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Re: Proposed Amendments Respecting Unprotected Transparent Marketplaces and the Order Protection Rule (the “Proposed Amendments”)

The Investment Industry Association of Canada (the “IIAC”) appreciates the opportunity to comment on the Proposed Amendments. The IIAC and its members acknowledge the uniqueness in this request for comments as the Ontario Securities Commission (the “OSC”) has already approved amendments to Alpha Exchange Inc.’s (“Alpha”) trading policies on April 15, 2015, which requires IIROC to amend certain rules to facilitate the OSC’s order. The IIAC appreciates IIROC’s timely response to address an immediate need to provide clarification and guidance for Dealer Members regarding marketplaces with “speed bumps”.

Agency Order Concerns:

In the May 15, 2014 request for comment on proposed amendments to National Instrument 23-101, the Canadian Securities Administrators (the “CSA”) stated that it would be deemed a violation of best execution to post agency orders on an unprotected market if the same Dealer Member had a similar order on a protected market for its proprietary trading book. It should be noted that some Dealer Members have organizational structures which logically and practically separate agency trading functions from proprietary trading functions. Where these separations exist, it is logistically impractical

for agency desks to check what proprietary orders are currently in the market, and on which venues, before posting agency orders. The difficulties are compounded by the need to monitor orders over their lifetime, in order to determine if the proprietary desk posts new orders on an unprotected market. The result of such a requirement would be extremely onerous from a compliance and supervision perspective.

We are concerned that in the absence of additional regulatory guidance, in order for agency desks at firms with proprietary trading to avoid these compliance issues, they will have to refrain from posting on unprotected markets. As such, any benefits accruing to passive flow on unprotected markets would not fairly be accessible by most agency orders. This issue is not addressed in the Proposed Amendments.

Pursuant to IIROC's UMIR Rule 5.3, Client Priority, proprietary orders on various markets would not violate best execution where it can be demonstrated the proprietary trader had no previous knowledge of the client orders. The IIAC believes that UMIR Rule 5.3 should permit Dealer Members to post agency orders on an unprotected market even if there was a similar order on a protected market for its proprietary trading book. The IIAC understands the CSA concerns that clients could be disadvantaged if the proprietary order could obtain a better price at the expense of the client. However, if the Dealer Member has clear separation between the agency and proprietary trading branches, and there are policies and procedures in place whereas the proprietary branch has no knowledge of the client orders, then consistent with the current trading environment, there would be no potential disadvantages to the client. ***The IIAC recommends that IIROC provide additional guidance to ensure that such trading will be permitted to continue.***

Dark Pool Concerns:

The best execution implications of the Proposed Amendments would effectively prohibit dark pools from using the unprotected markets in ascertaining pricing information. We ask IIROC to consider the possibility that unprotected displayed venues may still provide meaningful assistance to the price discovery process and the IIAC suggests that dark pools should be given the option (but not the obligation) to consume unprotected markets' quote information for dark pool matching purposes. To illustrate the importance of the option, if a dark pool does not include quotes from unprotected markets, they may have a mid-point pricing mechanism that may result in a trade through of a visible, lit quote (albeit an unprotected one). This effect would diminish the value of dark pool to investors, and could require Dealer Members to implement new price limits when routing to dark pools. ***The IIAC recognizes that amendments to the rules and/or provisions respecting dark liquidity may need to be made if dark pools were to be given discretion when determining a mid-point from lit orders across protected an unprotected market venues***

Client-Principal Trading

The Proposed Amendments state that in determining "best available price" a Participant should consider the price and size of orders displayed on marketplaces other than protected market places if the information is available or known to the Participant. The term "if available" is not clear and could be construed broadly. Dealer Members may access aspects of unprotected markets for a variety of reasons (based on their lines of business) and that information may be considered "available" but may not be

“known” to all areas of the Dealer Member. If Dealer Members are required to price-improve their client based on unprotected displayed markets, the result will be uneven and will increase the complexity of how the rule is applied.

In particular, if a Participant has access to the unprotected market’s data but does not have access to trade on that marketplace, then it is problematic under the rule to expect that Participant to provide the client the better price when the Participant cannot access that marketplace. This could create a regulatory disincentive for some participants to receive market data and/or establish trading access to unprotected venues. ***The IIAC recommends that IIROC clarify its expectations regarding “best available price” to ensure that Dealer Members are not required to access unprotected markets to satisfy their obligations.***

Locked and Crossed Markets

The CSA is considering the implications of unprotected markets on locking and crossing of markets. Dealer Members require guidance regarding regulatory expectations during the interim period when the Proposed Amendments come into effect, and when the CSA issues new rules regarding locking and crossing of markets.

Thank you for considering our comments. If you have any questions, please do not hesitate to contact myself.

Yours Sincerely,

“Adrian Walrath”

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