CIBC World Markets Inc.

Brookfield Place
161 Bay Street, 5th Floor
Toronto ON M5J 2S8

Tel: 416 594-8149

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The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd floor
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

and

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

RE: CSA Staff Notice and Request for Comment 23-323
Trading Fee Rebate Pilot Study

CIBC Capital Markets (CIBCCM) thanks you for this opportunity to comment on the proposed Trading Fee Rebate Pilot Study ("Proposed Pilot") that would apply temporary pricing restrictions on marketplace transaction fees applicable to trading in certain securities.

CIBCCM is the investment banking platform of Canadian Imperial Bank of Commerce (CIBC). We are a registered Canadian broker-dealer, engaged in, among other things, providing equities trading and execution services to retail and institutional investors. Our comments reflect the views of an institutional broker dealer and a retail broker dealer who will be impacted by the Proposed Pilot.

CIBCCM believes that the Canadian equity markets are fundamentally strong and that investors have benefited from advances in technology and a competitive marketplace where multiple trading venues have led to improved cost, liquidity, speed and product innovation. The need to globally compete for capital over the years has provided appropriate incentives to deliver a high quality capital market driven by the price discovery process, which concentrates liquidity to the benefit of investors. Furthermore, we support the regulators continued efforts to evaluate market structure developments to help promote market integrity, which in turn can bolster investor confidence.

As a full service broker dealer, our views on the Proposed Pilot are conflicted. On the one hand, we firmly support increased transparency and increased efficiency in equity markets.

We are supportive of studying trading fees and their impact on market quality, execution quality and order routing behaviour. We also strongly support the notion of data driven conclusions prior to implementing policy change and commend the Regulators and their academic partners for the time and effort put in to developing the framework for the Proposed Pilot.

The noble purpose of the proposed pilot is to better understand how the prohibition of rebates may affect dealers routing practices, the level of intermediation and standard measures of market quality. The challenge is that the Proposed Pilot will have real impacts, unknown impacts, with investors' real dollars. In our view, measures for success are ambiguous and ought to be more clearly defined prior to introducing change to existing marketplace pricing structures.

In addition, the current market structure serves our retail customers well, providing them with lower spreads and reduced execution costs. We believe that the competition amongst trade venues fostered by current market structure has had a positive impact on the execution of our retail customer orders.

However, we appreciate the challenges our institutional community faces with perceived conflicts related to broker order routing. Broker routing conflicts are a valid concern, though, we question whether the Proposed Pilot is the best solution to these concerns. Are there other approaches we can take without risking impacts to market integrity?

Our position:

1. Clearly define the problem we are trying to solve, and create equally clearly defined measures for success, which can then be measured at the Pilot's conclusion. There ought to be statistically significant results that demonstrate behavioural change of routing brokers and clearly articulated improvements in execution quality achieved, and to the extent possible, isolated to differences in fee or rebate levels. For example, if the results of the Pilot simply shows that routing practices have changed, that does not confirm that it was to the benefit or detriment of execution quality. Those benefits or harms are what needs to be measured (pre and post Pilot), rather than a simple review of market share shifts.

2. Make institutional order routing disclosure a policy priority. Regulators should address broker conflicts through a focus on disclosure and transparency around broker executions and execution quality statistics. With existing best execution obligations, we assert that broker conflicts of interest in order routing are best addressed through transparent performance reporting. A requirement for standardized information about the manner in which brokers handle orders will allow institutional clients to evaluate broker routing decisions, potential conflicts of interest and the quality of trade executions. In turn, improved reporting will allow for better management of broker relationships. In our opinion, this should be a precursor to the Proposed Pilot.

3. Regulators have been taking the right approach and should continue to test reductions in the existing fee cap. Through a gradual reduction of the current fee cap across all stocks, we can achieve a deliberate way of collecting data and uniformly assessing the impact of each reduction on all stocks. This approach eliminates the potential for issuer concerns (corporates and ETPs), being subject to disparate treatment due to the

arbitrary nature of test group selection. Reductions in the fee cap can be supported today.

4. Retail investors enjoy low cost executions, fast executions, significant liquidity and narrow spreads. From the retail perspective, our primary concern with the pilot is the potential for a degradation in the quality of trade execution for our clients.

   With the removal of incentives for liquidity provision, there is a likelihood of wider spreads and higher transaction costs for (retail) investors. In other words, exchange fees will move from an explicit trading cost to an implicit cost, measured by a widening of spreads. As retail generally takes liquidity rather than providing, should spreads widen, retail will pay the spread more often than they earn it. This equals a higher investor cost. At a minimum, there will be a direct increase in transaction costs for liquidity consumers.

5. The conflict inherent in broker routing will not be eliminated by a rebate ban. So long as venues can offer different fees or can offer other economic incentives to route order flow to them, there will be concerns about order routing conflicts. Furthermore, marketplace ownership may be a greater contributor to conflicted order routing practices and a rebate ban does nothing to address this conflict.

6. We believe that rebates can be a legitimate incentive to promote liquidity provision and contribute to price discovery in public markets. The elimination of rebates without introducing a better alternative to incentivize liquidity provision could lead to wider spreads, less liquidity and increased costs for both retail and institutional investors. Specifically, incentives may exert a beneficial influence which outweighs any negative impact on less liquid securities. Rebates may improve market quality in these securities and attract liquidity by incentivizing publicly displayed quotes.

   Rebates have the ability to disproportionally impact lower priced stocks as the access fee makes up a higher percentage of the share price of a lower priced stock. Consider that one size may not fit all - changes to access fee caps should potentially contemplate the share price of a stock, among other things.

7. The imposition of new regulatory constraints should be a last resort. Ideally competition and market forces would produce a solution that obviates the need for the Proposed Pilot. However, should the Proposed Pilot proceed, and in the event of no change upon conclusion of the Proposed Pilot, it should be determined that the price of liquidity is the price of liquidity. If there is no systemic damage, then do not put in artificial regulatory constraints which may simply add friction.

<u>Responses to Appendix II: Questions for Market Participants</u>

Despite our position stated above, we provide answers to the specific questions posed.

1. *We propose to define a security as medium-liquid if it trades at least 50 times a day on average and more than $50,000 on average per trading day over the past month. Do you believe that this definition is appropriate? If not, please provide an alternative definition and supporting data, if available, to illustrate which securities your definition captures.*

We support the inclusion of, and definition of medium liquid securities. Our view is that should we proceed with the Proposed Pilot, the sample should cover a broad spectrum of liquidity conditions otherwise it runs the risk of false conclusions that are not representative of the entire market. A comprehensive pilot has the potential to produce a more meaningful dataset to facilitate a broadened analysis of the impact.

2. *We propose to introduce the Pilot in two stages, with non-interlisted securities first, followed by interlisted securities. Do you believe that such staggered introduction will cause material problems for the statistical analysis and the results of the Pilot? If so, please describe your concerns in detail.*

Recognizing the need to ensure that the interlisted security set coincides with the SEC implementation of the US Proposed Pilot so as not to create an opportunity for regulatory/pricing arbitrage, we are supportive of a staggered start date between Canadian listed and interlisted securities.

3. *Several Canadian marketplaces offer formal programs that reward market makers with enhanced rebates in return for liquidity provision obligations. On the one hand, such programs may benefit liquidity. One the other hand, one of the primary objectives of the Pilot is to understand if rebates cause excessive intermediation. In your opinion, should exchanges be allowed to continue using rebates or similar arrangements for market making programs during the Pilot? Do you believe any constraints on such programs during the Pilot to be appropriate?*

We believe that market making incentive programs should be constrained for the duration of the Proposed Pilot, for those securities participating in the pilot. If we are testing the impact of the removal of rebates on our markets, then market maker programs have the potential to create a regulatory arbitrage to the structure of the Proposed Pilot.

4. *We propose to compute price impacts at the one- and five-second horizons. Do you believe that we should consider other horizons? If so, which ones?*

We support the time horizons proposed.

5. *We propose to compute time-to-execution for limit orders posted at the CBBO prices or improving these prices. Do you believe that we should consider different price levels? If so, which ones? Please provide supporting data and analysis, if available, to demonstrate the empirical importance of order postings at other levels.*

We support using the CBBO to compute time-to-execution.

6. *We propose a number of market quality metrics. Do you believe that we should consider additional metrics? If so, please outline these metrics and provide supporting data and analysis, if available, to demonstrate their empirical importance.*

The analysis of order routing decisions requires information at the parent (order) level. Only at the parent level can it be known that an order was placed by algorithmic decision or through direct client instructions, as well as whether orders are placed individually or as a sequence of orders. The Proposed Pilot would be strengthened should it include parent order level impact costs.

We also believe that for proper analysis, there should be a distinction between agency and principal orders. A high volume of rebates are provided to market participants that have no agency conflict. This order flow should be excluded from any measures of improvements/degradations to broker order routing conflicts.

7. *We have had extensive discussions with a number of market participants on whether to include exchange-traded products (ETPs) in the Pilot, and some participants suggest that such an inclusion is warranted. Nevertheless, others point out that trading characteristics of ETPs are substantially different from those of corporate equities and including ETPs will present significant challenges in the matching stage and will likely confound the results in the analysis stage.*

   These participants and our own research identify the following concerns:

   • most liquidity in ETPs is determined and provided by contracted market makers, and the ETP creation/redemption process represents its own source of liquidity; 23
   • matching characteristics that we propose to use for corporate equities do not have the same meaning for ETPs. For instance, ETP fund size is not a relevant metric, and ETP trading volume is usually not correlated with quoting activity or liquidity;
   • spillover effects of two types may confound the results. First, liquidity in ETPs relates to liquidity of the underlying basket of securities, and if the basket is significantly affected by the Pilot, the ETP will be affected too. Second, ETPs that follow the same baskets may be viewed not only as good matches, but also as substitutes for investment, hedging, and trading purposes. If one of them is selected to be treated, and the other is not, market participants may move between products, potentially confounding the results of the Pilot.

   The above-mentioned concerns make finding matched ETP pairs a uniquely challenging task. To the best of our knowledge, there is no established procedure for matching ETPs to study their trading costs.

   As such, in relation to ETP inclusion, we ask that market participants consider the following questions: Given the challenges that ETP matching presents, can the goals of the Pilot be achieved without including ETPs in the sample? If ETP inclusion is important, can you propose a way to construct a matched sample that addresses the concerns identified above?

We believe that the addition of exchange-traded products (ETPs) to the Proposed Pilot would produce a more inclusive analysis of rebates and fees across all product segments. Although we agree that the trading characteristics of ETPs differ significantly from corporate securities, the data that may be obtained from including these products should be included when considering market structure changes to existing pricing models. This aligns with the US proposal on transaction fees.

Concluding thoughts

Regulators are challenged to ensure that as markets evolve, as technology changes that regulations continue to drive efficiency, integrity and resilience. Their focus is to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation. A healthy market will have investors with different trading horizons and liquidity needs – this is a good thing.

Marketplace pricing is transparent and accessible by all, and has been a stable force in our current market structure. We highlight the concern that there is a potential for more regulation to exacerbate inefficiencies in today's markets, or unintentionally introduces new ones.

We strongly support increased transparency for assessing order routing practices by broker-dealers. The disclosure of order handling information should be the first step to better evaluate broker order-routing decisions and to manage perceived conflicts. Conflicts of interest existed before the onset of maker-taker pricing and are likely to continue to exist during and after the Proposed Pilot.

We commend the regulators for putting together a thoughtful Pilot study, and appreciate the opportunity to provide our comments on the Proposed Pilot. Please feel free to contact us with any questions or requests for clarification.

Respectfully,

Heather Killian
CIBC World Markets Inc.
Heather.killian@cibc.com