



Susan Copland, B.Comm, LLB.
Director

Sonali GuptaBhaya
Senior Policy Counsel, Market Regulation Policy
Investment Industry Regulatory Organization of Canada
Suite 2000 – 121 King St. West
Toronto, ON M5H-3T9
sguptabhaya@iirc.ca

Susan Greenglass
Director, Market Regulation
Ontario Securities Commission
Suite 1903, 20 Queen Street West
Toronto, ON M5H-3SH
marketregulation@osc.gov.on.ca

March 30, 2015

Dear Mesdames:

Re: Re-Publication of Proposed Dark Rules Anti-Avoidance Provision (the “Proposed Rules”)

The Investment Industry Association of Canada (“IIAC” or the “Association”) appreciates the opportunity to comment on the Proposed Rules.

While we understand the policy objective of maintaining the quality of Canadian price discovery and the competitiveness of our equity markets, the imposition of Canadian standards in US markets is, in effect, a protectionist measure that will result in a number of negative unintended consequences that will ultimately weaken Canadian markets and prejudice Canadian investors.

Given that the reasoning behind re-introducing the Proposed Rules is that order flow to the US has increased, it is critical that this assumption be objectively and quantitatively verified. If it is demonstrated that US bound order flow has indeed increased, a cost-benefit analysis that considers all of the factors enumerated in the Notice should be conducted to ensure that the negative consequences of implementing the Proposed Rules are outweighed by the potential benefits.

Reasons Orders are Routed to the US Market

In order to understand the effect of the Proposed Rules, it is important to reiterate the reasons that orders may be sent to the US. In respect of interlisted securities, the size of the US market as compared to the Canadian market means that the liquidity pool for, and volume of trading in, any given security will likely be significantly larger in the US. As such, there is an increased likelihood of obtaining a better price in US markets, on some or all of the order. The additional liquidity also increases the probability of complete or increased order fills, which benefits the investor and decreases transaction costs associated with execution on several marketplaces.

In addition to the advantages of conducting trades on a larger market, the costs of trading in Canada must be considered. It is widely acknowledged within the industry and also by Canadian regulators (most recently in the Proposed Amendments to the Order Protection Rules) that trading and data costs in Canada are significantly higher than in the US, making it more expensive to execute trades and do business in Canada.

As such, in order to obtain better execution for clients, and in order to conduct business in a cost efficient manner, some Canadian dealers may direct a portion of their order flow to the US.

Procedural Issues

When orders are routed to the US, they are generally executed by a registered US broker-dealer rather than the Canadian dealer. Except for the few Canadian firms that have an affiliate in the US, Canadian dealers may not have control over the details of how these trades are actually executed, and some may not be aware of whether the order will be filled on a dark or lit market.

In order to comply with the Proposed Rules, Canadian dealers would have to ensure their US execution firms comply with the Canadian regulatory requirements. Given the relatively small percentage of business this represents for US firms, it is unlikely that many US firms would introduce new manual processes or undertake the development of new algorithms. When the exchange rate is factored in, it may not be possible to ensure compliance with the Proposed Rules due to uncertainty in timing and volatility. For those dealers that elect to adhere to Proposed Rules and continue trading in the US, we anticipate that the costs of execution would increase significantly, making it

uneconomic to find liquidity in the US. This ultimately prejudices clients interests by limiting the venues on which they may execute against liquidity that may provide improved price and/or execution.

Clients should be able to make this determination if they are informed about the differences in pricing rules.

Effect on Canadian Industry

The effect of the Proposed Rules will be to create a protectionist regime in Canada. This protectionism will drive up costs, restrict available options for investors and hamper the competitiveness of the Canadian investment industry. In particular, this may have a disproportionate effect on smaller dealers that do not have a US affiliate through which they can route US bound orders. This will potentially reduce order flow and the size of the Canadian market significantly more than the current diversion of order flow to the US.

IIROC Questions

1. Are there alternative approaches which would ensure that the policy objectives of the Order Exposure Rule and the dark liquidity framework are achieved?

We reiterate our position that the intent of the Proposed Rules could be largely achieved through changes to current Canadian market structure regulation that results in an excessive and non-competitive cost structure for dealers operating in the Canadian marketplace. Certain changes such as the implementation of trading and market data fee caps, and elements of the Order Protection Rule could significantly affect the variation in the cost of doing business in Canada versus the US, and reduce some of the outbound order flow.

In addition, we believe that informed consent from clients would permit clients to make the choice regarding the potential costs and benefits of accessing liquidity on foreign markets.

2. Are US dollar denominated accounts, by their nature, distinct from other client accounts such that they should be permitted to trade in the US without reference to the CBBO? If an exception to UMIR 6.3 existed for US dollar denominated accounts, could the exception be exploited contrary to the principles espoused in the Order Exposure Rule?

US dollar denominated accounts are distinct from other client accounts and should be able to trade in the US without reference to the CBBO. In such cases, clients are issuing direct instructions to execute in the US, and requiring the conversion would

add costs and prejudice best execution. Creating this as an exception to the UMIR 6.3, however, would only address a portion of the problems created by the Proposed Rules, as discussed above.

Although it is important to understand the issues relating to US dollar denominated accounts, the larger issue is not so much about the currency denomination of the account; as many clients will trade US securities from Canadian Dollar registered accounts. Rather the key issue relates to where the client wishes to trade the security. If the client elects to trade a security in the US as a result of better liquidity or price opportunity, the client should not be restricted simply because a security may also be listed on a Canadian market

3. Does the proposed implementation date of 90 days following the publication of the notice of approval of the Proposed Amendments provide sufficient time to accommodate any development work that may be required to be performed by Participants?

A 90 day implementation period following the publication of the Notice of Approval of the Proposed Amendments would not be sufficient to accommodate the development work that may be required to be performed by Participants. Significant changes would be required to Participants' internal systems, and time to negotiate and implement changes to US partners' systems (if possible) would also need to be factored into this implementation period.

The IIAC is extremely concerned about the implications of the Proposed Amendments on the Canadian marketplace. We believe application of Canadian regulation on transactions undertaken in the US will ultimately have the opposite effect of what is intended, resulting in reduced trade flow occurring through Canadian dealers, rather than maintaining the majority of the business in Canada, with diversions to the US in appropriate circumstances. This may be particularly prejudicial for smaller dealers who do not have US affiliates through which some of these transactions may occur.

We would be pleased to meet with you to provide more information and discuss this matter further.

Yours sincerely,



Susan Copland