S. broker-dealers to quickly compare the performance of North American marketplaces on a common basis. Our response to Question 19 in Appendix 1 lists a number of items that Dash-5 reports measure. One such item is spread information. Spread information must be included in marketplace reporting, since this is the most commonly accepted indicator of liquidity. Spread-based statistics have predictive value and allow users to find marketplaces with the most liquidity, and this information is very valuable to all elements of the new best execution definition.

Standardized reporting should be produced by all marketplaces covered by the trade-through rules, regardless of whether the securities they trade are interlisted. Otherwise, more liquid interlisted symbols will be advantaged over symbols whose liquidity is still growing. Whether or not a symbol is interlisted, Canadian investors benefit from understanding its liquidity, and the likelihood and speed of fills. In electronic markets, interlisted status can potentially be determined using electronic symbol lists that are uploaded to dealer systems daily, although Canadian marketplaces would need to standardize symbology to ensure interlisted symbols are identified. There are currently no mechanisms to automatically guarantee notification to a marketplace that a security has been interlisted or traded OTC. The determination and monitoring of interlisted status would ideally reside with a specialized third party that can assemble and centralize the requisite information.

The greatest challenge in delivering monthly reporting to compare marketplace performance is defining objective data points to be measured. For example, marketplace latency can be measured between any two points (or processes) in a trading enterprise, and the points chosen can favour a particular marketplace. It is critical to develop objective metrics that do not favour one marketplace structure over another. For this reason, data should be submitted to an independent, third party for formal reporting.

Summary information relating to trades for interlisted securities executed on a foreign market or over-the-counter should be included in data reported by dealers. It would be beneficial to deliver better information on overall execution quality regardless of borders. As stated earlier, 204 Toronto Stock Exchange-listed securities are interlisted on U.S. marketplaces⁴, and because executions by Canadian dealers span jurisdictions it is important to include transactions on foreign markets in their reporting to provide clients with additional transparency.

Although TSX Group supports the notion of reporting on orders that have been routed in order to meet trade-through obligations, we do not feel that such reporting is feasible today. It is difficult to attribute a routing decision to the trade-through obligation, especially in light of the best execution obligation and the variety of routing systems that are employed. The effort to mark and report on order flow routed in order to comply with trade-through obligations must be commensurate with the perceived benefits.

⁴ Based on year-to-date data as at June 30, 2007.

Access to Marketplaces

Extension of RS Jurisdiction

The proposal to extend RS's jurisdiction to participants' clients is dangerous to Canadian markets. Treating U.S. broker-dealers who are direct market access (dma) clients and foreign buy-side customers as Access Persons may cause these clients to stop trading on Canadian marketplaces. We are unable to quantify the potential cost to the Canadian market in terms of possible lost northbound order flow. However, we believe that it could be considerable. We estimate that between 25 and 40 percent of active trading on Toronto Stock Exchange is initiated in the U.S. Further, we believe that between 5 and 15 percent of active trading on Toronto Stock Exchange is inter-market arbitrage. A decrease in this order flow could reduce liquidity and result in wider spreads on Canadian marketplaces. This would have a negative impact on execution costs for all Canadian market participants.

Adding a new requirement that these clients enter into an agreement with RS will certainly quell northbound order flow given that these dma clients are already subject to the primary jurisdiction of their local regulator. It is our belief that an additional layer of direct, foreign regulation will not be acceptable to these entities.

Client Agreement with RS

We believe that RS does not need to execute a contract with a dma client in order to adequately monitor and investigate the client's trading. If a dma client is not compliant with an RS request for information or does not participate fully in an RS investigation, the marketplace to which the dma client is granted access could threaten to revoke, and ultimately revoke, the dma client's direct access trading privileges. The marketplace would be able to do this through its relationship with its Participating Organization or subscriber. In particular, we do not believe that foreign broker-dealers should be required to execute an agreement with RS. U.S. broker-dealers and their registered traders operate in a highly regulated environment. To add another regulatory layer on top of their existing regime could force them to re-think their northbound order flow strategy and result in an outcome that could negatively affect Canadian markets and ultimately hurt Canadian investors.

Global Competition and Free Trade in Securities

It is paramount that the regulatory framework for market access issues does not disadvantage Canada in our competition for order flow. In our global economy, domestic rule changes will not only affect competition among marketplaces within Canada, but will also affect competition between Canadian and U.S. based marketplaces.

The CSA and RS should also ensure that any new access regulations do not obstruct the current dialogue regarding free trade in securities. On June 12, 2007, the Securities and Exchange Commission (SEC) held a roundtable on mutual recognition to examine how investors, exchanges, broker-dealers, and others may be impacted by a selective mutual recognition regulatory regime. News reports provide that as early as this fall, the SEC may produce a proposal on mutual recognition. This easier access to U.S. investors without SEC oversight would likely only result if other jurisdictions take a similar stance toward U.S. financial

markets.⁵ We strongly suggest that introducing an expansive new regime in Canada that gives a Canadian regulator jurisdiction over U.S. clients of Canadian dealers would be sending a message that is contrary to the laudable goal of free trade in securities.

Increased Monitoring

We submit that regulatory concerns about direct access trading can be addressed through increased monitoring by RS. This can be effected by RS obtaining a unique trader ID for each dma client, as is currently done with TSX Venture Exchange direct access trading. Once RS obtains this enhanced monitoring ability, it will be able to monitor dma client account activity not only across participants but also across marketplaces.

Marketplaces Maintain DMA Access Rules

We agree that certain direct access rules should remain with the marketplaces. Direct access is one of the ways in which marketplaces can distinguish themselves. Marketplaces must be able to determine who their participants or subscribers are, as well as which categories of end-client are permitted to use extra functionality that provides access to the marketplace through more direct transmission mechanisms. Marketplaces must also be able to determine the manner in which these participants, subscribers, and dma clients access the marketplace. Direct market access client eligibility and connectivity standards are key points of competitive differentiation among marketplaces.

Closing

Thank you for providing us the opportunity to comment on the Proposal. We would be pleased to discuss our comments with you at your convenience.

Sincerely,



Rik Parkhill
Executive Vice President
TSX Group

⁵ Barnes, Judith. Dow Jones Newswires. July 12, 2007.

Appendix I

1. In addition to imposing a general obligation on marketplaces to establish, maintain and enforce written policies and procedures to prevent trade-throughs, would it also be necessary to place an obligation on marketplace participants to address trade execution on a foreign market?

TSX Group agrees that participants should not be able to bypass trade-through obligations by trading in foreign jurisdictions. However, we also acknowledge the difficulty of monitoring trade-throughs on foreign markets in foreign currency, given the lack of a central, executable, real-time foreign exchange rate. For this reason, we do not believe it is practical to impose such an obligation at this time.

2. What factors should we consider in developing our cost-benefit analysis for the trade-through proposal?

The most important costs to consider are technology costs. The complexity of compliance has a real cost in terms of systems that must be implemented to manage a dealer's obligation. These can be significant, especially for smaller dealers. Given that our obligation to multiple levels of the book is more complex than the top of book obligation in the U.S. under Regulation NMS, we risk a higher cost of compliance that could impair the competitiveness of the Canadian capital market.

In addition, we urge the CSA to consider the impact of latency. Obligations to dark books, special terms orders, and too many small marketplaces can create conditions where orders must travel to many destinations before they are filled. This can result in missed opportunities, information leakage, and high transaction and clearing costs, all of which are exacerbated if orders are split across many marketplaces.

3. Would you like to participate in the cost-benefit analysis by providing your input?

Yes.

4. Should trade-through protection apply only during "regular trading hours"? If so, what is the appropriate definition of "regular trading hours"?

There should be an absolute operating day during which trade-throughs must be prevented. Trade-throughs should be permitted outside of the standard trading day. Otherwise, there is a risk that the number of possible marketplaces will be inhibited, and that dealers will need to undertake the costly process of moving their entire book of resting orders from one market to another.

We recommend that regular trading hours initially be defined as 9:30 a.m. to 4:00 p.m., in keeping with current market practices. We also strongly suggest that a process for changing regular trading hours be put in place that will solicit the opinions of market participants and provide sufficient notice to the industry so that appropriate system and strategy changes can be made.

5. Should the consolidated feed (and, by extension, trade-through obligations) be limited to the top five levels? Would another number of levels (for example, top-of-book) be more appropriate for tradethrough purposes? What is the impact of the absence of an information processor to provide centralized order and trade information?

As discussed in the September 2005 Submission, we believe that all resting orders deserve equal treatment and should be protected. We continue to recommend full depth

of book protection. Although the formal obligation in the U.S. under Regulation NMS is to the top of book, competition to provide service to orders seeking best price has driven the development of full depth of book routing products and strategies. We believe that a full depth obligation in Canada is feasible, and that competition would eventually deliver products to address such an obligation even if best price protection was limited to a fixed number of levels in the book.

In the absence of an information processor, we believe that market driven solutions have been, and will be, created to address the needs for disseminating and consolidating multiple marketplace pre- and post-trade data, including appropriate levels of order book information.

6. Should there be a limit on the fees charged on a trade-by-trade basis to access an order on a marketplace for trade-through purposes?

TSX Group does not support fee caps. Capping fees restricts the number of features along which marketplaces can compete, as each will have different cost bases depending on the value they provide. We firmly believe that market pressures will rationalize fees over time.

7. Should the CSA establish a threshold that would require an ATS to permit access to all groups of marketplace participants? If so, what is the appropriate threshold?

Yes. Any marketplace with a market share of 10% or more on interlisted securities has significant influence on the market for those securities. Consequently, any ATS meeting this threshold should remove restrictions on participation.

8. Should it be a requirement that specialized marketplaces not prohibit access to non-members so they can access, through a member (or subscriber), immediately accessible, visible limit orders to satisfy the trade-through obligation?

Yes.

- Should an ATS be required to provide direct order execution access if no subscriber will provide this service?

Yes.

- Is this solution practical?

Yes. ATSs are registered brokers and as such, they should be able to handle inbound order flow as client flow.

- Should there be a certain percentage threshold for specialized marketplaces below which a trade-through obligation would not apply to orders and/or trades on that marketplace?

TSX Group does not support an exemption to the trade-through rules for marketplaces below a given threshold. We firmly believe this would create an opportunity for regulatory arbitrage, where marketplaces promote avoidance of regulatory obligations as a feature instead of specialized, innovative, value-added services.

9. Are there any types of special terms orders that should not be exempt from trade-through obligations?

Special terms orders that are used to establish the last sale price because they execute in a central order book should not be exempt from the obligation to honour better-priced orders.

10. Are there current technology tools that would allow monitoring and enforcement of a flickering quote exception?

No comment.

11. Should the exception only apply for a specified period of time (for example, one second)? If so, what is the appropriate period of time?

TSX Group supports a flickering quote exception. This is in keeping with the 'best efforts' nature of the trade-through obligation. The appropriate duration should vary given the nature of the order. A one second exception is appropriate for a cross entered manually, but is a very long time for a fully electronic order. It may be appropriate to have several time periods based on the nature of the order entered: manual vs. electronic.

12. Should this exception only be applicable for trades that must occur at a specific marketplace's closing price? Are there any issues of fairness if there is no reciprocal treatment for orders on another marketplace exempting them from having to execute at the closing price in a special facility if that price is better?

Trading at a security's closing price during a last sale session should be permitted even if it results in a trade-through on another marketplace. Trading at the closing price is a legitimate strategy used by numerous market participants.

13. Should a last sale price order facility exception be limited to any residual volume of a trade or should it apply for any amount between the two original parties to a trade? What is the appropriate time limit?

No comment.

14. Should trade-throughs be allowed in any other circumstances? For example, are there specific types or characteristics of orders that should be subject to an exemption from the trade-through obligation?

The CSA should maintain the flexibility that is needed in an evolving multiple marketplace environment in order to be able to exempt types of orders in the future from trade-through obligations or protection, where an exemption would be beneficial to market participants

15. Are there other considerations that are relevant?

TSX Group believes that the proposed definition of best execution is sufficiently broad to address the specific needs of electronic, institutional, and retail clients. We do not believe that additional considerations warranting specific inclusion in the definition exist at this time, although we note that it is likely that the definition will need to be revisited periodically to accommodate new developments in Canadian capital markets.

16. How does the multiple marketplace environment and broadening the description of best execution impact small dealers?

TSX Group believes that broadening the definition of best execution will be beneficial to smaller dealers. Smaller dealers will be allowed to pursue niche strategies that target the needs of a specific client class and thereby ultimately increase the number of execution options/strategies available to investors.

More generally, however, the multiple marketplace environment will negatively impact all dealers from a cost perspective, as they will be required to invest in infrastructure to manage more information across multiple venues under a more complex regulatory regime. Small dealers will be affected disproportionately, particularly those choosing to specialize, as they will be required to connect to multiple marketplaces regardless of their best execution obligations. Small dealers cannot allocate related costs across multiple lines of business, and will find their profitability challenged.

The impact of multiple marketplaces on small dealers can be mitigated through interconnection of marketplaces, and by applying a de-minimis standard so that these dealers will only need to contemplate marketplaces that have attained a significant presence in the market. These measures can reduce the risk and direct and overhead costs for small dealers looking to flourish in a multiple marketplace environment.

17. Should the best execution obligation be the same for an adviser as a dealer where the adviser retains control over trading decisions or should the focus remain on the performance of the portfolio? Under what circumstances should the best execution obligation be different?

No comment.

18. Are there any other areas of cost or benefit not covered by the CBA?

No comment.

19. Please comment on whether the proposed reporting requirements for marketplaces and dealers would provide useful information. Is there other information that would be useful? Are there differences between the U.S. and Canadian markets that make this information less useful in Canada?

TSX Group agrees that reporting requirements for marketplaces would provide useful information. We are committed to transparency in financial markets in order to enable investors and their agents to make decisions that are in investors' best interests. We suggest that marketplace reporting requirements should be modeled after "Dash 5" reports produced in the United States, given the significance of interlisted trading in Canada. Fungibility of information across borders will be critical in assisting dealers and marketplaces alike in their efforts to attract foreign flow into the Canadian capital market.

Among other things, Dash 5 reports provide the following measurements:

For market orders, marketable limit orders, inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders:

- The number of covered orders
- The cumulative number of shares of covered orders

- The cumulative number of shares of covered orders cancelled prior to execution
- The cumulative number of shares of covered orders executed at the receiving market centre
- The cumulative number of shares of covered orders executed at any other venue
- The cumulative number of shares of covered orders executed from 0 to 9 seconds after the time of order receipt
- The cumulative number of shares of covered orders executed from 10 to 29 seconds after the time of order receipt
- The cumulative number of shares of covered orders executed from 30 seconds to 59 seconds after the time of order receipt
- The cumulative number of shares of covered orders executed from 60 seconds to 299 seconds after the time of order receipt
- The cumulative number of shares of covered orders executed from 5 minutes to 30 minutes after the time of order receipt
- The average realized spread for executions of covered orders

For market orders and marketable limit orders:

- The average effective spread for executions of covered orders
- The cumulative number of shares of covered orders executed with price improvement
- For shares executed with price improvement, the share-weighted average amount per share that prices were improved
- For shares executed with price improvement, the share-weighted average period from the time of order receipt to the time of order execution
- The cumulative number of shares of covered orders executed at the quote
- For shares executed at the quote, the share-weighted average period from the time of order receipt to the time of order execution
- The cumulative number of shares of covered orders executed outside the quote

For shares executed outside the quote:

- the share-weighted average amount per share that prices were outside the quote
- the share-weighted average period from the time of order receipt to the time of order execution

Although the basic metrics proposed by the CSA are appropriate, we do not believe they are sufficient because information on orders, trades and speed alone is not enough to make a routing decision. The structures of different marketplaces also need to be considered, and the metrics provided in the Dash 5 type reports provide information that allows the end recipient to compare the costs and benefits of executing on various marketplaces.

We also note that, although this information is useful for making high-level connectivity decisions and for confirming the best execution marketplace for client order flow, routing decisions will be made on a real-time basis. The provision of monthly marketplace reporting will not alleviate the need for firms to invest in technology to automate routing decisions.

20. Should trades executed on a foreign market or over-the-counter be included in the data reported by dealers?

Yes. It would be valuable for dealers to include foreign executions in their reporting.

21. Should dealers report information about orders that are routed due to trade-through obligations?

We support the idea of reporting information relating to routing for trade-through compliance purposes. However, we believe that technical implementation will be a challenge and that such reporting is not feasible today. Common criteria for tagging a routed order and other technological solutions will need to be devised and built at considerable expense. Before mandating this reporting, the CSA must be confident that the benefits of receiving reports on order routing for trade-through compliance outweigh the costs associated with building this reporting structure.

22. Should information reported by a marketplace include spread-based statistics?

Marketplaces should report spread-based statistics as they have predictive value and allow users to find marketplaces with dominant liquidity in a particular security. Spreads are arguably the best objective metric for liquidity.

23. If securities are traded on only one marketplace, would the information included in the proposed reporting requirements be useful? Is it practical for the requirement to be triggered only once securities are also traded on other marketplaces? Would marketplaces always be in a position to know when this has occurred?

The information included in the proposed reports is valuable, whether securities trade on one or more marketplaces. The reporting requirements offer metrics to measure the expected execution quality of a marketplace. This is valuable in both absolute and relative terms. Furthermore, as has become apparent with the proposed RS short-sale tick rule exemption, it is difficult to track interlisted securities on a real-time basis. This requires investment in new systems, and the presence of an official, central list of interlisted securities accessible to all marketplace participants. Given the complexity of implementing such a system, we believe that the best alternative is to standardize marketplace reporting requirement regardless of whether the securities they trade are interlisted.

24. Should DMA clients be subject to the same requirements as subscribers before being permitted access to a marketplace?

DMA clients must continue to be treated as clients, and not regulated directly by RS. RS's jurisdiction should not extend directly to clients as this will result in a regulatory regime that will reduce dma activity on Canadian markets and make Canada a regulatory anomaly as compared to other markets. ATSS are registered dealers that are capable of regulating their subscribers if the CSA and RS believe that ATS subscribers should not be regulated directly by RS.

25. Should the requirements regarding dealer-sponsored participants apply when the products traded are fixed income securities? Derivatives? Why or why not?

The principles underlying our comments on dma would apply to trading of all products.

26. Would your view about the jurisdiction of a regulation services provider (such as RS for ATS subscribers or an exchange for DMA clients) depend on whether it was limited to certain circumstances? For example, if for violations relating to manipulation and fraud, the securities commissions would be the applicable regulatory authorities for enforcement purposes?

Our view that RS should not have jurisdiction over clients does not depend on certain circumstances. We strongly believe that RS should not have regulatory jurisdiction directly over dma clients.

27. Could the proposed amendments lead dealer-sponsored participants to choose alternative ways to access the market such as using more traditional access (for example, by telephone), using foreign markets (for inter-listed securities) or creating multiple levels of DMA (for example, a DMA client providing access to other persons)?

Dealer-sponsored participants are electronic traders that require certainty of execution when trading in a marketplace. These dma clients will not change their manner of trading simply to accommodate a shifting regulatory regime. The majority of order flow coming to Toronto Stock Exchange is high-velocity trading. Algorithmic and program trading is a significant and growing part of Canadian markets. Traditional methods such as telephones simply cannot be substituted for this electronic order flow. Other kinds of traders similarly have embraced electronic trading as part of their regular processes and will not revert back to old methods of trading. We have been advised by certain dealers that their clients will simply stop trading in Canada if they are required to be subject to another non-local regulatory regime.

28. Should there be an exemption for foreign clients who are dealer-sponsored participants from the requirements to enter into an agreement with the exchange or regulations services provider? If so, why and under what circumstances?

Dealer-sponsored participants should not be required to enter into an agreement with an exchange or RS. This is particularly true for foreign clients who are already operating within the bounds of their local regulatory regime and access Canadian markets through a Canadian registered dealer. As stated previously, we believe that foreign dma clients will simply stop trading in Canada if they are required to execute an agreement with a foreign regulator.

29. Please provide the advantages and disadvantages of a new category of member of an exchange that would have direct access to exchanges without the involvement of a dealer (assuming clearing and settlement could continue to be through a participant of the clearing agency).

We believe that exchanges must be able to determine member eligibility criteria in their sole discretion. In addition, exchanges must be able to create echelons within their membership in the event that they want to provide different types of services to different types of members, so long as a requisite level of access and functionality is provided to all members. The provision of varied value-added services to members is one way in which exchanges are able to differentiate themselves. If it is sensible to create member echelons, and provide certain value propositions to members who meet explicit criteria, then exchanges should be able to set membership criteria accordingly.

Appendix II

1. Should UMIR establish uniform criteria for the granting of access to any marketplace subject to UMIR or should an Exchange or QTRS be able to continue to establish rules regarding the grant of Direct Market Access?

Exchanges and QTRS's must be able to establish rules regarding the grant of direct market access. Toronto Stock Exchange, TSX Venture Exchange and other exchanges and QTRS's must be able to determine who their participants or subscribers are, including which categories of clients are permitted to use extra functionality that gives them access to the marketplace through more direct transmission mechanisms. Marketplaces must also be able to determine how these participants, subscribers, and direct access clients access the trading engine or matching facility. These marketplaces must be allowed to continue to determine type of direct access client and modality of client access, to competitively differentiate their business and marketplace models. To house all direct access rules in UMIR denies marketplaces of this ability.

2. Should an ATS be able to establish criteria for the granting of access to its marketplace in the contract between the ATS and any Participant that is a subscriber to the ATS?

So long as the ATS and/or its subscriber is subject to full CSA and RS regulation as applicable, an ATS should be permitted to establish criteria for the granting of access to its marketplace in its contract with the subscriber where the subscriber is a Participant.

3. If training requirements are adopted for each Representative of an Access Person should marketplaces be relieved on any further training obligations in respect of Access Persons or should the requirement be continued in lieu of "continuing education requirements" for Representatives?

We do not think that there should be a UMIR training requirement applicable to representatives trading at dma clients. However, if such training requirements are adopted into UMIR, marketplaces should be relieved of any further training obligations. If a marketplace chooses to require marketplace-specific training in addition to the UMIR training requirements, then it should be able to do so. However, there should not be a mandate for marketplaces to train such individuals where the training would be viewed by the marketplace to be duplicative and redundant.

4. Should there be an exemption from the requirement for a foreign DSA Client to enter into an agreement directly with RS? If so, why and under what circumstances should such an exemption be available?

Foreign dma clients should not be required to enter into an agreement directly with RS. Please see our response to question 28 in Appendix I and our response to this proposal in our submission letter.

5. If a DSA Client is exempted from executing an agreement with RS, should the Participant accept a higher level of responsibility for the conduct of the foreign DSA client?

Participants currently have taken on a high level of regulatory responsibility with respect to their dma clients. We do not believe that Participants should be required to accept higher levels of responsibility for the conduct of a dma client that does not execute an agreement with RS.