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December 15, 2008

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Securities Administration Branch, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Registrar of Securities, Government of Yukon
Registrar of Securities, Legal Registries Division, Dept. of Justice, Nunavut

Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8

Attention: Mr. John Stevenson, Secretary
Email: jstevenson@osc.gov.on.ca

- and -

Commission des valeurs mobilières du Québec
800 Victoria Square, Stock Exchange Tower
P. O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3

Attention: Anne- Marie Beaudoin, Secretary
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

**Re: Amendments to NI 21-101 - Marketplace Operation and
NI 23-101 - Trading Rules**

TORONTO

MONTREAL

OTTAWA

CALGARY

VANCOUVER

NEW YORK

LONDON

SYDNEY

The following are my personal comments (and not those of the firm) with respect to the proposed Amendments to NI 21-101 – Marketplace Operation and NI 23-101 – Trading Rules.

Introduction

I wish to ensure that proper consideration has been given to the very unique confluence of rules and regulations in Canada that affect the trade-through provisions, as they differ significantly from the requirements of most other jurisdictions, particularly including the U.S. and Europe.

These intersecting rules include:

- (a) the obligation to carry out trades on a marketplace contained in UMIR;
- (b) the very expansive and uncertain definition of marketplace in clause (d) thereof in NI 21-101;
- (c) the complete prohibition on after-hours trading contained in UMIR;
- (d) the prohibition contained in the TSX rules on its participating organizations operating (or being related to companies that operate) a free-standing ATS (to the extent that it is valid given s. 5.2 of UMIR) – note also that this will make ATS routing to the TSX much more difficult;
- (e) IIROC’s related party guarantee requirements, which serve to make carrying on an ATS through an affiliate very difficult for IIROC members, especially where one or other side of the business will have other investors;
- (f) the hard black-letter take-over bid limits at the 20% level contained in securities legislation, coupled with the various related take-over bid/early warning/insider reporting restrictions containing numeric limits, including the various exempt take-over bid rules;
- (g) the very restrictive DMA arrangements available under exchange rules in Canada, along with IIROC’s requirements for non-dealer liability;
- (h) Canada’s high trading cost environment; and
- (i) the uncertain definition of “control person” contained in securities legislation.

I am not sure that appropriate consideration has been given to the complexities caused by these numerous and often uniquely Canadian

requirements, and encourage Commission market regulation staff to consult with corporate finance and take-over bid staff in developing the trade-through rules, as these rules are potentially all inter-related.

The two situations that I have experienced in practice in which trade-through requirements (coupled with UMIR's on marketplace trading requirements) have caused the greatest difficulty are (i) in connection with sales from significant but likely not control person positions (e.g. from say 14% to just under, or in occasional circumstances over, 20%), and (ii) in connection with take-over bid or pre- or potential take-over bid situations. I believe that further exemptions from trade-through requirements and the related on-marketplace trading requirements in UMIR may be required to deal with these situations.

In addition, I am concerned that inadequate consideration has been given to the relative illiquidity of many Canadian securities. In particular, neither the request for comments nor the cost-benefit analysis appeared to consider the potential adverse effects on liquidity that tightening of the trade-through requirements may have. ATS subscribers not currently subject to them will become subject to them, and may reduce their trading as a result. The restrictions on dealers will also be tighter, which may adversely affect liquidity. As well, investors that cannot engage in short sales may be restricted in trading. Given the chronic illiquidity of Canadian securities in many cases, imposing tighter restrictions, not only in the trade-through rules but also in the various rules listed above, need to be carefully analysed from a liquidity perspective, as these rules may explain part of the illiquidity. I encourage Commission staff to give greater consideration, and request comments on, liquidity effects.

In particular, Canadian rules would be tighter than those of the world's two most liquid and well-regulated markets, the U.S. and Europe. It is unclear that this is wise.

Detailed Comments

1. The definition of marketplace in clause (d) of the term in NI 21-101 should be deleted. If it was intended to prevent "pseudo" marketplaces from being created by dealers, it could better be addressed by anti-avoidance language. As written, it potentially affects all off-exchange trading, including IPOs and private placements.
2. Trade-through requirements (and "on market" requirements) should not apply to situations where a buyer wishes to remain under 9.9% (or 5% where a bid is already present or for inter-listed shares) in the

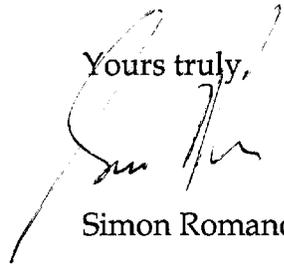
context of toe-hold purchases. Otherwise, inadvertent and undesired disclosure could be required.

3. Trade-through requirements (and “on market” requirements) should not apply to situations where a buyer wishes to remain under 20% to avoid making an inadvertent illegal take-over bid.
4. Trade-through requirements (and “on market” requirements) should not apply to situations where a seller is legally unable (including as a result of its constating documents or investment policies) to engage in a short sale.
5. Trade-through requirements should not apply to situations where a buyer must, because it has not obtained any required consent to exceed (or because it is simply illegal to exceed) remain below a specified level prescribed by law. For example, the Investment Canada Act, the Competition Act, the Broadcasting Act, the Bank Act, the Securities Acts and various other statutes restrict purchases over specified levels.
6. Persons holding significant positions short of “control person” status need to be able to sell off-market and/or free of trade-through requirements (witness the refusal of IIROC’s predecessor to give a major dealer an on-market trading exemption from a multi-billion dollar series of block trades a few years ago and the resulting nearly impossible position that put the dealer in).
7. It is unclear why derivatives trading will be so less regulated in this regard than equity trading. The ME allows much more block-trading, free of interference, for derivatives. Policy-wise, it is unclear why equities trading should not similarly benefit. This difference, if it will persist, should be explained and justified.
8. After-hours off-market trading should be permitted in Canada, especially in the volatile world in which we now live. Losing the ability to trade for 17 hours (or longer in the case of weekends or holidays) may make the difference between the life and death of a business or retirement plan, and have a huge impact on the pricing of trades.
9. Persons seeking to engage in an exempt take-over bid purchase under s. 100 of the Ontario Act, who are subject to a 5% limit, need to be exempted from trade-through requirements, or else they could inadvertently violate the law by purchasing in excess of 5%.

10. Persons seeking to engage in a cross that is to be completed as an exempt private agreement purchase under s. 100.1 of the Ontario Act, who are subject to a 5 person limit, need to be exempted from trade-through requirements, or else they could inadvertently violate the law by purchasing from more than 5 sellers.
11. Persons conducting a normal course issuer bid, which requires purchases to be made on an exchange under s. 101.2 of the Ontario Act, need to be exempted from trade-through requirements, or else they could inadvertently violate the law by purchasing through an ATS.
12. It is not clear to me that the drafting of the inter-market sweep order is correct. It seems that the inter-market sweep order is the order routed to another market to mop up better priced orders, and not the main trade, whereas the definition seems to confuse the two. As well, might the main trade be executed against an unprotected order as well as a protected order, and while the two are entered at approximately the same time, they are unlikely to be entered "at the same time". The word "approximately" should probably be added.
13. ATs should be allowed to route orders for trade-through purposes to an exchange without being required to become participating organizations of the exchange. Also, marketplaces should be expressly entitled to allocate trade-through transactions to the client in question. And should there be any size limits on the inter-market sweep trade-through obligation? In the U.S., this is achieved by the best bid/offer limit. Here, it is imposed without limit, which seems arguably unfair.
14. The definition of "effective spread" seems unclear. Might it frequently be zero?
15. Is a 5 minute interval too long to measure "realized spread"? In volatile markets, there can be huge swings in very short time periods, so a 5 minute interval may lead to very inaccurate assessments.
16. The definition of "non-standard order" only allows for variations in settlement. There may be other variations, such as (by way of example) the receipt of a regulatory or third party consent, the satisfaction of another condition, or the obligation to pay a top-up price in the event that the buyer buys or sells for a different price within a specified period (the latter is common in a pre-take-over bid situation).

Thank you for considering my comments.

Yours truly,

A handwritten signature in black ink, appearing to read "Simon Romano", written over the typed name below.

Simon Romano

SAR/he