



RBC Dominion Securities Inc.
P.O. Box 50 | Royal Bank Plaza | 200 Bay Street
Toronto, ON | M5J 2W7

January 30, 2009

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

Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse, 800 square Victoria
C.P. 246, 22 étage
Montreal, QC H4Z 1G3

Dear Mr. Stevenson and Ms. Beaudoin:

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

We appreciate the opportunity to comment on the proposed amendments to National Instrument 21-101 *Marketplace Operation* ("NI 21-101") and National Instrument 23-101 *Trading Rules* ("NI 23-101") published on October 17, 2008. As stated in our previous letters on this topic, RBC DS continues to support the CSA, as well as the Investment Industry Regulatory Organization of Canada, in their ongoing efforts to address the need for comprehensive trade through rules in Canada.

With respect to the proposed amendments to NI 21-101 and NI 23-101 (the "Proposed Amendments"), we submit the following letter for your consideration.

I. General Comments

As stated in our previous comment letters, we remain concerned that the CSA does not view a centralized data consolidator as critical for compliance with a trade through obligation. We believe that in order to have full transparency and an effective price discovery process, all market participants need to have access to all available market information in Canada. Without a street-

wide data consolidator, the onus for dealing with trade throughs will have simply shifted from the market participants to the marketplaces. Moreover, we believe that a number of the more problematic issues that have emerged with the development of a multiple marketplace environment, including “locked markets” and “crossed markets”, would be addressed or minimized with a designated information processor.

To the extent a centralized data consolidator is unachievable, we believe that the CSA should adopt a requirement whereby each marketplace would be required to have the ability to redirect orders to all other approved marketplaces using a SMART Order Router (“SOR”) or other technology to ensure that each and every order entered on a Canadian marketplace complies with the proposed trade through obligations. Minimum routing capabilities must be standard for all marketplaces prior to approval, and such regulatory approval should not be granted until it can be demonstrated that this routing capability can be achieved.

II. Specific Questions on the Proposed Amendments

We have the following comments in relation to certain of the specific questions raised by the CSA under the Proposed Amendments:

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.

In order to ensure a level playing field for all market participants, marketplaces should not be permitted to pass the trade-through protection obligations back to their marketplace participants. However, we believe that market participants should be provided with the ability and discretion to utilize their own SORs, and to effectively “opt out” of the marketplace obligation to prevent trade throughs as they deem appropriate with respect to orders that they designate. In these circumstances, the market participant would assume the trade through obligation, and the applicable marketplaces would not be held accountable similar to ISO (inter-market sweep orders) in the United States. In connection with this approach, we believe that all market participants would be required to have an internal SOR that satisfies minimum standardized requirements.

We further believe that, unless and until the CSA adopts meaningful fines and/or other penalties for intentional trade through violations, they will continue to occur. Such sanctions should be imposed on the marketplace or the dealer, as applicable, that is responsible for fulfilling the trade through obligation. Any fines that are imposed could be used to compensate the person or company whose order was traded through.

In addition to the specific Question 1 identified above, we also believe that it would be beneficial for the CSA to provide additional guidance concerning how the “bypass” marker would be implemented. In this regard, it appears that the “bypass” marker would mean that the full size of the order would be displayed, in which case iceberg orders would become practically ineffective.

2. What length of time should be considered an “immediate” response by a marketplace to a received order?

In light of the current speed with which today’s trading engines are operating, we believe that the term “immediate” should be a designated fixed time increment that is 20 milliseconds or less. We believe that this standard should apply uniformly to all market participants and marketplaces to minimize interpretive disputes as to the practical meaning of “immediate”, and when dealers are able to avail themselves of “self help” measures.

3. Are any additional exceptions necessary?

We do not believe that there should be any additional exceptions to those listed in the Proposed Amendments.

Further, we believe that a regime similar to the regulatory framework that currently exists in the United States would be appropriate. The Automated Confirmation Transaction (ACT) service operated by the FINRA/NASDAQ Trade Reporting Facility (TRF) electronically facilitates the post-execution steps of price and volume reporting, comparison and clearing. Under this regime, these types of orders are subject to post-trade reporting and do not impact the marketplace.

In absence of a similar system, we believe that negotiated trades should not be subject to the trade through requirements. In particular, circumstances can arise where parties to a negotiated trade can agree on a price that is within the context of the market. However, at the time the trade is physically executed, the market price may have moved such that the agreed upon trade represents a trade through violation under the proposed rules. In the event that the CSA (and/or IIROC) introduce any trade-through protection rule, any such rule must take into account these market considerations. We note that this issue (i.e. the need to provide dealers who have orally negotiated a permitted trade (at a price that is within the context of the market) with an appropriate time period in which to execute such trade) continues to be of significant concern given the current volatility of the markets. We believe that greater flexibility should be available to market participants as is currently provided for under the regulatory framework in the United States.

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

As stated in our opening paragraph, we believe that appropriate minimum and standardized requirements should be in place for all new marketplaces to have the ability to route orders to each another. We believe that all currently approved markets have such capability, and encourage the CSA to ensure that these requirements be imposed on all new marketplaces seeking regulatory approval in Canada.

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 IIROC Universal Market Integrity Rule 6.1 as this limit?*

We believe that marketplaces should not be permitted to charge market participants any fee for the execution of an order to comply with the proposed trade through requirement. In this regard, marketplaces should not be able to derive a revenue stream for facilitating compliance with applicable regulatory requirements by charging a higher trading fee for orders that are routed to it to satisfy the trade through protection requirements as that marketplace would have charged if such order was entered directly on that marketplace. Further, we believe that if any such fee is adopted by the CSA, it should be nominal and standardized to facilitate the comparability of prices across marketplaces.

6. *Should there be a prohibition against intentionally creating a “locked market”?*

We strongly support the CSA prohibition against intentionally creating a “locked market” to protect the integrity of the Canadian markets. In our view, a “locked market” effectively represents a trade through violation and could further represent manipulative and deceptive trading activity under the Universal Market Integrity Rules. We believe that one way to eliminate “locked markets” would be to require marketplaces to “move” the applicable orders to unlock the market. For example, if a market is lock 100 buy @ \$2.00/100 offered @ \$2.00, the marketplace would be required to move the sell side orders to match the buy orders, thereby unlocking the market. In addition to unlocking the market, this would address the difficulties encountered by dealers being required to move a passive order to an active order to satisfy their obligations to their clients. Further, another remedy that marketplaces may implement is that they could take the locked order (as they have a time stamp for both orders) and move it to the marketplace that posted the passive order. We believe that these actions by the applicable marketplaces if consistently applied would significantly address the problems of “locked markets”.

Questions 7 through 13

No comment.

14. *In addition to the proposed reporting requirements for marketplaces, would other information, such as the following, be useful to dealers or advisors to assess best execution:*

- (a) a breakdown of the information by order size (i.e. 100-499 shares, 500-1999 shares, 2000-4999 shares, 5000 or more);***
- (b) the proportion of time that a marketplace had orders that were at the best bid or the best ask;***
- (c) the proportion of trades (in number of shares or number of trades based on our decision) executed inside the best bid and ask price?***

We believe that all primary “raw” data and information in relation to the marketplace should be made available thereby enabling market participants to analyze the data based on their specific needs.

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?

As noted above, we believe that it is of critical importance to have an information processor that reports all relevant information in order to provide market participants with the required data for, among others things, compliance with the proposed trade through obligations. Although we believe that all price levels are relevant, given the practical considerations relating to the volume of data and system limitations, we believe that 5 to 10 levels would be appropriate.

Thank you for providing us with an opportunity to comment. We would be pleased to discuss our comments further with you. If you have any questions or require additional information, please do not hesitate to contact me.

Yours truly,



J. Greg Mills
Head, Global Equity Sales & Trading
RBC Dominion Securities Inc.

cc. John Reilly, Managing Director and Head of Canadian Equity Trading
Kelley Hoffer, Director, Compliance, Canadian Wealth Management & Capital Markets
Gary Tamura, Senior Counsel, RBC Law Group

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