CANADIAN® SECURITIES EXCHANGE
The Exchange For Entrepreneurs

February 13, 2023

BY EMAIL

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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
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RE: CSA Consultation Paper 21-403 Access to Real-Time Market Data

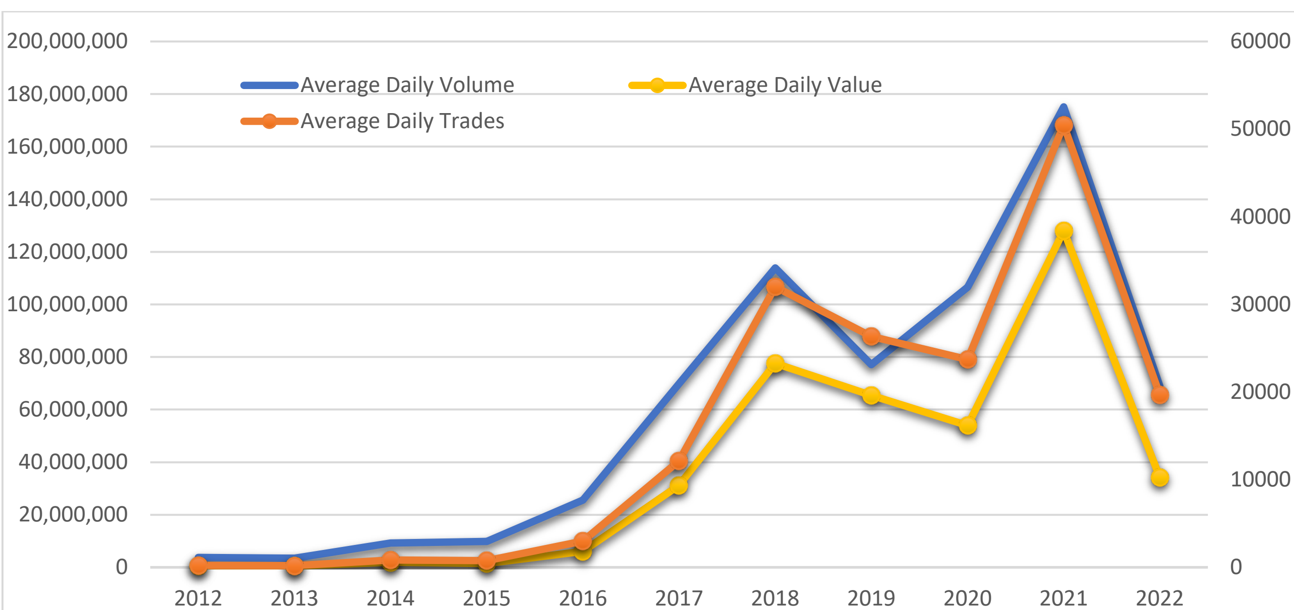
CNSX Markets Inc., operator of the Canadian Securities Exchange ("CSE"), thanks the Canadian Securities Administrators ("CSA") for the opportunity to provide feedback on the possible options to address concerns relating to the current regulatory regime for real-time market data ("RTMD") outlined in CSA Consultation Paper 21-403 – *Access to Real-Time Market Data* ("21-403" or "Consultation Paper"). Unless otherwise indicated, we have used the same defined terms as 21-403.

We would first like to commend the staff involved in the preparation of the Consultation Paper for their careful analysis of RTMD in Canada, including the detailed background information and extensive quantitative data included in 21-403. We recognize the complexity of the issue and appreciate the thoughtfulness that has gone into the proposed options identified.

CSE welcomes the opportunity to substantively contribute to the development of innovative solutions to systemic problems with Canadian RTMD. CSE believes that it is well positioned to do so, given its growth in the time between CSA's last significant review of Canadian RTMD in November of 2012, and today. Where in 2012 CSE had 164 listed companies, by the time the DFM was implemented in 2017, CSE had 326 listed companies, and as of the submission date of this comment letter, CSE now has 773 listed companies and 817 listed securities over all (see Table 1). CSE has also grown in the context of its average daily value volume and number of trades (Table 2).

TABLE 1

TABLE 2



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In this letter, we have summarized our view on market data issues and the options identified. With a focus of moving the conversation forward, we have outlined a possible solution to the concerns around RTMD that we think is feasible and beneficial to investors, dealers, and marketplaces. This solution is outlined in Appendix A. We are of the view that the solution lies in the development of an Administrative IP for each listed market, a set RTMD fee for consolidated data and fees for direct feeds determined by reasonableness, including a consideration of costs and a reasonable return. In addition to our proposed solution, we have answered most of the specific questions in Appendix B.

We would also like to take this opportunity to acknowledge the work done by the Investment Industry Association of Canada ("IIAC") in response to this Consultation Paper. CSE has had the opportunity to review a draft of IIAC's response. In general, we support the approach proposed by IIAC. While we have expressed concerns over the years on the creation of a Technical IP, if the data from the Technical IP is used to calculate index levels, related index derivatives and exchange-traded funds ("ETFs"), the market resiliency and improved competitive landscape gained by this proposed approach is likely worth the investment required to create the Technical IP proposed in the IIAC submission. In addition, consolidation of the administration of RTMD will, in our view, result in major improvements in the cost and accessibility of RTMD from all Canadian marketplaces.

<u>General Comments</u>

As you know, the existing regulatory framework for the provision of RTMD is based on several objectives:

- Addressing the fragmentation of information across marketplaces by providing consolidated information
- Controlling the cost of market data for consumers
- Providing a semi-official benchmark (effectively a bright line) for dealers to measure their regulatory obligations including best execution and order protection obligations
- Promoting transparency in Canada's cash equity markets
- Enhancing marketplace competition

CSE agrees that these objectives are worthwhile; however, due to the development of multiple markets in Canada, changes to the statutory authority of the CSA and the history of data consolidation, we do not think that the RTMD model has been ultimately successful. It may have held fees for direct marketplace feeds to lower levels than they would otherwise might have been without the Data Fee Methodology ("DFM"), but the DFM did not control the rapid increase in "unregulated" fees, and for reasons outlined below, negatively impacted marketplaces other than the incumbent.

Concerns relating to the Data Fee Methodology

As indicated, we have several concerns regarding the DFM, as articulated below.

- The objective of cost control was only partially successful. While the DFM may have slowed year over year growth, the benchmark did not remain static but instead grew as more marketplaces charged fees. The aggregate was then recalculated and reallocated based on the formulas and ranges determined by the DFM.

- Unlike the TSX whose fees were included in full in the aggregate benchmark and thus determined to be “reasonable” despite already having suffered a loss of market share to competing venues, CSA benchmarked and set other exchanges’ fees, including CSE’s fees, before they were traded across competing markets. As a result, under the DFM, the data fees charged by CSE could only decrease as more marketplaces charged for RTMD for CSE-listed securities and the total was reallocated based on the DFM.

- The ‘formula’ has no regard for marketplace growth. The result is that the CSE is experiencing increasing costs relating to operations, regulation, systems improvements, and other costs but is unable to recover the costs through fees, whereas other marketplaces have used market data fees to cover costs and increase revenue.

- Marketplaces shifted revenue focus and raised fees outside the scope of the DFM, such as technical access fees, characterized by the marketplaces as “port” or “server” charges, thereby frustrating the cost containment objectives set for the DFM.

- Including intentional crosses in the market share calculations for individual marketplaces incented markets to offer inducements to dealers to print crosses on that marketplace. There was no other reason for this activity other than to game the DFM by increasing the volume numbers used to calculate the fee ranges.

Impact of Reliance on Indicative Pricing

The regulatory regime relating to RTMD has not facilitated greater transparency in the Canadian equities markets. Most professional and retail users do not avail themselves of RTMD from all marketplaces, but instead rely on only TMX exchanges’ RTMD. This is because the existing model, in which a user firm has to acquire data from every operating marketplace, results in a high aggregate cost and administrative complexity and risk to access RTMD from all marketplaces. Another major factor was the means in which the DFM model was implemented: the cost for the TMX exchange data did not go down, so every additional marketplace RTMD service that was added by a user represented an incremental expense. As a result, firms employing investment advisors typically subscribe only to TMX exchanges’ data, as it is thought to be ‘indicative’ of the Canadian market. This results in a lack of transparency, especially where the liquidity of particular securities does not reside on the incumbent marketplaces. As a result, when TMX exchanges experience an outage, trading across all other marketplaces is negatively impacted:

- During an outage, advisors and investors who only get TMX exchanges’ data no longer see any RTMD. This has resulted in dealers announcing that the market is closed, or making a decision that client execution obligations may be compromised, thus impacting trading on other marketplaces. The loss of the price discovery process under these circumstances negatively impacts confidence in the Canadian markets.

- We acknowledge that the ability to shift existing liquidity between marketplaces in real-time is dependent on a number of factors, including access to RTMD; however, new orders should continue to be routed to other marketplaces that are open and contain liquidity. Trading should not halt for all marketplaces because of a lack of access to order and trade information on the incumbent.

- S&P/TSX indices are calculated based on only TMX exchanges' data, so these indices immediately stop updating when there is an outage. This results in a stoppage of index related ETF and derivatives trading activity. In our view, this lack of resilience in the overall market negatively impacts market confidence and integrity.

We note that under the US framework and in particular, Regulation NMS, the equities exchanges in the U.S. all contribute their data to the National Market System ("NMS") which means that when one exchange experiences an outage, market data information from other markets is available and relied upon such that trading shifts to the other exchanges without a noticeable decline in volume and without a noticeable impact on market integrity.

Contracting to obtain RTMD

We would also like to reiterate that the current fragmented RTMD framework is a source of frustration for consumers of RTMD who are required to negotiate and contract for access with individual marketplaces. There are different reporting cycles, consumption metrics, and conflicting or different terms of use for each marketplace. It is not only possible, but likely, that certain would-be consumers of Canadian RTMD opt-out of contracting for non-TMX group data because the complexity and the cost of the process is not worth the outcome. Therefore, certain listed issuers in Canada are at a distinct disadvantage as their securities are not as easily tradeable by would be investors.

Proposed RTMD Model

CSE has considered the issue over many years and outlines a RTMD model in Appendix A that addresses many of the concerns and issues with the current framework.

While 21-403 reflects on RTMD regimes around the globe, Canada is, admittedly, most closely aligned with the US from a market structure perspective. Best execution and order protection (acknowledging key differences) are factors in the U.S. approach to data consolidation. However, while the US NMS model works from a functional perspective, it is also very costly. One of the reasons for the costs is the administrative cost associated with the consolidation of the data. Yet, one contract, one fee, and one administrative process per listing exchange grants a user access to equities trading data generated by all the NMS exchanges. That overall single fee is closely regulated by the SEC which uses a complex formula to allocate revenue among the listing exchanges. We acknowledge, at least on a superficial level, that the DFM borrows from the SIP approach in the U.S. and its revenue sharing equation.

Our proposed Canadian model would not only promote transparency and reduce the administrative burden but would also enable the CSA to regulate RTMD fees using a method that is more transparent and able to account for changes in the standing of different marketplaces. For example, if a marketplace doubles its listings and increases its trading volume by a factor of six, the fee for the data should rise to reflect that growth and the increased value of the data. The marketplace would still have to compete for the revenue by providing the price discovery and trade execution services.

Each marketplace in Canada already has the infrastructure in place to run an Administrative IP. Industry standard reporting protocols and services are in place. Each Canadian listing venue is therefore well positioned to operate an Administrative IP for its own listed securities. The IIAC submission proposes the creation of an independent administrator. We are reluctant to adopt this approach:

- Each listing exchange is clearly incented to administer the provision of RTMD in ways that maximize the simplicity of reporting, consistency of key contractual terms and minimizing cost in order to ensure that data in respect of their listed securities is available to the broadest possible audience.

- Each listing exchange has existing customer service relationships with vendors and end user firms. All of these would have to be re-built from scratch if a new administrative body was created to manage the distribution and use of RTMD services.

We submit that the fees to be charged for this consolidated RTMD (on a listing exchange basis) would be proposed on behalf of the Administrative IPs by a committee that would be made up of the listing exchange, dealers, and other stakeholders. It would be filed for public comment and need approval from the CSA. Any changes would be subject to the same process. In this regard, we are borrowing heavily from the processes established in the US to oversee the provision of RTMD services for NASDAQ, NYSE, NYSE American and the Options Price Reporting Authority.

We acknowledge the challenges with setting a fee that properly balances interests and determines the value of consolidated data. However, there is a large body of expertise available in the US and we suggest that the CSA draw from the US experience with adjusting NMS fee formulas and other aspects of handling RTMD.

We believe that the cost to the industry, and in particular the marketplaces, of establishing an independent Technical IP is justified by the benefits of integrating all RTMD into the calculation of indices and derivatives, and the preservation of the integrity of the price discovery process during periods of market disruption.

Conclusion

CSE welcomes the opportunity to discuss our proposed RTMD model in greater detail with CSA Staff. We also thank you for the opportunity to provide feedback on the proposals outlined in 21-403 and would welcome any open forums or other platforms to continue the conversation about possible solutions to the issues posed by the current RTMD regime.

Sincerely,

Richard W. Carleton

Richard W. Carleton
Chief Executive Officer

APPENDIX A

CSE Proposed RTMD Model

The CSA should facilitate the introduction of a system like the U.S. model for the administration of the provision of market data to the end user community.

Consolidation of administration of RTMD addresses the main policy objectives originally set for the framework by consolidating the fragmentation of information across multiple marketplaces and facilitating access to data for RTMD consumers.

We propose the following model, which draws heavily on the system used in the United States over the last four decades:

- Each Canadian listing marketplace (currently TSX, TSXV, NEO and the CSE) would administer the contracting, billing, and administration for all real time data services for trading in its listed securities.

- The pricing and terms and conditions of use for each of the services would be subject to the approval of the regulators. As in the U.S., it is expected that the terms and conditions across the agreements would be essentially similar and resemble terms and conditions established in other common law jurisdictions.

- Users would pay a single fee, and receive all of the data, for information related to securities listed on the particular exchange. As with all exchanges operating currently, top of book (bid/offer, last sale) and market depth (Level 2) would be administered under the plan. New marketplaces offering trading services would have no impact on the end user consumer: if the services offered are “protected”, then the data would be available in the services offered by the Technical IP.

- Display requirements and other terms of service, and delivery to end users would be set out in the agreement between the administrator and the vendors, obviating the need to regulate the activities of each vendor.

- The administrator would be encouraged to negotiate arrangements designed to reduce costs and improve efficiencies for users: enterprise pricing, “usage based” fees and consistent and transparent policies (for indexing, historical database, computer assisted trading, “non-professional” user definition, QA, etc.). Standards exist for all of these services in existing agreements in use in Canada, the United States and elsewhere in the developed world. As an example, the global trade association for the market data industry, the Financial Information Services Division of the Software and Information Industry Association has published a series of definitions for key components of RTMD service delivery. See: https://fisd.net/best-practices-recommendations/

- Proceeds from the sale of the data would be apportioned by each administrating exchange according to a formula based on the existing US CT (sales information) and CQ (quotes) Plans after the costs of operating the Technical IP and administrative fees have been deducted. Admittedly complicated, these formulae have been adjusted over the decades of use to eliminate as many opportunities for gamesmanship as possible.

- The initial price charged to the vendors by the administrating exchange would reflect the existing prices with a review to factor in developments over the last number of years in the size, trading activity and growth in the listing exchanges. Future changes would require regulatory approval with a focus on increased cost, and the growth of different market segments.

- Direct feeds from each marketplace would be reviewed on a reasonableness standard that considers the cost of providing the direct feed, expectations of a reasonable return, marketplace growth and thus value of the data.

Implementing the new plan should not be a material exercise as far as time, systems and related expense:

- Each one of the listing exchanges has the required resources in place now (contractual framework, billing and collection policies, payment rails) to administer the plan. They would be collecting a larger sum of money from the customer base with whom they have existing workflow.

- The disbursement of the funds would be conducted according to the formulae approved. To provide a consistent approach and to avoid unnecessary duplication of effort, a third-party firm could be retained to analyze the data, apply the formulae, and advise each exchange of the amounts to be paid out to the contributing marketplaces under the plan. The SIP performs this responsibility in the US; there is a body of knowledge in the market data consulting community on the operation of the US system that could be drawn upon to assist with the establishment and operation of the plan.

APPENDIX B

CSE Answers to 21-403 Specific Questions

Initial Options

(a) Enhance transparency of any fee proposals related to RTMD by requiring marketplaces, as part of the regulatory review and approval process, to publish proposed changes when they are filed for approval.

QUESTION #1: Please identify any potential unintended consequences at the industry, marketplace, or firm level if we pursue this option.

CSE Response:

For the model proposed in our general comments, it would be necessary for the administrator of each RTMD service to have the terms and conditions for the service subject to review and approval by the responsible regulator. The same sort of oversight would be required for the operations of the Technical IP to ensure that its governance, service levels and costs were achieving the goals set for the provision of RTMD services in Canada. We would expect that the process in proposing any fees for these IP entities would be transparent. In some respects, this model may represent a decrease in effort: instead of regulating the RTMD function of all marketplaces, regulators would only have specific oversight on the operations of the administrator and the Technical IP.

In the context of the status quo, while increased transparency is always a worthwhile goal, we do not believe stakeholders will benefit from publishing fees before approval. Marketplaces, in accordance with the contractual obligations of the specific agreements they may have with their end users and data vendors, already provide advance notice of proposed fee increases. Such notices almost always carry disclaimers that the proposed increases are subject to regulatory approval.

It is also unlikely that consumers of RTMD, or the competitors of a marketplace seeking the fee increase will vocalize support for any such fee increases, whether such increases are justified or not. This could result in a self-selection bias among those that choose to raise issues and may make it more difficult for smaller marketplaces to receive value for their services in the face of only negative comments.

QUESTION #2: Would this approach satisfy the need for more transparency in relation to proposed fee changes and their review process? If yes, please indicate what benefits this approach would offer. If no, please explain why and whether other requirements should be considered.

CSE Response:

In the current model, we do not think publishing fee proposals would satisfy the need for more transparency. We recognize that the CSA has provided guidance relating to what marketplaces must provide in a filing, which indirectly provides the criteria used to evaluate fee changes. However, in our view, further details regarding these criteria should be specifically provided by the CSA, including what specific criteria lead to objections to particular fee models or fees.

Under an Admin/Technical IP model, the review and approval of the fees and service terms would address many of the concerns around the provision of RTMD in Canada. In addition, governance of the operations of the administrator(s) and the Technical IP could be provided by an independent committee, charged with providing regular oversight of the operations of each party, further ensuring the protection of the public interest and meeting the transparency and access goals we should be striving towards.

(b) Retain external assistance to review the DFM and its relevance in the context of domestic and international developments in equity markets. The review should include an examination of reference points that could be used by CSA Staff to allocate the share of fees chargeable by marketplaces under the DFM. The fee ranges assigned to each marketplace should be made transparent.

QUESTION #3: What are your concerns, if any, with continuing to use the DFM? If the DFM were to continue to be used, what changes are necessary?

CSE Response:

We have outlined the general concerns with the application of the DFM earlier in this submission. Application of the DFM to the CSE specifically, has brought about a significant degree of unfairness.

When the DFM was formalized on April 7, 2016, only two marketplaces traded CSE-listed securities (CSE and OMEGA). The CSE's share of the trading was close to 100% at that point. Since then, a number of additional venues (protected and non) are offering trading in CSE-listed securities. Under the principles of the DFM, the RTMD fees charged by CSE could only go down as more and more marketplaces offered trading services in CSE-listed securities. To compound the problem, by the time the DFM applied to the TSX (and to a slightly lesser extent the TSXV) the exchange had already lost a significant amount of trading market share to competing exchanges and ATSs. The relative share of TSX and TSXV trading in their own listed securities has not changed materially since the DFM was implemented.

Compounding the challenges for the CSE, since that time, trading on the exchange has grown at a rapid pace by every meaningful measure. Yet, the DFM, and, in particular, its benchmark, has not been adjusted to reflect substantial growth in listings, market capitalization and share trading turnover, and with that, increases in company regulation costs and required staff. For CSE, this difference in treatment between the TMX Group exchanges and CSE is fundamentally unfair.

QUESTION #4: Is the application of the DFM appropriate for both senior and venture market data?

CSE Response:

Given the concerns outlined above, CSE respectfully submits that the DFM is not appropriate for senior or venture market data.

QUESTION #5: Should the application of the DFM be extended beyond subscriber fees? For example, should the DFM be applied to non-display and distribution fees (whether internal and/or external distribution fees) given the potential challenges noted above?

CSE Response:

Because of the concerns outlined above, CSE respectfully submits that the DFM should not be extended under the current model.

Under the model proposed by the CSE, the administrator would be responsible for justifying all costs associated with the provision of RTMD to end user customers. The provision of direct feed services should be subject to review and approval by the applicable regulator as part of their ordinary oversight of the fees charged by the marketplaces they regulate. The test for regulatory review should continue to be whether or not the fees sought to be charged are an unreasonable 'limit or condition to access' to the products or services of the marketplace and are transparent.

QUESTION #6: What are the potential benefits or risks of making the fee ranges calculated under the DFM transparent? Should there be greater transparency of other inputs to the DFM (e.g., reference points or key input metrics)? If so, please comment on the potential benefits and risks.

CSE Response:

Any formula used to determine fees or allocate revenue related to RTMD should be transparent. All datapoints used in the DFM should be available to the marketplaces subject to its outcomes.

QUESTION #7: Should we consider adopting a methodology for non-professional subscriber fees? If yes, what should be factored into such a methodology? If not, why not?

CSE Response:

Both the definition of "non-professional" and the applicable fees for receipt of RTMD products should be part of the services provided by the administrator under a new model.

Under the current model, consistent application of the definition, along with reporting policies, has been a challenge for market data vendors and consumer firms taking advantage of 'enterprise' arrangements for mass distribution of RTMD to their 'non-pro' clients. We do not think, however, that adopting a DFM-like model will address these issues.

(c) Create an industry group to help standardize key terms and definitions for access to and use of RTMD between marketplaces and market participants.

QUESTION #8: Should standardized key terms and definitions, such as professional and non-professional users, be developed for the access to, receipt, distribution, and use of RTMD products? If yes, please explain what the benefits of such an approach would be. If not, please explain why not.

CSE Response:

As indicated above, FISD, the global industry trade association, has developed standardized terms and conditions for use by exchanges, vendors, and consumers. The work suggested by the question has, in fact, already been done. An early version of the best practices document informed the development of the CSE's market data vendor and user agreements. Under a new model, each administrator (if there are multiple) agreement would be subject to review and approval by the responsible regulator; in that process, the administrator should be encouraged to adopt industry standard terms and conditions in their terms of service.

Under an existing model, standardizing terms would be burdensome on marketplaces and dealers without substantial benefits. The costs of the time taken to agree to standardized terms, the need to revamp products and services and having to adjust contracts and systems would outweigh any benefit. In addition, without fundamental change to the RTMD model in Canada, retail investors will not obtain easier and more direct access to RTMD.

QUESTION #9: What other key terms and definitions should be standardized? What factors or industry legacy issues should be considered in standardizing such terms?

CSE Response:

As above.

QUESTION #10: Would this approach help address market participants' concerns with respect to the administrative burden related to the access to and use of consolidated RTMD? Please explain your answer.

CSE Response:

In the context of the adoption of an Admin/Technical IP model, it would. A key complaint from the user and vendor community when dealing with Canadian equity market data is the difficulty of managing numerous marketplace agreements, with potentially conflicting terms and conditions governing RTMD use, the resulting fees, reporting methodologies, audit rights and other key terms. This complexity and resulting cost and compliance risk for the vendors and end users, deters customers from purchasing data services from many of the marketplaces serving the Canadian equity markets.

As indicated, without a change to the RTMD model, CSE does not think that this approach will meaningfully address concerns over the short or medium term because of the time it will take to implement an agreement, if any, and changes to data services, including associated systems changes for marketplaces, vendors, and subscribers.

QUESTION #11: What would be the unintended consequences, if any, of standardizing these types of key RTMD terms and definitions?

CSE Response:

If the model proposed by the CSE is adopted by the CSA, then we do not see any negative consequences of standardizing terms and conditions, intended or otherwise. Anything that eliminates barriers to purchasing and displaying the information from all marketplaces increases market transparency and price discovery processes.

In the current model, as indicated above, CSE does not think the benefits will outweigh the costs.

7.2 Longer-term Options

(a) Leverage the current IP model by introducing a TIP+ Model

QUESTION #12: Would caps on fees charged by marketplaces for their RTMD consumed through the consolidated TIP products affect the consumption and use of consolidated RTMD? If so, how? If not, why not, and are there alternatives that should be considered?

CSE Response:

Under the model proposed by the CSE (and other responders), the question posed would not have to be addressed.

In Canada and the US, the majority of RTMD products consumed are provided to end users through the services of information vendors such as Bloomberg and Refinitiv. They package the RTMD services requested by their clients with a variety of screen displays for the data, along with news, graphics, analytics, and other value-added services. RTMD from various markets is either chargeable directly from the marketplace (the model used in the US equities and options markets and for most Canadian equities) or is sold to the vendor by the marketplace on a wholesale basis for subsequent retail sale to the end user. The latter model is used by the US futures markets, and by most global exchange groups outside of North America. It is also the model used by the CSE.

The TIP functions solely as the source of the data for vendors and end user firms taking a direct feed. The TIP would not be creating "products", it would be providing a feed consisting of a NBBO/last sale enabling vendors to create a Level 1 display, and a feed with all quote information that would be the basis of the market depth displays (Level 2 data). Use of the data, and the resulting fees for the vendors and end users, would be governed by the terms and conditions imposed by the administrator.

QUESTION #13: Under this approach, do you believe data vendors would begin to offer TIP-based products and pass cost savings on to the end user? If not, what drivers would be necessary to encourage this? Do you envision any potential unintended consequences under this approach?

CSE Response:

Information vendors will weigh the relative costs and latency needs of their clients, as they do currently, in determining the method of access to RTMD: via the TIP, direct from the marketplace, or from a third-party specialty feed vendor.

QUESTION #14: What means of establishing caps and what factors for establishing cap levels should be considered?

CSE Response:

Initial fees for end user RTMD would have to be set by the responsible regulator for each listing exchange information service in conjunction with the administrator, stakeholder committee and comments received in response to a RFC. Changes would be applied for by the administrator, and subject to the review and oversight responsibilities of that regulator. Individual marketplace fees (direct feeds, port charges, server charges, and so on) would be subject to the oversight processes currently in place for each marketplace.

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(b) Introduce a new model for data consolidation through the use of an Admin IP.

QUESTION #15: What are your views on the appropriateness of an Admin IP model for Canada? What would be the key benefits and challenges and how could any challenges be addressed?

CSE Response:

We have long advocated for an administrator to oversee the provision of consolidated RTMD. In 2013, we stated:[1]

> *"The CSA should "facilitate" the creation of an industry body ("administrator") that would act as the administrator of consolidated real time data services from the Canadian marketplaces to vendors and the end user community."*

As we have described at some length in this response, we believe that the answer to cost containment, administrative consistency, and the availability of RTMD from all marketplaces participating in the price discovery processes is the appointment of one or more administrators for each listing exchange data.

Having the listing exchange take on this responsibility makes a good deal of sense because each of the exchanges has all of the existing capabilities in place to perform the role without any meaningful workflow changes or technical investment.

QUESTION #16: What are the unintended consequences or risks that should be considered?

CSE Response:

None that we can see. In the US there was a move to circumvent the SIP framework by exchanges offering "indicative pricing" services at a lower cost than the services managed by the SIP. The SEC is in the process of limiting the exchanges ability to provide such services. The CSA regulators could accomplish the same task by ensuring that the RTMD fees from the TIP and administrator were low enough to avoid the potential for undercutting from a particular marketplace arguing that their prices are indicative of the state of the market.

QUESTION #17: Are there any other key responsibilities that should be considered for an Admin IP model?

CSE Response:

The revenue sharing model is one that would have to be established and overseen by the administrator. Again, we believe that the CT and CQ plans developed over the course of four decades in the United States represent a very good starting point, with necessary modifications taking into account Canadian market structure differences. One such difference is the fact that an ATS can be "protected" for the purposes of the trade through protection rules and should be considered as part of an investment dealer's best execution obligations. In the US, an ATS operates outside this framework.

[1] CNSX Markets Market Data Fee Comment Letter to CSA, Feb 8 2013.

QUESTION #18: What governance model could be introduced that would be fair and help overcome conflicts such that the Admin IP could achieve its regulatory obligations?

CSE Response:

As proposed in the IIAC submission, we support the notion of an independent body appointed by the CSA members overseeing the operations of both the Technical IP and any RTMD administrator. The body should have representatives from the marketplaces, data vendors and user groups, and would have primary responsibility for ensuring that the operation of each body is conducted in accordance with its objectives.

(ii) Single vs. Multiple TIPs under an Admin IP Model

QUESTION #19: Based on the size and scale of the Canadian market, should the CSA consider allowing for multiple TIPs to operate under the Admin IP approach?

CSE Response:

No. The benefit of the TIP model is that a single point of reference will be created for index calculation, equity derivatives valuation, ETF trading and fund pricing. The single TIP will also provide a "bright line" for investment dealers to use in managing trade through protection obligations and to measure client best execution. Multiple TIPs would eliminate all of these benefits and materially add to the costs of operating the Canadian RTMD system.

QUESTION #20: Alternatively, should there only be a single TIP and, if so, should it be operated independently of the Admin IP?

CSE Response:

As set out in the IIAC paper, it is important that the TIP be operated by an organization not affiliated with any of the marketplaces or information vendors. The temptation to operate the service in support of other business goals and objectives would be too great. That said, we do not see any advantage in having the TIP also responsible for administering the provision of the data. The new body would have to establish all of the workflow with the vendors and end user firms from scratch; essentially wasting the investment and expertise that has been gained by the listing exchanges to date.

QUESTION #21: If there is only a single TIP, should it operate as a for profit business or as a not-for-profit entity? Please explain your answer.

CSE Response:

As set out in the IIAC paper, we agree that it is essential that the TIP operate as a not-for-profit entity. It is likely that a for-profit TIP would find itself competing with existing data vendor firms on the delivery and formulation of different RTMD products. This competition would not promote investment in the industry, instead it would more likely discourage competing vendors from making significant investments in the Canadian RTMD field.

General Questions

QUESTION #22: With respect to Staff Consideration 1, do you think that our review of RTMD costs and accessibility should consider the impact of regulatory requirements, such as OPR and best execution? What could drive changes in consumer behaviour (such as disconnecting from marketplaces that offer little benefit to the market compared with the costs or unprotected marketplaces)? What changes could impact the competition among data producers? What could incrementally increase consumer bargaining power? And ultimately, could any of these suggestions impact fees? Please explain your answer.

> *Staff Consideration 1: Given the expected limited impact on access to RTMD and the feedback obtained in the interviews, we do not think that amending OPR or best execution will address the industry's concerns around access to RTMD but seek feedback on this consideration further on in this Consultation Paper.*

CSE Response:

The present RTMD regime in Canada puts investment dealers and other data consumers in a difficult position: in addition to the costs of connecting their trading systems to the marketplaces, for some purposes they "have" to purchase data from all marketplaces to meet their trade through avoidance and best execution obligations. On the other hand, they find the cost of providing RTMD to many internal and external users (such as firm clients) prohibitive. This lack of transparency, as we have pointed out at length, does not build confidence in the Canadian equity trading system. The CSE believes that the answer is not in addressing issues related to the OPR and best execution obligations, but in fixing the cost issues associated with the provision of RTMD to key members of the Canadian trading community.

QUESTION #23: Would any of the options outlined above assist dealers with moving retail orders to other marketplaces during a marketplace outage?

CSE Response:

Yes, with some caveats. Better transparency for markets unaffected by a particular outage is part of the solution. As suggested by the IIAC, and supported by the CSE, use of the prices from a TIP for index and related calculations would also go a long way towards preserving the price discovery processes during market outages. We also recognize that existing order management system products in use by the investment dealers have issues handling open orders "stuck" on the impacted market, and there is some risk of 'double fills' when trading resumes. We suspect that if indices, derivatives pricing and other price discovery services are more robust, the providers of order management services will be motivated to make the changes required to permit their clients to continue trading through a market outage.

QUESTION #24: Are there any other options to address industry's concerns about the access to and cost of RTMD that we have not considered? Please explain your answer.

CSE Response:

N/A