



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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June 14, 2011

Dear Sir/Madam:

Re: Proposed Amendments to NI 21-101 *Marketplace Operation* and NI 23-101 *Trading Rules* (the “Proposed Amendments”)

The Investment Industry Association of Canada (“IIAC” or the “Association”) appreciates the opportunity to comment on the Proposed Amendments.

The Association supports the principle of creating consistency in the regulatory requirements governing exchanges, QTRSs and ATSSs operating in Canada. By creating a level regulatory playing field applicable to trading, reporting, and responsibility for fair and orderly markets, the industry will be in a better position to evaluate and compare the value provided by each marketplace.

We do, however, have some concerns with the Proposed Amendments, which are expressed below.

Marketplace Reporting Requirements

The reduction of the notice period for proposed fee changes, from 45 to 7 days may present some challenges. We note that many fee changes are not straightforward, and involve adjustments to different components of marketplace fees. In those cases, 7 days does not provide sufficient time to ascertain the impact and make appropriate adjustments to trading strategies. We agree that in the case of a clear fee decrease, there is no a regulatory or market integrity concern that would outweigh the competitive advantages of allowing marketplaces to move quickly to adjust fees. As such, we recommend that the 7 day notice period be applicable only to fee decreases, and the 45 day period be retained for situations where fees are increased or otherwise adjusted in a manner that is not clearly a decrease.

We also seek clarification as to what specific type of marketplace fees are subject to the notification period. For instance, does the notification requirement apply to the use of smart order routers, or market data offered outside the actual market entity, but by a related firm (for example TMX Datalinx).

Currently, the regulation does not require that marketplaces disclose individual agreements that have been negotiated with dealers and other industry participants. The result is that although there appears to be transparency with respect to fees, in practice, the actual rates at which the industry is charged can vary significantly from what is publicly disclosed. We question whether the creation and non disclosure of these special agreements violates the principles of fair access and transparency. The regulation should make clear whether fees are negotiable, and if so, if and how such agreements must be disclosed.

Additional clarification about what is considered a “significant change” in respect of technological issues that require regulatory notification would be helpful. For instance, we would expect that fixes to address problematic issues or a “bug” in the marketplace systems would not require filing with the regulators. It is important to distinguish between such fixes and those items that would require dealers and other participating organizations to adjust their systems to accommodate new technology.

Financial Reporting

We are supportive of the Proposed Amendments relating to financial reporting.

Marketplace Rules

Although the requirement to provide fair access to the marketplace appears straightforward, it is unclear how it applies to trading forums that restrict access to certain types of dealers, for example, to the buy side, or to retail investors only. Is the intention to provide exemptions for certain business models, or allow existing business models that restrict access to be “grandfathered” under current regulation?

If restrictive business models are to be accommodated under the Proposed Amendments, the market integrity implications of such restrictions should be closely examined, and the term “fair access” must be more clearly defined to describe how it will be applied.

Information Transparency Requirements for Marketplaces Dealing in Exchange-Traded Securities

We acknowledge the need to establish a regulatory framework that will facilitate a timely response to future market developments relating to the minimum size requirements for dark pools. We reiterate the importance, however, of ensuring that in the event that a minimum order size is proposed, it is critical that fulsome industry consultation is undertaken, and that industry participants are given sufficient notice to make the appropriate technological and systems adjustments.

We agree with the principle that in furtherance of the fair access requirements, information sent to a marketplace SOR should be made public to all marketplace SORs. This helps to ensure that any individual marketplace cannot take advantage of information flowing to their particular SOR to route to their dark pools without sending the orders to other markets first. We question whether this requirement applies only to displayed orders or if it is intended to apply to dark orders, flash or co-location orders as well.

Use of IOIs

The criteria for when an IOI will be considered an order, and subject to the transparency requirements is reasonable and promotes market integrity. The effect will be to prevent a market from being developed that provides certainty in respect of orders, without imposing the appropriate marketplace regulation on the provider.

The Association strongly supports the expectation that marketplaces that send IOI information to an SOR should be required to send it to all other SORs in order to meet the fair access obligations. We believe the guidance provided in the Proposed Amendments that states that the marketplace should “consider” whether to send it to other SORs is not sufficient and does not promote market integrity through fair access. If a marketplace sends any information to an SOR, it should be available to all SORs so that no investors are subject to discrimination based on the marketplace on which they are trading.

Transparency of Marketplace Operations

We agree with the proposed disclosure requirements applicable to ATs, QTRs and Exchanges. In addition to the enumerated items, we also believe that all marketplaces should also disclose the identity of those holding material ownership positions, and make timely updates when such ownership information is proposed, and is changed.

Other Requirements Applicable to Marketplaces

Conflicts of Interest

We agree with the proposed requirements relating to the disclosure of existing material conflicts of interest. We believe that our suggestion to disclose material ownership positions may fall within this requirement.

Outsourcing

We support the proposed requirements relating to the establishment of procedures regarding the selection and monitoring of outsourcing arrangements. These requirements will help ensure a consistent and appropriate quality of service provided to the market served by the marketplaces.

Notification of Threshold by ATSS

We question the appropriateness of the regulatory review to establish whether an ATS should become an exchange, based on its trading value and volumes. Where an ATS does not intend to list securities, there does not appear to be any reason to require it to be regulated as an exchange, particularly when the Proposed Amendments ensure that the relevant regulations apply equally as between exchanges and ATSS. This provision introduces a regulatory burden on ATSS without any apparent benefit to the market.

Requirements for Information Processors

Given the importance of the role of an Information Processor in respect of the trade-through requirements, we support the enhanced disclosure relating to those undertaking these functions.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Copland', written in a cursive style.

Susan Copland