Susan Copland, B.Comm, LLB.
Director

Kevin McCoy
Director, Market Regulation Policy
Investment Industry Regulatory Organization of Canada
Suite 2000 – 121 King Street West
Toronto ON - M5H 3T9
kmccoy@iiroc.ca

Jamie Bulnes
Director, Market Regulation Policy
Investment Industry Regulatory Organization of Canada
Suite 2000 – 121 King Street West
Toronto ON - M5H 3T9
jbulnes@iiroc.ca

January 10, 2014

Dear Sirs:

Re: Proposed Provisions Respecting Order Execution Services as a Form of Third Party Electronic Access to Marketplaces (the "Proposed Provisions")

The Investment Industry Association of Canada (the "IIAC" or "Association") appreciates the opportunity to comment on the Proposed Provisions.

We have comments, and seek clarification on the following issues raised by the Proposed Provisions.

Definition of "Order" and "Trade"

We note that the Proposed Provisions did not specifically provide a definition of "trade" and "order". Clear definitions are necessary to ensure consistency and compliance with the rule. We seek clarification as to whether the intended definitions are consistent with what IIROC provided to the OES Sub-Committee in its Sept 2013 communication, as provided below.

- Order - defined as each order submitted including order amends. For example, and order entered and later amended to a different price or quantity would count as two orders. One for the original order, and one for the amended order.

- Trade - measured at parent level (i.e. orders that were fully or partially filled). For example, an order entered for 1,000 shares that was completed with 10 fills of 100 shares each would be counted as one.

Thresholds

We understand IIROC is considering basing the thresholds on only the trade or order threshold rather than having a two part trigger. We support a threshold based on the number of orders only, as it provides a more appropriate indication of activity in the market.

In respect of the threshold for orders, it is appropriate only the parent order as entered by the OES client be considered.

The basis on which the thresholds were chosen is not clear. In order to ascertain whether they are appropriate, it would be helpful to know what factors were taken into account in setting the thresholds. Were there situations involving abuse that occurred at these levels?

We note that at this time, the thresholds do not distinguish between trades in one security or several securities. We seek clarification that the thresholds apply on an aggregate rather than individual security level.

Client IDs / Timing

The requirement to "immediately notify" IIROC of trading activity when a client trips the trading threshold creates compliance problems, particularly in the first instance where the threshold is exceeded. The process of identifying the account that tripped the threshold and obtaining a trading ID for the client cannot take place in real time. In order to obtain a trading ID, there is a process involving the application and provision of the ID by the TSX. This may take several days. We seek confirmation that the

requirement to "immediately notify" IIROC of trading activity is understood to mean notify IIROC promptly after the trading ID is obtained.

We are also concerned that there appears to be no time line in respect of ongoing reporting on clients that cross the threshold for OES. Once a client meets the threshold, they will be deemed to be an active trader on an ongoing basis, even if they never cross that threshold again. It may be appropriate to set a time review in respect of identifying and reporting on such clients.

In addition, although it is not problematic to identify trading in individual client accounts that would meet or exceed these thresholds, it is much more difficult to do this on an aggregate account basis. Building a system to do the aggregation on a real time basis would require significant resources and at least a 6 month timeline.

If the objective of the Proposed Provisions is to detect manipulation, clients may easily avoid this by opening and trading through accounts at a variety of firms to avoid detection.

In respect of the reporting timeline, we question the need for immediacy in reporting. If the system is to be used for investigations, T+1 reporting should be sufficient. The burden to build real time systems that identify and aggregate accounts is significant. This is particularly problematic for retail discount brokerage, as opposed to institutional brokerage, given the vast number of client accounts that would be affected.

If live intervention into trading is not envisioned by IIROC, T+1 reporting would be achievable at a reasonable cost to the industry. It is important to understand that the systems required to be constructed for the Proposed Provisions are different from those used for DEA purposes, and as such, represent considerable investment in new technology and systems. Constructing such new systems would take at least 6 months and significant resources and may make the provision of services at the discount level non-economic, particularly due to the small number of clients that would be involved.

Rather than requiring firms to obtain a new trading ID for clients for the purpose of this regulation, we suggest that firms be able to choose between using the existing User ID field, and populating it with the client account number, or creating a new trading ID. This would save the firms and the industry significant time and cost, as it would not require a new system build and creation of accompanying processes. We understand that certain firms may currently be using the existing User ID field for other purposes, and as such would have to change their systems and processes to accommodate this. As such, we recommend giving firms a choice to adapt the existing field to this use, or create a new trading ID as per the Proposed Provisions.

Opting-Out

We understand from our discussions with IIROC staff that firms may be able to opt-out of the Proposed Provisions by ensuring any clients that trip the trading/order threshold are moved off the OES platform once they are identified. We confirm that the identity of the clients would be disclosed to IIROC at that time, however, no specific trading ID would be required to be created, as they would not continue to be OES clients. In the transition period, during which the account is being transferred out, or to the new platform, the firm would continue to monitor and report trades of that client to IIROC.

Scope

It is unclear whether firms are required to include only orders/trades that are being executed in Canadian marketplaces in determining whether the threshold has been met with respect to identifying clients who require the application of a client ID.

Often, a client may have trading authority over other client named accounts (eg: spouse's account, corporate account, trust accounts and etc) in addition to having accounts of his own. In such situations, is the member firm required to include the activity in those other client named accounts (1) in determining whether the threshold has been met and (2) with respect to applying the client ID on all subsequent orders?

There are three ways a client order in an OES member firm can be submitted and processed - (a) online orders with straight-through-processing privilege which are sent to the marketplace without any direct handling by individual registrants; (b) online orders that are intermediated/handled by individual registrants before they are send to the marketplace; and (c) phone orders that are intermediated/handled by individual registrants before they are send to the marketplace. We seek confirmation that member firms are only required to include online orders that are sent to the marketplace without any direct handling by individual registrants in determining whether the threshold has been met and with respect to applying the client ID on all subsequent orders. Where systems cannot differentiate between (a), (b) and (c) we confirm that all of those orders could be included in the report that is sent to IIROC.

If a firm (registered as a portfolio manager) does not have accounts opened in its own firm name but rather acts as a trading authority on multiple individual client named accounts, we seek confirmation that the member firm is required to assign this particular portfolio manager firm a client ID and apply it on all orders in those client accounts.

Implementation

As noted above, the cost and time of creating a system to comply with the Proposed Provisions is potentially very significant, and it is not clear if there is an urgency to implement the systems due to existing abuse. We suggest that if there is not an immediate problem in the marketplace that the Proposed Provisions would address,

that the implementation date be examined and prioritized in light of other existing and pending regulatory instruments that will require system changes.

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

Yours sincerely,

Susan Copland