

August 6, 2014

**BY EMAIL**

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission (NB)  
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 Territory  
Superintendent of Securities, Nunavut

The Secretary  
Ontario Securities Commission  
20 Queen Street West, 19th Floor, Box 55  
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 (Québec) H4Z 1G3  
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

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

The Canadian Advocacy Council<sup>1</sup> for Canadian CFA Institute<sup>2</sup> Societies (the CAC) appreciates the opportunity to comment on the Proposed Amendments and wishes to

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<sup>1</sup>The CAC represents the 13,000 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 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>.

<sup>2</sup> CFA Institute is the global association of investment professionals that sets the standard for professional excellence and

provide feedback specifically with respect to the proposed change to section 5.10 of NI 21-101. The amendment would permit a marketplace to disclose a marketplace participant's trade information without consent to researchers for capital market research purposes if the marketplace has entered into a written agreement with the recipient and if the agreement contains certain mandated provisions. We are highly concerned about the potential misuse of this information and the chain of custody of end client information.

An agreement would require the recipient to ensure that they do not publish data that discloses, directly or indirectly, the transactions, trading strategies or market position of a particular dealer (in the case of anonymous trades) or its clients. We believe that in practice some recipients would, notwithstanding the proposed restrictions, attempt to utilize the data to reverse engineer proprietary trading strategies, particularly if they are provided access to end-client identifiers. While the recipient would then be in breach of their obligations under the agreement (and the marketplace could choose to pursue a remedy for such breach), the damage to the originator of the sensitive information, which could include the client's identity and other intellectual property in the form of trading strategies, would be irreparable. Such information has value to the end client, and if disclosed or misplaced/misused by the recipient, the end client has no obvious means of legal recourse under the Proposed Amendments. In addition, as a general matter, proprietary trading strategies and cumulative client position sizes can have a significant financial impact to the originator of the data, particularly if they happen to be active managers who deal in illiquid securities.

We are also unclear as to the nature and scope of the term "capital market research" and believe that additional guidance and controls are required concerning the permitted use of sensitive trading data.

Given the confidential nature of the information, as a potential alternative to permitting the release of data by marketplaces (which may have their own commercial interests in connection with the release of the data), the CSA could instead work with IIROC in connection with any request for information by third party capital markets researchers. IIROC would appear to be the appropriate moderator of access to the capital markets data set in question, as the inputs it currently receives with respect to its internal research function is not dissimilar to the inputs that would be received with respect to any external research that might occur. Whoever releases the data must ensure the information is safeguarded. One of IIROC's functions in this respect could potentially include determining whether full visibility on data points should be provided to a third party if it is not required for the scope of the research project.

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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](http://www.cfainstitute.org).

### **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](mailto:chair@cfaadvocacy.ca) on this or any other issue in future.

(Signed) *Cecilia Wong*

**Cecilia Wong, CFA**  
**Chair, Canadian Advocacy Council**