



January 15, 2009

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

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
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and

c/o Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Proposed Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules (the Proposed Amendments)

Chi-X Canada ATS Limited operates a high-performance, fully anonymous and low-cost continuous alternative trading system (ATS) for TSX-listed senior equities. Chi-X Canada supports a wide array of advance order types, based on strict price-time priority and provides the ability to smart-route orders to equities marketplaces in Canada. Chi-X Canada aims to provide trading efficiency and cost savings to investors and ultimately to help increase Canadian market volumes as ATSs operated by Chi-X Canada affiliates have done elsewhere in the world.

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We commend the Canadian Securities Administrators (“CSA”) for the overall direction they have taken with the proposed amendments. The adoption of the amendments will protect investors and support fair and efficient markets. We believe that there is broadly based and strong support by capital markets participants for the proposed amendments and we urge the CSA to implement the amendments as quickly as possible. The current environment of regulatory uncertainty around NI 21-101 and NI 23-101 makes enforcement of key matters such as trade-through protection difficult and as a result investors are not currently receiving the full benefit from competition and the operation of multiple marketplaces in Canada.

General Comments on the proposed amendments to NI 21-101 ad NI 23-101

Key Aspects of the Proposed Trade-through Protection Rule

We generally agree with full depth-of-book trade-through prevention, but we would suggest that the specific definition of “full depth-of-book” be set by the industry committee which oversees the establishment of the information processor so that the regulatory standard is aligned with the practical concerns of the marketplace.

Access to Marketplaces

Trading Fee Limitation

Setting the fee cap at ‘less than the minimum price increment’ for execution of orders to comply with trade-through seems reasonable. However, it should be clarified that marketplaces are not restricted in setting fees for non-protected or specialty order types that are not executed strictly to comply with trade-through, such as benchmark orders, where the market participant elects to use such order types.

The trading fees regime should be broadened to an “access fees” regime that restricts the fees a marketplace may charge other markets and smart order routing vendors for displayed “protected quote data” that they are obligated to consume to enforce trade through obligations. This fee cap, and the definition of “protected quote data” and its associated uses, should be created with a view towards promoting cooperation and innovation in the Canadian equity markets.

Locked and Crossed Markets

Strictly prohibiting market participants from entering a bid at a price the same or higher than the best protected offer or a sell at a price the same or lower than the best protected bid assumes the participant’s intent was to lock or cross the market and does not take into account race conditions that result from the differences in speed between brokers or vendors connecting to markets. Nor does it consider a market’s ability to prevent locked or crossed markets. For example, a market participant wants to enter an aggressive bid price (which at the time is higher than the best protected offer) and avoid “chasing the quote” by entering multiple orders at incrementally aggressive bids as the offer moves higher. Marketplaces should automatically re-price orders to prevent them from locking or crossing another market. Marketplaces that are unable to support re-pricing to prevent locked or crossed markets natively within their trading algorithms should not be permitted to accept directed orders, i.e. all orders to a market that does not prevent locked or crossed markets must be entered onto that market via a smart order router.

Question 1: Should marketplaces be permitted to pass on the trade-through protection obligation to their market participants? If so, in what circumstances? Please provide comment on the practical implication if this were permitted.

When they elect to use a 3rd party or marketplace smartrouter and/or the ISO order designation.

“Permitted” Trade-throughs

A more comprehensive regime with clear definitions is necessary for the trade-through exception allowed for “any failure or malfunction of a marketplace’s systems” as well as any “material delay (systems issues)” and associated reporting and alerting requirements to participants, other markets, and the appropriate regulation services provider. Similar to the “self help” regime in the U.S., there must be a clear definition of “material disruption”, “material delay”, and “material malfunction”. Furthermore, the regime should address circumstances where a marketplace has persistent, frequent, or ongoing stability and dependability issues.

Question 4: Please comment on the various alternatives available to a marketplace to route orders to another marketplace.

Currently, marketplaces have two options for routing orders to another marketplace on behalf of a market participant:

- 1) On a “service bureau” basis where the routing market acts strictly as a technology/service vendor and routes orders under its participants’ broker codes.
- 2) On a “jitney” basis where an ATS’s or exchange’s brokerage arm would be required to become a member firm of the destination market and route under its own broker code on behalf of its participant marked as a jitney order.

We propose that the “jitney” order marking requirement be reconsidered in a multiple market, inter-market linkages environment. To be clear, we are not suggesting that the requirement for participants to report to regulators information concerning the orders they route on behalf of other participants be eliminated, but that the method of reporting be modified. Specifically, by forcing markets to route on either a jitney or service bureau basis, they are also being forced to provide full transparency of their smart order router customer list, and details as to the specific smart order router usage by those customers to competitors. Allowing a market the option to route to another market under its own participant code, and removing the jitney requirement, would address this issue and create efficiencies in inter-market routing and trade clearing and settlement.

Question 5: Should the CSA set an upper limit on trading fees that can be charged to access an order for trade-through purposes? If so, is it appropriate to reference?

Marketplaces should not be allowed to charge discriminatory or punitive execution fees to access orders for trade-through purposes. Specifically, marketplaces should not be allowed to charge other markets that route to them non-standard execution fees on a schedule different from its own participants.

Reporting Requirements

We agree that marketplaces should report statistics based on identical standards that will assist participants in making comparisons between marketplaces. However, a careful evaluation of the cost/benefit and the usefulness of the various proposed statistics must be undertaken.

Additionally, to ensure the most uniform and efficient reporting it may be most appropriate for IIROC to generate the reports. IIROC currently receives data from all markets and appears to be well positioned to produce the marketplace statistics.

Responses to questions on which the CSA is specifically requesting feedback

Question 7: Should the marketplace statistics focus on units of securities traded instead of orders and number of trades?

We believe units of securities (shares) and number of trades are the relevant units for marketplace comparative purposes.

Question 8: Should the marketplace statistics require separate reporting on specific order types that would include market orders, intentional crosses, and pre-arranged trades?

It would be helpful for marketplaces to report specific order types separately to the extent that it will help participants discern a market's true liquidity, as measured by shares available for interaction in the continuous market central limit order book versus pre-arranged trades, intentional crosses, or other trades in which participants are unable to directly participate.

Question 9: Should the focus of the liquidity measures be the number of orders or the cumulative number of shares?

In an environment of strict trade-through enforcement, the focus should be on the number of shares and trades executed in the central limit order book and notional value traded. On an individual stock basis, the number of shares is a sufficient measure. The number of orders is not a relevant measure to the extent that a market is not disadvantaged from trade-throughs against its protected orders.

Question 11: Would it be useful to include reporting similar to the near-the-quote orders required by the SEC in the U.S.? What price increment away from the quote would be appropriate to use for the Canadian market?

In a full depth-of-book trade through environment this type of reporting would not be useful.

Question 12: Are statistics regarding average realized and effective spreads useful without a consolidated best bid and offer?

Yes, so long as the marketplace takes in and consolidates market data from other markets and is able to demonstrate how its spread data is derived. However, this function may be best suited to IIROC as the central and benchmark source.

Question 13: Are the time frames used to assess speed and certainty of execution on a marketplace in section 11.1.1 of NI 21-101 appropriate? If not, what time frames should be used?

Participants are well positioned to compile data to assess the speed and certainty of executions they experience with each market and make their own comparisons of the relative performance of the marketplaces. Setting absolute measures is impractical due to the speed with which technology changes and increases performance.

Question 15: Do you agree that an information processor should disseminate consolidated trade information along with a feed that contains the best bid and best offer and all other orders at all price levels (along with the marketplace identifier/marker)? For practical reasons, should the price levels be limited? If so, to how many levels?

We generally agree that an information processor is needed. The number of price levels should be set after the Information Processor has conducted an appropriate cost/benefit analysis and has determined the optimal number of price levels.

We would like to thank the CSA for the opportunity to respond and reiterate our support for the proposed amendments to NI 21-101 and NI 23-101.

Very truly yours,



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Chi-X Canada ATS Limited