



TD Bank Financial Group
TD Tower
66 Wellington Street West, 7th Floor
Toronto, Ontario M5K 1A2

January 30th, 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 & Labrador
Ontario Securities Commission

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
E-mail: jstevenson@osc.gov.on.ca

And

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





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Re: Notice of Proposed Amendments to National Instrument 21-101 *Marketplace Operation*, and National Instrument 23-101 *Trading Rules*

About TD Securities - TD Securities Inc. (TDSI) is the securities trading arm of the TD Bank Financial Group. TDSI is one of leading broker-dealers in Canada with an underlying client base of over 3.5 million investors. TD Waterhouse, a separate division of TD Bank Financial Group, is the largest discount brokerage firm in Canada and has over 425 full service investment advisors. TD Newcrest, the institutional equities arm of TDSI, is the number one equity trader in Canada based on dollar value and shares traded.

Thank you for the opportunity to present our thoughts and comments on this important issue. Before responding to the specific questions on which comment was sought, we would like to make a few general comments regarding trade through protection and the information processor requirements. We feel that there are a number of overarching issues that have not been dealt with and will be critical to the success of multiple markets in this country,

Firstly, TDSI believes that it is essential that whatever entity winds up becoming the information processor be subject to an appropriate governance structure. It must have an independent board of directors. It should also have an independent technology provider and the ability to change that provider if service level agreements (which should be based on an objective set of metrics including speed) are not lived up to. Without these attributes, the information processor may become too commercialized and self serving of the interests of its owners. It should not favour or benefit any one trading venue; otherwise the interests of other capital markets participants may be minimized or ignored.

Secondly, TDSI believes that in addition to broader governance issues, the information processor needs to be subjected to some financial regulation in the same manner as a utility in order to prevent monopolistic pricing of market data. There are various ATSS and trading venues making up the market landscape at present and each of them must have a commercial stake in the information product that is created out of the totality of the market data. Some formula that addresses both the question of how to compensate entities that contribute to the data and how to charge entities that use the data must be agreed upon. This will avoid duplication of charges by marketplaces for data and help create a more cost efficient source of data for market participants.

Thirdly, TDSI believes that there should be some minimum standards that marketplaces must meet before dealers are obligated to consider better priced orders on them. These standards should be established through industry consultation and should be related to technology and liquidity. The current situation, while not explicitly requiring connections to every visible marketplace, does so in practice due to the nature of present day order flow. Large dealers in particular must be able to route orders automatically, especially in fast moving stocks. We are in favour of a US style model where ATSS maintain connections to and display prices through an SRO. We would like to see start up operations post their quotes through another venue at first, until they meet some pre-determined minimum level of contribution to price discovery. In this



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way, participants would be able to access better priced orders on that venue without having to make jitney arrangements or build costly technological solutions.

Finally, we would like to note that the issue of trade through protection is very complex. We would suggest that the US experience in this area be considered more fully. US participants have had four years under Regulation NMS and it is evident from both their experience, which only covers top of book price protection, and ours that the complications of compliance with full depth of book price protection in Canada may not have been fully considered. We believe that this issue requires a full discussion; in particular as to whether in some cases the costs may outweigh the advantages. Separately, we do not believe that it was appropriate to implement the bypass marker feature differentiating displayed from hidden liquidity without 2008 industry debate. While TDSI agrees with the outcome, specifically that visible volume in the book deserves more protection than hidden liquidity, we feel that these topics require public discussion to hear all perspectives.

In a similar vein, we think that the topic of order types needs discussion. This is one area where marketplaces can innovate and differentiate themselves from other markets, but it is also an area that may create unfair disadvantages and friction. As a specific example, we are not supportive of hidden orders pegged to the consolidated bid or offer as we feel that this allows people to free ride on visible order flow without assuming the same market risk.

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

TDSI believes that in some respects this question is phrased the wrong way around, and that large dealers will not want to rely on marketplaces to route orders on their behalf. Participants who have the technological capability and the desire to should be able to assume the obligation directly in order to better manage their best execution obligations. As noted above, we would like to see a model similar to that currently in operation in the United States, where markets maintain connections to each other and prices on various ATSS are displayed through an exchange or other SRO. We believe that this type of regime will support the establishment of agreed upon minimum standards for full connectivity to new marketplaces by providing an interim step for marketplaces to begin operation, without requiring the entire Street to connect to unproven venues prior to launch.

Question 2: What length of time should be considered an immediate response by a marketplace to a received order?

We believe that there should be an agreed upon benchmark based on the current best of breed standard in router technology.

Question 3: Are any additional exceptions necessary?

There are no exceptions immediately apparent to us at the present time; while full depth of book protection would be our preference, the cost of full depth of book may prove to be prohibitive.





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

We have no comment on this issue except as we have noted above, we believe that dealers should be able to decide if they would like a marketplace to route orders for them.

Question 5: Should the CSA set an upper limit on fees that can be charged to access an order for trade-through purposes? If so, is it appropriate to reference the minimum price increment described in IROC Universal Market Integrity Rule 6.1 as this limit?

We believe that something like the \$0.003 take fee limit in the United States is appropriate. Further, we would like to see a scale in force that does not create unreasonable trading costs when dealing with lower priced stocks.

Question 6: Should there be a prohibition against intentionally creating a "locked market"?

TDSI believes that there should definitely be a prohibition on this type of activity. It is banned in the United States for good reason. We view this as a market quality issue as there may be numerous trades executed where no real market risk has been assumed. This type of volume is misleading to other investors. Furthermore, retail investors may be confused and frustrated to be bidding at a particular price on one venue while the stock is offered at that price on another. We feel strongly that this is not legitimate volume and should be deemed a manipulative and deceptive practice since its sole purpose is to generate money from the markets through fee arbitrage.

Questions 7 through 14:

TDSI believes that the various market statistics described in the questions are no doubt invaluable tools for investors and dealers. However, since these statistics are primarily aimed at measuring market and execution quality we would acquiesce to the opinion of both retail and institutional clients in determining what statistics a marketplace should publish.

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 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?





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TDSI believes that the information processor should disseminate consolidated trade information along with a feed that contains the best bid and offer and all orders at all price levels. The market identifier should be included. This information is of great value to market participants and is essential if all visible prices are to be protected. As noted above, we believe that compliance with full price protection will prove to be enormously difficult and complicated. However, we do not believe that there are any major practical reasons to limit price levels displayed as this is not the primary impediment to complete price protection.

In closing we would like to thank you once again for the opportunity to present our thoughts. We would be happy to discuss them with you further in person.

Yours truly,

A large, stylized handwritten signature in black ink, appearing to be 'Peter Haynes'.

Peter Haynes, CFA
Managing Director, Index Products and Portfolio Trading
TD Newcrest
Phone: 416-944-5385

A smaller, stylized handwritten signature in black ink, appearing to be 'Ray Tucker'.

Ray Tucker
Managing Director, Trade Execution Services
TD Newcrest
Phone: 416-944-5145

