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BY EMAIL

Dear Sirs/Mesdames:

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Re: Re-Publication of Proposed Dark Rules Anti-Avoidance Provision (the "Proposed Amendments")

The Canadian Advocacy Council[1] for Canadian CFA Institute[2] Societies (the CAC) appreciates the opportunity to provide the following general comments on the Proposed Amendments.

We support the purposes of the Proposed Amendments to promote public price discovery by adding liquidity in the displayed markets, as well as consistency in the requirement to obtain a "better price" under Canada's dark liquidity framework. We are of the view that there may be broader implications (both positive and negative) that require consideration with respect to small client orders that are prohibited from being executed in a foreign jurisdiction at an inferior price to that which would be required if executed in Canada

[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 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.

against a dark order. The complicated implications arise in trying to balance best execution obligations, increased price discovery and retail investor protection.

We agree that the Proposed Amendments will help close the regulatory gap that currently exists for small client orders that are executed on a foreign organized regulated market ("FORM") that could not otherwise be executed in Canada. The Canadian capital markets will benefit from a diverse set of market participants contributing to the price discovery process, including retail participants. We support the effort of regulators to limit the potential for rules based regulatory arbitrage. If the Proposed Amendments come into force, there will be added consistency in the application of the dark liquidity framework fostering the balance between dark and visible liquidity, leading to better price discovery and stronger investor protection. We accept the commenters' concerns indicating that these smaller orders may execute at a slightly higher cost on Canadian markets post amendments. However, we believe competitive pricing between dealers and marketplaces operating in an efficient market ecosystem will reduce any pricing discrepancy between Canadian and US marketplaces, net of fees and rebates, and ultimately result in execution quality similar, if not superior to, the status quo available to the retail investor.

The Proposed Amendments may also, however, create a difference in the behaviour of Canadian and United States dealer firms with a significant amount of northbound order flow. Canadian firms should be encouraged by the Proposed Amendments to follow the higher standard, even if their U.S. counterparts treat northbound trades separately.

We note as well that the technology build that will be required in order for dealers to comply with the Proposed Amendments is not insignificant. Systems will need to be revised to appropriately handle orders that look like, but should not be treated as, a small client order but is in fact a child order derived from a parent order that is greater than 50 standard trading units. As a result of these system upgrades, we anticipate that further consultation with the dealer community will be required. In the interest of efficient markets and investor protection, we understand that any cost to the industry can be detrimental to the capital formation process. As such, we recognize the importance of having adequate timeframes to avoid unnecessary costs and to maximize implementation effectiveness.

As the dealer systems impact the market microstructure, the changes required should be optimal and help serve the dealers' best execution standard. We agree with some of the prior commentators who have expressed concerns about dealers' ability to meet their best execution obligations if the Proposed Amendments proceed. Under securities legislation, dealers have obligations to make reasonable efforts to achieve best execution when acting for a client. As the many guidance notices issued by IIROC in the past have illustrated, the implementation of the best execution standard is an imprecise concept that applies differently to separate clients and in different circumstances. The best execution obligation is particularly well suited to further examination and potentially further guidance in connection with the Proposed Amendments. The standard helps ensure that the policy objectives of the Order Exposure Rule and the dark liquidity framework are achieved. In

addition to further guidance, we would support a market based solution to provide trading venues that are both economic and in compliance with the foregoing rules.

Canadian end investors have difficulties in identifying whether their orders will be subject to the dark rules, and it becomes even harder to identify when rules are based on trading size increments. It will be interesting, post implementation, for IIROC to study whether the Proposed Amendments have an impact on prices over a longer period of time. Investors may not understand how (or why) their orders are routed to particular venues, whether they are FORM or wholesale markets, nor the pricing mechanics and economics of various dealers and venues. For example, the current price spreads of many firms are opaque to the end investor, and it is difficult to determine whether the difference in spreads relate simply to price, currency conversion costs, or other metrics, and thus whether there will be a noticeable price difference when the Proposed Amendments are adopted (i.e. whether the opportunity cost for end investors is less than 100% of the full spread for trades executed on a FORM). Additional disclosure around routing practices and the pricing mechanism would be helpful information for both the regulators and end participants.

With respect to the specific question about U.S. dollar denominated accounts, we do not believe they are distinct from other client accounts such that they should be permitted to trade in the U.S. without reference to the CBBO. If the Proposed Amendments apply, they should apply system wide, in order to avoid the possibility that market participants would structure their accounts to avoid the rule (for example, by opening up a separate account to manage currency exposure).

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) Cecilia Wong

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