The Canadian Advocacy Council for Canadian CFA Institute Societies
ADVOCATING THE CFA INSTITUTE'S CODE OF ETHICS AND STANDARDS

August 17, 2015

BY EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority (Saskatchewan)
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety,
Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor
Toronto, Ontario M5H 2S8
Email: comments@osc.gov.on.ca

and

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

Dear Sirs/Mesdames:

Re: Proposed Amendments to the Companion Policy to National Instrument 23-101 *Trading Rules*: Application of the Order Protection Rule to Marketplaces Imposing Systematic Order Processing Delays (the "Proposed Amendments")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to comment on the questions relating to the Proposed Amendments.

[1]The CAC represents the 14,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital

As a general comment, we agree that it is important to address the implementation of "speed bumps" and how they operate in the context of OPR.

1. *What are your views on whether OPR should apply to marketplaces that impose an order processing delay? If OPR should apply to marketplaces that impose an order processing delay, should it apply to some or all of them? What factors should be considered in determining whether OPR should apply to marketplaces that impose an order processing delay?*

We do agree that in general OPR should not apply to marketplaces that intentionally impose an order processing delay either systemically or on certain types of participants. While the Proposed Amendments could have the negative consequences set out in our responses to the Questions below, there may not be any other viable alternative given the previous approval of Alpha's related proposal. We note that further consideration should be given to whether OPR should still apply to marketplaces that may have an embedded, unintentional order processing delay due to, for example, technological restrictions or latency due to physical location.

If OPR were to apply to marketplaces that impose an order processing delay, it should apply to all such marketplaces for fair access purposes. However, we are of the opinion that this situation would create serious and systemic issues related to quote accessibility and general market integrity.

We note that choosing to impose OPR on only certain marketplaces will certainly introduce additional complexity, and some market participants may choose to ignore those facilities that are not protected.

We query the result if the percentage of markets that utilize speed bumps were to increase such that a significant portion of the market became unprotected. Such a scenario does not appear to be contemplated in the Proposed Amendments and should be considered further.

In our view, excluding markets that impose an order processing delay from OPR does not deal with the symptoms of a bigger market issue, which include the participant economics, latency differentials and fragmentation which speed bumps are designed to partially address.

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markets in Canada. See the CAC's website at http://www.cfasociety.org/cac. Our Code of Ethics and Standards of Professional Conduct can be found at http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx.

[2] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 119,000 members in 147 countries and territories, including 112,000 CFA charterholders, and 143 member societies. For more information, visit www.cfainstitute.org.

The CSA ought to determine a reasonable set of criteria for an OPR regime before proceeding with further market structure change (e.g. relative latency standards, fair access principles, economics and NBBO constraints). Applying or removing OPR on an ad hoc basis such as in the case of Alpha or Aequitas Neo, while incremental on the surface, has the potential to lead to a proliferation of new trading venues and severe unintended consequences.

2. *In an environment where not all displayed orders on visible marketplaces are protected under OPR because marketplaces impose an order processing delay, what are your views with respect to the outcomes for protected and unprotected visible marketplaces and for trading on those marketplaces? In responding, please consider the impacts on:*
    a. *Various market participants including retail and institutional investors, and liquidity providers;*
    b. *Liquidity on both protected and unprotected visible marketplaces;*
    c. *Price discovery;*
    d. *Complexities and changes you anticipate from participating in both protected and unprotected visible marketplaces, including costs and effort; and*
    e. *The provision and use of consolidated data.*

As a general comment, the increased complexity contemplated by this proposal (and de facto already in place with the approval of Alpha's related order type) benefits only a very small portion of market participants, complicates price discovery, and further fragments liquidity.

The increased complexity and fragmentation increases structural barriers to new and/or less informed market participants, resulting in certain participants having priority to data vendors. In our view, it also imposes increased systemic costs and complexity on all of the aforementioned market participant constituencies, with a net-negative outcome for the efficacy of our capital markets.

The provision and use of consolidated data will become increasingly costly and challenging under this proposal. Certain data vendors will inevitably choose to display unprotected orders and/or marketplaces in different ways. The resulting differentials in data provision and presentation will result in additional difficulty in understanding and analyzing market data for all participants. It will require technological improvements (costs) either on the part of data vendors, market participants, or both, the cost of which will not be easily recouped through any potential savings related to this proposal. The net effect will be greater costs pushed down to end investors by market participants.

We are also concerned about the creation of the Canadian NBBO in the event that a larger portion of displayed orders becomes unprotected. Foreign investors may avoid Canadian marketplaces due to frustrations over certain visible orders being excluded from the NBBO. This would in turn, reduce liquidity in Canada and ultimately have an adverse effect on the price discovery process. This is unfavorable for institutional investors, who are interested in finding natural liquidity and trading in larger quantities. It will be harder for natural participants to capture the passive side of the spread. We understand that there will be two consolidated feeds, with one containing only protected marketplaces' quotes and the other containing all visible marketplace quotes (protected and unprotected). It is not clear which of the two feeds will be used for calculating NBBO and which one dark pools will reference to calculate the mid-point of the quote. We are also concerned that two consolidated feeds will result in higher market data fees for brokers, which will likely result in increased trading costs for investors.

As noted below in Question #3, one of the key objectives of OPR is to support retail participation in the market; however, once the Proposed Amendments are in effect, a number of orders and/or marketplaces may no longer be visible to retail investors. This would of course depend on the corresponding data vendor's treatment of unprotected quote data, but this will not simplify or encourage retail participation in the market.

3. *A key objective of OPR is to recognize and support the role of retail participation in the market. If the Proposed Amendments are finalized, what changes if any, do you expect will be required for dealers handling retail order flow? What changes if any, do you expect in terms of outcomes for retail clients?*

As noted in our response to Question #2 above, there could be a negative impact on retail participation in the market as a result of the structural complexities introduced. The Proposed Amendments may create incremental barriers to understanding of available prices and liquidity, and while such results may be partially mitigated through policies and procedures of dealers, it becomes increasingly important for regulators to employ a viable standard for best execution, including particular controls to monitor the routing of order flow. It will also be important for regulators such as the CSA and IIROC to consider how to monitor the trade and quote history of a particular security and the compliance with best execution obligations under the contemplated regime.

4. *Are there implications that have not been addressed above that should be considered? How do you suggest they be addressed?*

In addition to the concerns addressed above, there will be an unaddressed impact on the integrity and universality of the NBBO concept since some orders will no longer be included. This fact could introduce complicated and varying concepts of the BBO including the Canadian BBO (CBBO) or Protected BBO (PBBO) representing different samples of available quotes and liquidity at any given point in time. Questions might arise in certain circumstances with respect to which quote should be used for trading and market analysis generally. If different brokers were to use different quotes, it will impact any evaluation of spreads, liquidity, and best execution and reduce comparability of market data and execution outcomes between brokers and marketplaces for all investor types. There could also be ramifications for the execution on agency vs. principal quotes, in that a dealer may be required to exhaust agency quotes prior to an inferior priced principal quote.

We would further note the potential additional incentive created by this proposal for any broker with captive (in practice, mostly retail) order flow to explore the creation of an unprotected marketplace for the effective internalization or wholesaling of a portion of their flow should they deem the economics and/or order types offered by the incumbent marketplaces unattractive. We believe this potential outcome deserves further consideration and discussion.

Another possible unintended consequence of the CSA's OPR proposal is that lower passive fill rates may cause an increase in active execution rates, which may increase information leakage and increase price impact associated costs for institutional investors. It is difficult to see how the increased interaction between retail flow and liquidity providers in the structure proposed by Alpha will improve the regulatory objectives of price discovery, fair access and market integrity. The commercial solution offered by Alpha would exclude the large, informed order flow from institutional investors whose participation would provide important input into price discovery. As a result, the level of what may be seen as unnecessary intermediation in visible, protected marketplaces will likely increase.

In sum, while the additional complexity may be offset by increased/recaptured order flow to Canada (what we believe may be the impetus for the proposal and related Alpha order types), the Proposed Amendments could in fact result in lesser flow to Canada if U.S. or foreign-based dealers with order flow originating outside of Canada in interlisted securities do not wish to navigate through the additional Canadian market complexity if Canadian liquidity is too difficult to understand or access (thus reducing overall market liquidity).

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) *Robin Pond*

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