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

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December 12, 2016

Dear Ms. GuptaBhaya:

Re: Republication of Proposed Provisions Respecting Best Execution (the "Proposed Provisions")

The Investment Industry Association of Canada (the "IIAC" or "Association") appreciates the opportunity to comment on the above noted matter. We were pleased to see that a number of the issues we raised in our letter of March 24, 2016 were taken into account in the Proposed Provisions. We believe that the latest version provides additional clarity and more adequately takes into account business practicalities relating to the relationship between executing and non-executing dealers.

We do, however, have a number of outstanding concerns in relation to the Proposed Provisions and the accompanying Guidance.

Section 3300.1 – definition of foreign exchange-traded security

While the context in which this definition is used would indicate that it does not apply to a ***Canadian*** listed security, the definition should explicitly exclude a "Canadian listed security", rather than just a "listed security".

We are concerned about the applicability of the Proposed Provisions to foreign markets which are not U.S. based. Within the Proposed Provisions, it appears that the context would apply exclusively the U.S. marketplace, however that is not overtly stated. Firms may provide retail client access to most major world markets. If these provisions were intended to apply across all international markets/jurisdictions it could prove quite onerous due to data requirements as well as different marketplace nuances. We seek further clarification on this matter.

Section 3300.3(c)

It is unclear exactly what type of transaction is intended to be addressed by this requirement. In practice, traders use an SOR, and as such, the best execution procedures would refer to how it is programmed. If the order is manually handled, it still is sent through an SOR, unless the trader decides that it should be executed on a specific marketplace. We seek clarification as to what specific circumstances this provision is intended to apply.

We also seek clarification as to what the regulatory expectation is when the transaction consists of crossing on an unprotected market.

Without a clear articulation of specific circumstances in which this would apply, it would make sense to end the provision after the word "execution".

Section 3300.4 (a)(ii)

We question if there are other "material" conflicts of interest in respect of best execution that are to be disclosed, other than those to be disclosed under existing regulations.

Section 3300.5 (a)

It is not clear whether the executing dealer's detailed policies and procedures as articulated in this section must be made public, or could be disclosed only for the benefit of their non-executing dealer clients. The information required in the policies and procedures is quite detailed and in certain

instances would contain information that could be considered competitive information. It would not be practical to have this information available to the public, and the degree of detail would not provide useful information to the end retail investor. If the policies and procedures are to be publicly disclosed, the information should be considerably less detailed, and allow for non-executing dealers to request further information if necessary.

Section 3300.8

We question why the record keeping requirement of 5 years is inconsistent with the 7 year record keeping requirement in other IIROC Rules.

Section 3300.11

In respect of disclosure of best execution policies and procedures to clients, the Proposed Provisions do not distinguish between the final investor client and non-executing dealers. The appropriate degree of disclosure would vary between these clients, with non-executing dealers requiring more detailed disclosure. The degree of disclosure set out in section 3300.11 is more appropriate for non-executing dealers and institutional clients rather than retail clients, who would not likely understand or require such disclosure. In addition, making the detailed disclosure outlined in this provision public may result in the disclosure of competitive information. Finally, the degree of granularity required may result in the need for frequent updates that would not necessarily provide additional useful information, and would require significant resources to continually monitor and update.

Although the Guidance seems to indicate that the degree of detail required in the public disclosure is based on a more discretionary standard depending on what is reasonable, the actual Rule, which forms the basis for compliance is very explicit and prescriptive. We suggest that the Rule contain more general provisions and that the more detailed suggestions be included in the guidance.

In respect of the requirements to update the policies and procedures, while we recognize a client must know there is a change, we question the value to a client in continuously seeing what a policy was 6 months ago, when that policy does not apply to order management today. In addition, we caution, identifying the change on the current version can be more confusing to some readers (for example, consider one's preference for a black-line version verses a clean final version).

As such, we would suggest that Dealers should be given a choice of the most effective method for their business and their clients on how to notify clients of best-execution changes. For example, if a dealer choses to notify clients of best-execution changes by way of mail, or email, or message centre, or

statement message as at an effective date the disclosure on the website should not need to contain the changes for 6 months, and may instead provide a clean version of the most current disclosure.

Guidance

Q8: What specific best execution policies and procedures is a Dealer Member expected to implement with respect to clients' transactions in OTC securities?

In respect of the actual trading processes in the OTC market, it is important to note that dealers do not have the information that is anticipated to be considered in this guidance at the time of the trade. The structure and processes that characterize the OTC market are quite different from the equities market, in terms of the information available at the time of the trade, as well as the nature of the securities, the transparency, liquidity and way in which dealers hold inventories. As such, the risks and returns are not uniform, and the concept of "fair and reasonable" is not a standard that can be objectively and consistently determined between transactions and dealers. Given the limited availability of concurrent and pre-trade information, and who has inventory at any given time, the concept of "fair and reasonable" as presented in the guidance is not practical, as it would be based on post-trade information.

A compensation table is unlikely to be a practical solution in the OTC space for the reasons noted above and also that it would not be able to take into account wholesale markets, when they exist.

Q9: What best execution policies and procedures may a non-Executing Dealer Member consider implementing respecting agency transactions in OTC securities for its clients that are executed by an Executing Dealer Member?

It appears from the answer in the guidance that a non-executing dealer must review other transactions in the security to establish that the price it offers to its clients is fair and reasonable. Given the nature of the OTC market, this is practically difficult, as the non-executing dealer is unlikely to know, or have a means of discovering what other dealers may be active in that security in the marketplace.

Q10: What best execution policies and procedures may an Executing Dealer Member consider implementing relating to agency transaction it executes in OTC securities on behalf on a non-Executing Dealer Member?

As the Guidance states, it is appropriate for the Executing Dealer Member to undertake the same care and diligence when acting on behalf of a non-executing dealer member as if it were executing the transaction for its own account or its client.

Q11: Does compliance with the "Order Protection Rule" under Part 6 of the Trading Rules ("OPR") also satisfy a Dealer Member's best execution obligation.

As noted, the OPR is a different requirement from best execution. It is unclear how it factors into best execution, however it is clear that there is an obligation to comply with both OPR and best execution, but the ways in which these two rules work together is not necessarily evident.

Q12: Is it necessary for a Dealer Member to access real-time order and trade information from every marketplace in order to be able to comply with best execution?

Although the Guidance indicates that this is not a requirement, members have indicated that IIROC reviews are conducted in a manner that demonstrates that there is indeed an expectation that dealers be able to access such real time order and trade information from every marketplace.

Q13: What factors may a Dealer Member consider when executing an order for a listed security on an unprotected marketplace?

Although the guidance provides some factors to consider, it is also unclear how unprotected marketplaces should be evaluated and what the expectation is for connecting to such marketplaces. In particular, the expectation with respect to current trading patterns is unclear. Although the guidance indicates that the dealers should evaluate such marketplaces on a "historical" basis, the first factor listed indicates that dealers should consider whether client orders could reasonably be expected to execute on the unprotected marketplace at a better price. The expectation of how recently members should evaluate the marketplaces leaves room for interpretation. For example, what is the expectation if there has been recent activity on a non-protected marketplace where historically the level did not justify connection?

Q17: Section 3300.4 requires a Dealer Member to outline a process designed to achieve best execution which includes identifying the Dealer Member's order handling and routing practices. Is describing the order handling and routing practices used during core trading hours sufficient?

Although we do not object to disclosing order handling and routing processes in general and in particular, after hours, we are concerned that the requirement that this disclosure be detailed and

public raises competitive concerns. As mentioned previously, detailed public disclosure would have limited value to investors, and could potentially cause confusion. It also may be very administratively difficult to maintain, given shifting circumstances in the industry and priorities within the firm.

Q18: What specific information should a Dealer Member include in its best execution process regarding accessing unprotected marketplaces?

We seek clarity in respect of the timing of the requirement to advise non-executing dealers and make public disclosure about access to unprotected marketplace. Specifically, if there is a change to access by the executing dealer, how soon must such dealer update its policies and procedures, and/or specifically advise its non-executing dealers about the change?

Q19: How should a Dealer Member manage order handling and routing practices to address different marketplace features and satisfy its best execution obligation?

We are concerned that the response in the guidance is both vague and prescriptive at the same time. If the level of disclosure outlined is expected to be made public, we believe it is too detailed and complex to achieve the purpose of creating informed investors. As stated above, there should be distinction as to what should be disclosed to non-executing dealers, who will have a direct interest, and sufficient expertise to understand the disclosure, and the public, for whom such disclosure is excessive, and may create competitive concerns for executing dealers.

Q20: Under what circumstances should a Dealer Member consider moving an order that is not immediately tradable from the marketplace where it is "booked" to another marketplace that trades the security in order to comply with its best execution obligation?

The answer to the FAQ guidance initially states that a Dealer Member is not required to migrate a resting order, but then further on states it expects a Dealer Member will migrate client orders to execute after market hours. This would appear contradictory, and appears to require Dealer Members to trade in the after hours markets. We seek clarity in respect of the problematic provisions, which state:

- *A Dealer Member is **not required to adopt a policy to migrate a resting order** to another marketplace to trade with an order entered after the entry of the "booked" order…*
- *In addition, IIROC expects that the Dealer Member has implemented appropriate procedures to monitor trading opportunities on marketplaces that operate outside the core trading hours of*

9:30 a.m. to 4:00 p.m., and ***will migrate appropriate client orders when they can execute with orders displayed on marketplaces that are still open for trading****.*

Q22: Is a Dealer Member expected to provide into order routing management for client orders to comply with its best execution obligation?

Although the answer to this question in the guidance appears to indicate that the question applies only to executing dealers, it is not explicit in the question itself. We seek clarification that the non-executing member is not expected to provide such input, as they would not have the expertise to do so, and if they were, executing dealers would not realistically be able to accommodate varied requests from their clients.

Q25: What level of detail do Dealer Members need to include in the disclosure of their policies and procedures as required under section 3300.10?

As noted previously, we are concerned that the prescribed level of disclosure is too detailed, particularly in respect of public disclosure aimed at the retail end client. The technicality of the disclosure would likely not be understood or useful to the end investor, and may compromise the executing dealer from a competitive standpoint. We are concerned also that the disclosure requirement in the Rule is quite prescriptive. Although the guidance appears to allow for more general disclosure, members advise that they believe that the Rule provides the actual requirements for compliance, and that the less prescriptive guidance would not relieve them of the requirements in the Rule.

Yours sincerely,

Susan Copland