

BY ELECTRONIC MAIL: comments@osc.gov.on.ca

February 10, 2023

Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8

Dear Sirs and Mesdames:

RE: CSA Consultation Paper 21-403 *Access to Real-Time Market Data*

National Bank Financial Inc. (“NBF”) appreciates this opportunity to comment on the CSA’s consultation surrounding access to real-time market data (“RTMD”). RTMD is a critical input to NBF’s core business of advising, trading, and investing. Our routing, execution, and investment management decisions depend on unimpeded access to RTMD. Additionally, access to RTMD contributes to efficient and competitive capital markets. We appreciate, therefore, the CSA’s efforts to identify the issues associated with access to RTMD, including its costs, and for proposing remedial actions for our consideration.

We concur with several of the CSA’s findings. Notably, the launch of new marketplaces and the introduction of RTMD fees by marketplaces for receipt, use, and distribution of such data has had a cumulative effect on user costs. Additionally, limited competitive pressures on market data fees, inefficiencies with the current Information Processor framework, burdensome contractual relationships with multiple marketplaces, and changing data needs among market participants requires us to re-think Canada’s approach for accessing RTMD and the way such data is commercialized.

Information Processor (IP) Model

The two longer-term options proposed by the CSA for improving access to RTMD are: i) leveraging the current IP model (the ‘TMX IP’) or ii) introducing a new model for data consolidation (the ‘Admin IP’). Our view is that the current IP model could be maintained, provided some necessary technical modifications and policy changes are introduced.

Under the TMX IP’s current “pass-through” mechanism, market data fees and the data policies of the contributing marketplaces are passed on to the subscriber. However, each marketplace has its own

unique pricing and license policies, requiring contracts to be executed by the subscriber with each marketplace. As the CSA points out, this approach is burdensome and reduces the usefulness of the TMX IP for market participants.

It may be desirable for the TMX IP to contract directly with the marketplaces and pass along only a single price and license agreement to subscribers, rather than “passing through” the costs and agreements of each marketplace. This would make the TMX IP into something of a ‘TIP+’ with some elements of an Admin IP. This approach would bring some needed efficiencies to the current TMX IP while sparing industry the added costs and confusion associated with introducing an entirely separate Admin IP to the Canadian market.

In contemplating changes to the IP model, the CSA should be mindful of how complexity in accessing Canadian RTMD may reduce the attractiveness of Canadian equity markets to foreign investors. It is our understanding that global investors often use the IP to access Canadian RTMD, and changes to the IP model should be made with a focus on increasing the ease for those investors to consume Canadian data and trade Canadian equities.

Obstacles Accessing RTMD Directly from Marketplaces

There exist several obstacles for market participants preferring to obtain RTMD directly from the marketplaces rather than through the IP.

1. Lack of Standardization Across Marketplaces

A general lack of standardization among marketplaces in their products, services, and contracts makes it difficult to compare the data offerings, and prices, across marketplaces.

Each marketplace has its own pricing and license policies with different taxonomy and terminology. In addition to the fee for the actual data, marketplaces have also added new access fees, distribution fees, fees for storing the data, display fees, non-display fees, delayed data fees, historical data fees, etc. The definition of these fees can differ across venues making it difficult to contrast their fee frameworks while increasing the time and effort required to review and execute agreements.

The CSA’s proposal to create an industry group to help standardize key terms and definitions for access to and use of RTMD between marketplace and market participants could be helpful in bringing much needed harmonization among the providers of RTMD. The group should be comprised of subject matter experts representing marketplaces, vendors, the legal community, and various subsets of data users. The industry group’s terms of reference should specify a deadline by which the review must be completed.

2. *Burdensome Audit Practices*

Standardizing and simplifying market data licensing contracts could also help with tackling what we perceive to be burdensome and aggressive audit practices by some marketplaces. These audits have become increasingly more complex and detailed requiring our firm to devote significant resources to develop policies to monitor and govern market data usage across all areas of our business.

Audit practices can also differ substantially across marketplaces which makes preparing for these audits more challenging and time consuming. Furthermore, interpretation of the licensing provisions embedded within signed agreements currently rests solely with the marketplace which could differ from that of the subscribers leading to added (potentially retroactive) charges.

Standardizing market data licensing contracts to include acceptable terms and conditions related to audit practices could help clarify the interpretation of licensing provisions which would simplify the audit and help subscribers stay compliant.

Consistent marketplace audit practices that are well understood and agreed to by subscribers will place both parties on more equal footing. Therefore, we would recommend the CSA also consider avenues to help align audit practices across the marketplaces.

3. *Duplication of Per-User Data Fees*

End users at large integrated firms often consume the same data several times over for different uses or on different display systems. Market data licensing agreements utilize broad terms covering widespread use of the data. This has afforded marketplaces the opportunity to levy multiple charges on the same set of data even if it's being used by the same person in the firm but for a different purpose. Moreover, even if the marketplace's policy is not to levy such charges, the difficulty of tracking users who subscribe to the same data through multiple platforms inevitably results in market data charges levied multiple times to customers who view market data through multiple interfaces. Firms should not be charged multiple times when the same individual, or group, leverages the same data for different uses or accesses it in different ways.

Regulators and marketplaces in other jurisdictions recognize this issue and have introduced some form 'natural user netting' where an individual employed by a subscribing firm is given access to the same data via multiple sources but only counted once for reporting and billing purposes.

For example, the U.S. Consolidated Tape Association's 'Multiple Installation for Singler Users' (MISU) policy applies a single device fee in respect of individual professional users subscribed to multiple sources of marketplace data¹.

¹ See CTA MISU [Policy](#)

Similarly, European exchanges are subject to the European Securities and Markets Authority's (ESMA) final guidelines on market data which introduced per-user based fees that prescribe a single fee for use of the same marketplace display data when received from different providers².

Though the administration of such user netting programs can be complicated, they could result in material cost savings to consumers of market data. The CSA should consider whether similar netting programs should be prescribed in Canada.

Data Fee Methodology

We concur with the CSA that the effectiveness of the current Data Fee model (DFM) has decreased in recent years with the arrival of additional marketplaces. The DFM is neither transparent, nor well-understood. The fact that fee caps are relative to other markets incents marketplaces to gradually raise their prices together.

A more sensible approach would be for the CSA to set a fee level that data users would pay if they subscribed to all marketplaces. This fee level should initially be set lower than current levels but factor growth or declines of key fundamentals such as market-capitalization, number of listed issuers and trade volumes. Individual venue fee caps would be set as a fraction of the overall fee, based on how much each venue contributed to listings, trading, and price discovery. In other words, the mechanism selected should incentivize marketplaces to provide liquidity and promote capital formation rather than just meeting the minimum OPR threshold requirements and collecting recurring fees.

We would not oppose, therefore, the CSA's proposal to retain external assistance to review the DFM and the reference points used by the CSA to allocate the share of fees chargeable by marketplaces. The mandate of the external advisor could be expanded to explore alternatives to the current DFM.

Non-Professional User Fees

Significant investments made by the dealer community, including our firm, in new client interfaces such as web and mobile applications have provided retail investors with unprecedented level of access to market data. Concurrently, many investors have also benefited from trading costs that have trended lower with National Bank Direct Brokerage being the first online brokerage of a major Canadian bank to eliminate commissions for online trades of Canadian and U.S. stocks and exchange-traded funds³.

However, as noted by the CSA, increased retail investor trading activity over the past several years has resulted in higher quote-usage, contributing to an increase in market data costs for market participants serving these clients. To manage costs dealers may be forced to be selective of where and when RTMD is provided to clients (e.g. at order entry) and utilizing delayed data in other areas (e.g. Portfolio valuations). Clients wishing to see their portfolio valuations in real-time, therefore, may resort to external web-based

² See section 5.5 of ESMA [guidelines](#)

³ See Press Release: [A Canadian First: National Bank Direct Brokerage Announces New Zero-Commission Pricing](#)

information services⁴. This results in a negative client experience and makes customer engagement difficult.

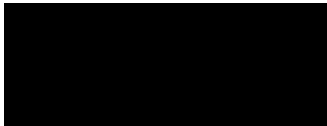
Our internal review also reveals that unit costs for real-time quotes for non-professionals is materially higher for Canadian markets when compared to the U.S. This requires us to consider options such as capping our monthly quote usage or looking to alternative sources of the data – neither is optimal.

We are unclear whether any of the CSA’s proposed options would address the rising cost of non-professional user fees by improving the competitiveness of current Canadian pricing. This is essential for us to deliver timely and comprehensive market data to retail investors cost effectively.

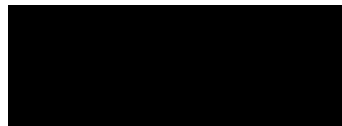
Conclusion

The CSA’s consultation has provided a good synopsis of the various considerations related to access to real-time market data. The biggest barriers to “access” ultimately revolve around the direct costs of subscribing to the data and the administrative burden of negotiating, reviewing, and executing necessary agreements which are largely one-sided in favour of the data provider. Data subscribers require solutions that seek to address these barriers.

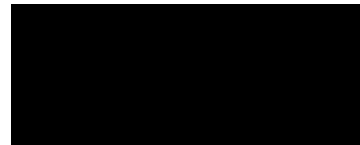
Sincerely,



Patrick McEntyre, CFA
Managing Director
Institutional Equity
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Nicholas Comtois
Managing Director
Retail Trading Desks



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⁴ It is our understanding that current licensing agreements by Canadian marketplaces extend “media” outlets preferential RTMD pricing when compared to institutions such as ours.