



INVESTMENT INDUSTRY ASSOCIATION OF CANADA  
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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Dear Sirs/Madam:

Re: Consultation Paper 23-404 Dark Pools, Dark Orders, and other Developments in  
Market Structure in Canada

The IIAC appreciates the opportunity to comment on the Consultation Paper. While the Paper provides a useful primer on many of the issues, we are concerned that regulation based on its content and questions may create significant unintended consequences, while failing to address the activities of concern. There have been significant changes in the trading environment in respect of dark pools, dark orders and other market developments such as high frequency trading in the months since the Paper was drafted. Innovation in electronic trading will continue at a rapid pace in the near future. Unless regulators take proper account of these market developments, the resulting regulatory framework risks being incomplete, inappropriate, and causing unintended consequences and incurring excessive compliance costs.

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Given Canada's limited experience in respect the operation of dark pools and related matters in the multiple marketplace context, the development of detailed rules at this juncture would be premature and would likely result in a regulatory regime out of step with the changing market realities by the time it becomes effective.

Prior to formulating a regulatory response to the complex and far reaching matters involving market structure, it is critical that the issues are well understood. In order to ensure that any proposed regulation is based on the most current information and high level analysis from industry participants, we recommend the regulators form a "Committee of Experts" drawn from the industry and senior regulatory staff. In order to keep the committee manageable and focused, we recommend the composition be limited to very senior regulators and a small number of experts experienced in various aspects of secondary market trading activity.

The Committee mandate would be to examine, analyze, monitor, and advise on the evolution and effects of emerging market structure issues, including dark pools, dark orders, and other related developments in the Canadian trading environment. The Committee should meet on a regular basis, say once a month, to monitor trends, identify emerging trends and propose an appropriate regulatory response. In making its recommendation, the Committee of Experts would consider the experiences and proposals in the US and UK in addressing market efficiency and investor protection issues in electronic equity markets, while taking into consideration the unique creativeness of the Canadian marketplace.

It is essential the regulatory process and the resulting initiatives be sufficiently flexible to incorporate the most current information, anticipate the direction of the newly developing market structure and adopt required amendments on a timely basis. The regulators must avoid repeating the experience with the introduction of multiple marketplaces in Canada, where the ATS regulation lagged far behind the ongoing structural and behavioural evolution of electronic trading in secondary equity markets. This result has been an industry encumbered with inappropriate and expensive regulation for several years, and facing the prospect of continued compliance on operational burdens until new rules are finally implemented in 2011.

The IIAC applauds the regulators in their efforts to be proactive in understanding the operation and potential effects of dark pools, dark orders and related market developments. With the evolution of this emerging market sector, the regulators will ensure appropriate regulation can be enacted on a timely basis, if and when necessary.

The IIAC will be pleased to assist in providing input and any support required in respect of the formation and administration of a “Committee of Experts”. We will be in touch with you in the New Year to discuss our ideas in respect of the operation of this Committee.

Yours sincerely,

*“Ian Russell”*

cc: British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Registrar of Securities, Prince Edward Island  
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Registrar of Securities, Yukon Territory  
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