

June 30, 2014

VIA ELECTRONIC-MAIL

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Corporate Secretary  
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Re: Comments in Response to Proposed Amendments to NI 21-101 Marketplace  
Operation and NI 23-101 Trading Rules

Dear Sirs/Mesdames:

We at Connor, Clark & Lunn Investment Management Ltd. (“CCLIM”) are pleased to take this opportunity to provide our comments on the proposed amendments to NI 21-101 Marketplace Operation and NI 23-101 Trading Rules outlined in the Canadian Securities Association (“CSA”) Notice and Request for Comment published April 24, 2014 (“Notice”). The proposed amendments update the Marketplace Rules to reflect developments that have occurred since they were last revised in July 2012. Our response focuses specifically on the proposed amendments to subsection 5.10(1) of NI 21-101 (“Proposed Confidential Data Subsection”). This proposal allows for marketplaces to provide marketplace participants’ order and trade information (“Confidential Data”) to a person or company for the purpose of capital markets research subject to certain terms and conditions.

CCLIM is an independent investment management company which manages approximately \$31 billion in assets on behalf of pension fund sponsors, corporations, foundations, endowments, mutual funds and qualified individual investors. CCLIM provides equity, fixed income, balanced and alternative investment solutions such as market neutral and high income strategies to clients.

### ***I. Background***

As mentioned above, the Proposed Confidential Data Subsection sets forth terms and conditions under which marketplaces are permitted to distribute a marketplace participant’s order and trade information to an individual or company for the purpose of capital markets research. At a high level, marketplaces must have in place written agreements with the person or company to which it provides Confidential Data, and that these agreements must provide terms on how that data is used, published, and/or shared. Beyond the

agreements, the proposal also requires marketplaces to, at their sole discretion, take steps to prevent or deal with a breach of confidentiality.

It is our understanding that data related to the DEA Client Identifier is a component of a “marketplace participant’s order and trade information” and thus would be made available to a person or company requesting data for capital markets research.<sup>1</sup> This DEA Client Identifier is a data field unique to an individual trader and appears on every order and subsequent trade submitted to a marketplace via direct market access or electronic algorithm. It is a field required under NI 23-103 for surveillance and regulatory purposes. It is our further understanding that the terminology used in this field by many brokers explicitly identifies the individual trader and firm.

## *II. Discussion*

CCLIM appreciates the CSA’s objective to “support capital markets research” and agrees that such research is valuable for the industry and investors. At the same time, however, we believe the provisions outlined in the proposal will not fully mitigate the risk of Confidential Data being misused, which could have a costly impact for industry participants. We discuss our concerns below and offer potential solutions which would largely address these confidentiality concerns.

### *A. Proposed Framework will not Prevent Misuse of Confidential Data*

Of primary concern to CCLIM is disclosure of the DEA Client Identifier on individual orders. This data enables a researcher to track all activity at the trader and firm level. This is economically valuable data. Trading strategies, algorithm design, and investment strategies can be reverse engineered using such information, leading to potentially lucrative rewards if the data were misused for this purpose and applied to a trading or investment strategy. The intellectual property of the entire trading and investment community is at risk if Confidential Data falls into the wrong hands or is used for the wrong purpose. Although a prohibition against such behavior would be required in written agreements,<sup>2</sup> we question:

- 1) Whether, realistically, the person or company’s use of Confidential Data will be closely monitored. Exchanges are not incented to allocate resources to this function. First, close monitoring does not result in greater profits for exchanges. Second, exchanges are not directly

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<sup>1</sup> (2013), 36 OSCB 8838

<sup>2</sup> Subsection 5.10(1.1)(ii) states that the person or company must “not publish or otherwise disseminate data of information that discloses...trading strategies or market positions of a client of a marketplace participant.”

Subsection 5.10(1.1)(iii) states that the person or company must “not use the order and trade information...for any purpose other than capital markets research.”

subject to adverse consequences associated with a person or company implementing a strategy derived from Confidential Data. It is marketplace participants and their clients that could be harmed. As a result, why would exchanges allocate resources to the monitoring function?

- 2) Whether use of the data for non-capital markets research can be proven. If a strategy were reverse engineered, adapted in some form, then deployed for the account of a person or company, how can an outsider prove the strategy was a result of data or knowledge gained through analysis of Confidential Data rather than through normal course research using non-Confidential Data? The differentiation between knowledge gained from Confidential Data and knowledge gained from normal research is blurred making it difficult to prove behavior is a result of the former (and therefore a violation of written agreements with exchanges).

The potential reward for misuse of any Confidential Data is substantial while downside risk for misuse is low. Given CCLIM intellectual property is directly at risk if Confidential Data falls into the wrong hands, we are not supportive of the proposed changes.

### *B. Proposed Solutions*

Notwithstanding our comments above, we do believe there can be a solution that offers protection of intellectual property to industry participants, but also enables researchers to obtain useful data. We would be supportive of the proposed changes conditional on market participant Confidential Data (directly or masked) being omitted from order and trade data. Realizing that some research may require market participant Confidential Data, we suggest a formal process by which access to this data is reviewed and either approved or rejected on a case-by-case basis. This review can be done via a public comment process or by a panel of individuals representing different aspects of the industry. Because order and trade information is ultimately the result of proprietary research and trading strategies developed by market participants and implemented on behalf of their clients, these two groups should have a voice in determining what level of information is disclosed.

### *III. Conclusion*

For the reasons set forth above, we encourage adjustments to the proposed amendments to Subsection 5.10(1) of NI 21-101.

Should you have any further questions, please do not hesitate to contact either Jenny Drake ([jdrake@cclgroup.com](mailto:jdrake@cclgroup.com)) or Don Towers ([drtowers@cclgroup.com](mailto:drtowers@cclgroup.com)).

Respectfully submitted,

Connor, Clark, & Lunn Investment Management Ltd.



Don Towers



Jenny Drake