



Kevin Sampson
President, Equity Trading
TMX Group Limited
300-100 Adelaide Street West
Toronto, Ontario M5H 1S3
T (416) 947-4718
kevin.sampson@tmx.com

March 12, 2019

VIA E-MAIL

Mr. Sanka Kasturiarachchi
Policy Counsel, Member Regulation Policy
Investment Industry Regulatory Organization of Canada
121 King Street West, Suite 2000
Toronto, Ontario
M5H 3T9
email: skasturiarachchi@iiroc.ca

and to:

Market Regulation
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario M5H 3S8
Fax: (416) 595-8940
e-mail: marketregulation@osc.gov.on.ca

Dear Mr. Kasturiarachchi:

Re: Proposed Amendments Respecting Provision of Price Improvement by a Dark Order

TMX Group Limited (“TMX Group” or “we”) welcomes the opportunity to comment on behalf of its subsidiaries TSX Inc. and TSX Venture Exchange Inc. on the “Proposed Amendments Respecting Provision of Price Improvement by a Dark Order” (the “Proposed Amendments”) published by the Investment Industry Regulatory Organization of Canada (“IIROC”) on December 13, 2018. All terms used and not otherwise defined in this letter have the same meaning as in IIROC’s December 13, 2018 publication.

We are supportive of the Proposed Amendments as they represent positive steps towards addressing a regulatory gap that currently results in a disconnect between outcomes and policy intent in relation to price improvement requirements for dark trades in low-priced securities. We commend IIROC for their efforts in addressing this issue and proposing an appropriate solution.

UMIR 6.6 sets out requirements for dark price improvement that were ultimately intended to promote price discovery and protect the long-term health and integrity of the visible markets. It achieves this by requiring price improvement be given by dark orders to ensure that investors

could continue to have confidence that if they display their orders and contribute to price discovery they will be rewarded with a fill. Said differently, the price improvement requirements ensure that investor confidence is not impaired as would be expected if investors were to continually see their displayed orders being bypassed by trades against dark orders at the same price.

As noted by IIROC in its Request for Comments (“RFC”), an exception to price improvement requirements was also granted where the incoming order size was large. This was intended to “accommodate the longstanding practice and important function of dark trading and the ‘upstairs market’ to allow investors to place large orders without displaying them to the public in order to minimize the market impact costs associated with such large orders.”

However, the threshold for determining what is ‘large’ for the purposes of this exception results in a gap between rule application and policy intent given that what is ‘large’ can vary significantly at different price levels. For example, ‘large’ under the 50 Standard Trading Unit (STU) component of the threshold for securities priced under \$0.10 can mean an order with a total value of as little as \$255 to \$4,845.¹ This is a far cry from what is otherwise considered ‘large’ under the alternative value component of the ‘large size threshold’ set at \$100,000 in value.

The regulatory gap that arises for low-priced securities was also identified previously by the Canadian Security Traders Association (“CSTA”) in comment letters to certain proposals from dark marketplaces to introduce at-the-quote dark trading. The CSTA suggested in one of those letters that “the concept of a ‘large’ order in UMIR 6.6 ... be reviewed to ensure that the spirit of the rule is being preserved and is promoting visible passive liquidity in low-priced securities.”²

As a result of this gap remaining open, we have observed a notable increase in at-the-quote executions in low priced securities (in particular for securities priced under \$0.10) involving orders that should not be considered large, and have found that a high proportion of these could have been satisfied by displayed orders at the same price.³ Allowing this to continue for securities at these price levels, where liquidity is already relatively scarce, presents risks to the long-term health of the visible market for low-priced securities that the dark rules were intended to mitigate.

We are therefore highly supportive of the Proposed Amendments as they take positive steps towards addressing this gap in the current dark rules, and protecting the health and integrity of the visible market.

Our remaining comments relate to the specific questions asked in the RFC:

¹ 50 STUs of a stock priced under \$0.10 is 50,000 shares based on each STU being equal to 1000 shares at that price level. Therefore a 51,000 share order (being the size needed to exceed the threshold) would range from \$255 to \$4,845 for orders entered at prices between \$0.005 and \$0.095.

² https://www.osc.gov.on.ca/documents/en/Marketplaces/com_20141001_triact-csta.pdf

³ See our previous analysis available at <https://www.tsx.com/resource/en/1783>

1. *Will the proposed floor value of \$30,000 adequately capture small orders and address concerns regarding low-priced securities trading in the dark without price improvement? Would a \$25,000 threshold be more appropriate? If so, why?*

Based on our own past analysis referred to above, and the information about traded dark order sizes provided in the graph on page 11 of the RFC, a floor value of \$30,000 is appropriate.

A \$30,000 floor value should be viewed as more appropriate than \$25,000 until such time as IIROC has completed its review of the other 'large size' thresholds contained in various UMIR rules.

2. *What is the scope of work required to make the appropriate systems changes? Is a 90-day implementation period reasonable?*

A 90-day implementation would be more than adequate for us to develop, implement and test the needed changes to dark trading logic in the TSX and TSXV trading engines. A shorter time frame can also be accommodated.

Thank you for the opportunity to comment. We would be pleased to discuss in further detail at your convenience.

Yours truly,



Kevin Sampson
President, Equity Trading
TMX Group Limited