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June 16, 2011

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

Dear Sirs and Madams:

TD Securities welcomes the opportunity to provide comments on the CSA proposed amendments to NI 21-201 *Marketplace Operation* and NI 23-101 *Trading Rules*.



As a diversified investment dealer with leading institutional and retail equity businesses, TD Securities is fully supportive of initiatives which improve the transparency of marketplace operations and strengthen market integrity.

1. Regulatory and reporting requirements of marketplaces

We support the streamlined regulatory and reporting requirements proposed by the CSA, and we welcome the requirement for ATSS to file financial statements in addition to Exchanges and QTRSs. We believe ATSS which primarily derive revenue from market data and connection fees rather than trading activity are a burden to the market by increasing the overhead of trading without providing meaningful liquidity, and these ATSS licenses should be reviewed and potentially withdrawn if a marketplace is unable to achieve sufficient market share.

2. Transparency requirements applicable to marketplaces dealing in exchange-traded securities

We appreciate the CSA has not imposed a minimum size requirement on dark orders at this time, but we are concerned the lack of clarity of how and when such a requirement may be introduced by a regulation services provider creates uncertainty for the business models of both marketplaces and market participants. We believe minimum size restrictions are unnecessary for dark orders, since such a restriction would create distortions for liquidity providers who may be willing to offer price improvement for small size, and would exclude participation from retail investors.

Minimum size restrictions on dark orders may also have an unintended consequence of reducing liquidity on the visible market, as market makers and liquidity providers would be required to take greater risk in dark markets which may reduce their risk appetite in the lit market.

In today's market environment, the make/take model has encouraged the separation of natural participants by imposing excessive costs on active orders and encouraging these orders to be directed away from traditional marketplaces to alternative trading venues. This separation of natural order flow is harmful to market integrity as it reduces opportunities for natural investors to trade with each other, and encourages unnecessary intermediation. A minimum size restriction on dark orders would limit the ability of retail orders to interact with other natural order flow executed in dark venues, and thus further reduce order matching between natural investors. We feel a restriction on the minimum size of dark orders is at odds with the principle of fair access, since it discriminates against retail investors in particular.

3. Transparency of marketplace operations

We welcome greater disclosure of marketplace operations and encourage this information to be made available on the public web sites of all marketplaces. This information would greatly benefit client education, especially considering the complexities of the multiple market environment and the wide range of capabilities of each marketplace.



4. Other requirements applicable to marketplaces

We are in agreement with the additional marketplace requirements on conflicts of interest, outsourcing, ATS threshold notification, recordkeeping, business continuity and independent systems review.

5. Definition of a marketplace

We are concerned the definition of a “marketplace” proposed by the CSA, if strictly interpreted, would require every Canadian dealer to immediately file as a marketplace and would lead to a full restructuring of the Canadian investment dealing business and dealer community.

Two of the primary functions of an investment dealer are:

- When acting as agent, solicit interest from clients to bring together multiple buyers and sellers for a security, and effect those trades on a marketplace.
- When acting as principal, to facilitate client trading by providing liquidity for client orders.

The new definition of a marketplace makes a distinction between these functions being performed electronically using non-discretionary methods, and manually in the upstairs market. However as dealer operations have been progressively automated over the past twenty years this distinction has effectively disappeared. Workflow automation tools are used for order management, order routing, client facilitation, order bundling and trade allocation, for both institutional and retail order flow. Virtually all dealers use commercial order management systems combined with in-house technology to automate the workflow for managing and facilitating client orders. In the present day no client order flow, either institutional or retail, is handled manually. The automation of dealer activities ultimately results in improvements in certainty of execution, speed of execution and average execution prices for investors.

We do not believe the intention of the definition is to require dealers to file as marketplaces, but rather to place limits on the ability of dealers to internalize order flow. Any limits on internalization should be weighed against the benefits that internalization provides to natural investors, who may improve their opportunity to fill passive orders through dealer internalization, by being matched directly with other clients, rather than competing with intermediaries in a pure price-time priority marketplace.

The danger of excessive internalization lies in market fragmentation if a significant percentage of orders migrate away from the visible markets to alternate liquidity pools. It should be noted the Canadian marketplace is already becoming highly fragmented with the recent filing of new ATSs, dark orders and dark pools. This fragmentation is primarily driven by the economics of the make/take model, which by placing a high fee on active orders encourages those orders to be directed away from traditional markets to alternate trading venues. We believe a more effective approach to reducing market fragmentation is through the elimination of marketplace sponsored payment-for-orderflow, rather than introducing a new marketplace definition which would reclassify dealers activities while not changing the underlying economic incentives driving market fragmentation.



6. Transparency requirements applicable to marketplaces, inter-dealer bond brokers and dealers dealing in government debt securities

We are supportive of the proposed extension of the exemption from pre-trade transparency requirements for unlisted debt securities.

7. Locked and crossed markets

We agree marketplaces should be responsible for preventing locked and crossed markets when the marketplace routes or reprices orders. The requirement to not lock or cross markets should be universal to all smart order routers, regardless if they are managed by a marketplace or market participant.

8. Requirements for information processors

We are in agreement with the additional disclosure and business continuity requirements for information processors.

We appreciate this opportunity to provide comment on the proposed amendments to NI 21-101 and NI 23-101 and we would welcome further discussion on the proposal. Please do not hesitate to contact the undersigned if you require any clarification or additional information.

Best regards,



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