TRADELOGIQ

December 4, 2023

By email

To: The individuals referenced in Section V of CSA/CIRO Staff Notice 23-331

Dear Sirs/Mesdames,

Re: CSA/CIRO Staff Notice 23-331 – Request for Feedback on December 2022 SEC Market Structure Proposals and Potential Impact on Canadian Capital Markets (the "RFF")

Tradelogiq Markets Inc. ("Tradelogiq") is a regulated Canadian marketplace operator with two separate alternative trading systems ("ATS"): Omega ATS and Lynx ATS. By accessing our two ATSs, our subscribers, all registered investment dealers, can trade securities that are listed on the Canadian recognized exchanges.

We appreciate the opportunity to comment on the RFF. Our responses to the questions posed in the RFF can be found at Appendix A of this letter and we have provided a summary of what we feel are the key issues below. We note that terms used in this letter, unless otherwise defined herein, reflect terms used in the RFF.

Our general view as it relates to what we feel are the two most significant areas covered by the RFF – minimum tick sizes and access fee caps – is that we should tread carefully and only follow the US's lead where the risks of not doing so (or any benefits) more than offset the additional costs, complexities, and challenges. In both cases, a low-touch approach that minimizes the risks and costs while also allowing room for further consideration through study of the impact of the SEC changes on the US markets is more desirable than following an unproven lead. This would not be the first time that Canada chooses its own path.

As it relates to minimum tick sizes, we do not see sufficient reason at this point to implement our own tick-size regime and measurement model, even if it were to mirror what is implemented in the US. Assuming the SEC adopts some form of reduced tick size for a specified set of tick-constrained securities, we would suggest adopting an approach that mirrors their reduced tick sizes, but only with respect to affected interlisted securities – being interlisted securities subject to reduced tick size in the US – and updating these in accordance with the periodic updates made to the specified securities list in the US. This will help to ensure that quoting and trade pricing for interlisteds in Canada can remain competitive with pricing in the US, without exposing the broader Canadian symbol-set and trading ecosystem to the associated risks, challenges, costs and complexities.

For access fee caps, we suggest an approach that reduces existing caps on interlisteds but only for those interlisteds subject to a reduced tick-size. This is the least intrusive approach, and would leave marketplaces with the most flexibility in terms of fee competition – both within Canada and with the US. A scenario whereby Canadian marketplaces can pay higher passive rebates on non-affected interlisteds than what is available in the US due to a higher access fee cap in Canada may also present opportunities for improved liquidity provision in Canada – the opposite of the potential negative outcomes that contributed to the previous CSA decisions to not reduce access fee caps for interlisteds to levels below the US caps.

Finally, we also wish to make some general observations regarding the RFF itself. Given the amount of time between the publication of the SEC Proposed Amendments, and the level of public discourse in both the US and in Canada (e.g., through public comment letters submitted to the SEC Proposed Amendments and by industry stakeholders via industry panels, industry and regulatory committees, market structure publications, etc.), we would have hoped to see more commentary and analysis in the RFF regarding the rationale for considering changes in Canada and the potential impacts. We would have also hoped that more context would have been provided regarding relevant similarities and differences between Canadian and US market structure in certain cases – for example, in relation to what constitutes "meaningful" price improvement in this context – in order to better facilitate stakeholder consideration and comment. Lastly, where these similarities and differences were presented in connection with the application of access fee caps, it would have been helpful if the information provided was correct, so as to avoid the potential to mistakenly bias responses.

Thank you again for the opportunity to provide our views on this important initiative. Should you have any questions or would like to discuss these views further, please do not hesitate to contact us.

Regards,

Laurence Rose

Chairman, President and CEO
Tradelogiq Markets Inc.

cc: Jonathan Sylvestre, Chief Compliance Officer & Head of Market Structure, Tradelogiq
Cindy Petlock, Chief Legal Officer and Corporate Secretary, Tradelogiq
Travis Felker, Head of Product and Strategy, Tradelogiq

APPENDIX A
RESPONSES TO QUESTIONS IN RFF

A. Variable Minimum Pricing Increments (aka tick sizes)

Question 1: *If adopted as proposed by the SEC, please provide your views regarding whether Canada should harmonize with an amended SEC rule, including with respect to:*

(a) the methodology used to calculate minimum pricing increments, including, source of data (which marketplaces and what entity should be responsible for calculation) and time periods during which the metrics are calculated,
(b) securities to which any amended Canadian price increments would apply (e.g., inter-listed securities only or all or some classes of securities, exchange-traded funds and/or other exchange-traded securities),
(c) treatment of situations where the use of an aligned methodology results in different trading increments between inter-listed securities traded in Canada and the U.S. (i.e., where the time-weighted average quoted spreads in Canada and the U.S. are different for the same security).

We do not see sufficient reason at this point to implement our own tick-size regime and measurement model, even if it were to mirror what is implemented in the US. As indicated in our covering letter, assuming the SEC adopts some form of reduced tick size for a specified set of tick-constrained securities, we suggest adopting an approach that mirrors their reduced tick sizes, but only with respect to affected interlisted securities – i.e., interlisted securities subject to reduced tick size in the US – and updating these in accordance with the periodic updates made to the specified securities list in the US. This could be implemented by requiring the Canadian listing exchanges to identify which interlisted stocks are affected and therefore subject to reduced tick sizes – for example, through start of day symbol status messages, which might help facilitate the dissemination of that information to downstream order and execution management systems and dealer front-ends.

An approach whereby only affected interlisteds are subject to reduced tick sizes would ensure that quoting and trade pricing in Canada for those affected interlisteds can remain competitive with pricing in the US, without exposing the broader Canadian symbol-set and trading ecosystem to the risks, costs, complexities and associated challenges of a migration to a symbol-based tick size regime from the current well-understood and easily applied price-based regime – this is before even considering the additional costs and challenges associated with implementation of a symbol-based regime under which tick-sizes might change for any given symbol from one measurement period to the next.

This would also provide an opportunity to study the impact of reduced tick sizes based on the US experience, as well as what can be observed from the limited number of interlisteds that would be affected under our proposal – perhaps as few as 35 based on the figures reported on by CIRO in the RFF – before broadening the scope of any reduced tick size regime.

We note, however, that if the SEC were to take a less complex approach than it is proposing and chose to reduce the tick sizes across the board for all securities priced over $1 to, say, a half-cent from the current full-cent tick-size, then further consideration may need to be given to implementing a similar universal reduction applicable to all Canadian-listeds priced over $1. It might be warranted in that case to follow suit to protect not only interlisteds, but all listeds on the expectation that a universal tick-size reduction would then likely be replicated in FINRA Rule 6434 – Minimum Pricing Increment for OTC Equity Securities, allowing for a further loss of trading on Canadian-only listeds via "F shares" trading on US OTC markets.

Question 2: *If Canadian requirements as related to minimum pricing increments are not amended in response to an amended SEC rule as proposed:*

(a) *Would marketplace participants send less order flow to Canadian marketplaces in favor of U.S. trading venues?*
(b) *Does the difference in value between the Canadian and the American dollars matter in your analysis?*

We defer to the views of our subscribers and their clients, but believe the ability to quote interlisted securities in the US at narrower spreads than in Canada due to tick-size reductions presents risks to liquidity, and therefore execution quality in Canada. For this reason, we have suggested an approach which seeks to directly address this risk for affected securities. See our response to Question 1.

Question 3: *Concerns have been raised in relation to:*

(a) operational resiliency and systems readiness should the number of pricing increments be increased, especially where they would be periodically adjusted on a per-security basis, and
(b) increase in message traffic (i.e., electronic order and trade messages) that will result from an increase in the number of pricing increments.

Please discuss whether you share these concerns.

We share these concerns, along with many of the other concerns that have been identified by commenters to the SEC Proposed Amendments, and by Canadian industry stakeholders through the various forums used by industry to discuss these issues – e.g., conferences, industry education events, industry and regulatory committees, dealer market structure publications, etc.

Question 4: *It has been suggested that any Canadian proposal to amend minimum pricing increments would introduce complexity in managing orders. Please provide your views in this regard, including as related to:*

(a) complexities associated with the frequency at which minimum trading increments could change,
(b) the necessary lead-time between establishment and implementation of new minimum trading increments both initially and on an ongoing basis,
(c) challenges with management of existing orders entered on marketplaces at prices that have become invalid trading increments (may be particularly relevant for orders of retail investors that are entered with longer expiry dates (i.e., "GTC" orders)),

(d) *investor education challenges associated with an amended approach to minimum pricing increments.*

We defer to our subscribers and their clients and vendors on this topic, but again note that these and other costs, complexities and challenges have been identified by commenters to the SEC Proposed Amendments and by Canadian industry stakeholders.

Question 5: *As modifying trading increments in Canada would impact the determination of a "better price" under UMIR, please discuss whether Participants (as defined in UMIR 1.1) would still be providing meaningful price improvement in circumstances where a "better price" is required.*

In the context of the finalization of the regulatory framework for dark liquidity, it had previously been determined that providing 1/10th or 2/10^{ths} of a penny of price improvement was not “meaningful”. It might still not be considered “meaningful” in the context of the application of order exposure requirements or a client-principal trade involving retail / small-sized orders.

However, it may also not be practical to deviate from the easily measurable and applied standard of one tick (or a half-tick where the Protected NBBO spread is one tick), for the purposes of the “better price” definition.

Regardless of whether 1/10th of a penny price improvement for symbol with a 1/10th of a penny tick size is “meaningful”, it is nonetheless “better”. When a participant decides to post a displayed price one tick better than the prevailing NBB/NBO, it is improving the price, regardless of tick size. Maintaining a single general standard for “better price” as the amount by which one can improve the quoted best price is a simple and practical approach.

Despite this, we suggest additional consideration should be given to establishing a higher threshold in specific cases like the application of order exposure requirements or client-principal trading involving retail / small-sized orders to the extent that a tick size of, say, 1/10th or 2/10^{ths} of a penny is arguably not meaningful and might only serve to enable retail internalization.

Question 6: *Please provide any views on expected outcomes (positive and negative) associated with any changes to minimum trading increments, including as related to expected quoted volume at each price increment. Additionally, please provide your views on what metrics could be used to evaluate whether any new approach to minimum trading increments results in positive or negative outcomes.*

We note that potential impacts, whether positive or negative, have been identified by commenters to the SEC Proposed Amendments and by Canadian industry stakeholders through a number of existing forums for discussing these issues.

In relation to the reference in the question to any impact on quoted volume at each price increment, we think that it is reasonable to expect that a reduction in tick size could result in reduced size being displayed at the reference NBBO prices, potentially reducing its value as a reference and as an input to price discovery. Consideration should also be given as to how reduced size at the NBBO might affect retail investor perceptions of the market, or their investment or trading decisions, given that they typically only see top-of-book prices and volume (and only from the listing markets) via the data provided to them by their dealer.

B. Reductions in Access Fee Caps

Question 7: *Please discuss whether fee caps should also apply to "taker-maker" fee models and, if so, whether their fee caps should be different.*

We note that, in the lead-up to posing this question, the RFF incorrectly informs readers that the US access fee caps apply to both maker-taker and taker-maker fee models, i.e., that active rebates or posting fees on US exchanges are also subject to caps. A review of SEC Rule 610 of Regulation NMS confirms our understanding that the caps only apply to fees charged to the taking side of a trade against displayed protected orders, and this is also supported by the following statement from the SEC's own proposing release:

> *The regulatory access fee cap is most relevant for maker-taker markets where the trader accessing a protected quote must pay the access fee. This is because the access fee cap applies only to fees for accessing protected quotations and does not apply to fees for posting quotations. Therefore, on an inverted venue the exchange is not restricted by rule 610 in terms of the rebate that it can offer to access a protected quote or the fee to post a protected quote.*[1]

In addition, the SEC proposed rule changes contemplate only a change in the capped fee levels for taking liquidity in recognition of the proposed reduced tick sizes, and does not contemplate the introduction or extension of the application of the existing fee caps to inverted taking rebates or posting fees. Given this, it follows that if the focus of this RFF is on the need for harmonization with the US, any question of extending fee caps to active rebates should be outside of the scope of any related proposals.

Regardless, our view on this topic is that caps should not apply to active rebates. The regulatory impetus for the cap on liquidity taking fees, both here and the US, was to address the regulatory impact of order protection requirements on dealer routing and how this might be leveraged by marketplaces to charge excessive taking fees.

In contrast, there is no similar regulatory requirement to post on inverted markets, and so market forces are not similarly impeded. Further, the posting fees charged by inverted markets are subject to implicit economic constraints that arise because there are limits on what participants will be willing to pay to gain market-wide queue priority and trade against fee-sensitive liquidity taking orders, and these fees are also subject to general market and competitive forces. If a marketplace sets its posting fees too high relative to another, it risks either a migration of passive liquidity to other marketplaces or its liquidity providers quoting at wider spreads than on other marketplaces (whether inverted or make-take). For any given marketplace, the absence of liquidity quoted at best prices, or worse, the absence of passive liquidity altogether, will mean that active orders will not be routed to that marketplace, no trades will occur, and the marketplace will lose revenue and market share.

[1] Page 172 of SEC proposing release available at https://www.sec.gov/files/rules/proposed/2022/34-96494.pdf.

The application of these implicit economic constraints and resulting market and competitive forces may have been observed recently when an inverted market increased its passive fees and active rebates for securities priced under $1. Post-fee change we observed a significant decline in market share due to what appears to be a shift in liquidity provision to another lower-priced inverted peer.

Extending caps to taking rebates and posting fees on inverted venues is therefore unnecessary and will constrain marketplace competition, while at the same time resulting in higher costs for the execution of cost-sensitive retail customer order flow.

Question 8: *Generally, the exact fee or rebate for an order cannot be determined until after an execution occurs, as discounted fees or credits are determined by marketplaces at the end of the month, based on trading during the month of a Participant. To be able to calculate the full cost of a transaction at the time of execution, the SEC also proposes to require that all exchange fees and rebates be determinable at the time of execution. U.S. trading venues would be required to set such volume thresholds or tiers using volume achieved during a stated period prior to the assessment of the fee or rebate so that market participants are able to determine what fee or rebate level would be applicable to any submitted order at the time of execution.*

Please discuss whether we should take a similar approach in Canada.

We do not believe that a similar approach is necessary in Canada. For some time, the volume discounts offered by Canadian marketplaces have taken the form of market making and liquidity incentive programs intended to promote passive quoting activity, with the typical participants being proprietary liquidity providers – whether dealer proprietary trading desks or clients of dealers that trade on a proprietary basis. Rewarding the trading program participants for the activity that satisfied the program thresholds results in the direct (and therefore best) alignment between incentive and reward relative to a model that provides future reward based on past behaviour.

Considering the nature of the programs that exist in Canada, we do not believe these generally present the issues identified by the SEC in their proposals, all of which relate to agency routing conflicts that do not arise with programs targeted towards proprietary liquidity providers who are in full control of their order routing decisions. If there are concerns with agency routing and posting decisions due to the existence of incentive programs in Canada, perhaps this would be better assessed through a broader best execution sweep as was last conducted by IIROC in 2013.

Further, the introduction of volume tiering programs targeted specifically towards agency order flow would in any event be subject to the regulatory review and filing process, and could be constrained through that process, if necessary.

Question 9: *If adopted as proposed by the SEC, please provide your views on a Canadian approach to fee caps, including with respect to:*

(a) harmonization with an amended SEC rule, including with respect to application to inter-listed and/or non-inter-listed securities,
(b) methodology used, including with respect to:

i. application to all securities, regardless of price,
ii. consideration of a fee cap that reflects tick size, similar to the methodology proposed by the SEC,
iii. consideration of a percentage-based fee cap for securities priced under CAD 1.00.

We suggest a different approach. We propose that current fee caps only be adjusted for securities subject to reduced tick sizes (which would be limited to affected interlisteds under our proposed approach on tick sizes discussed under Question 1 above), and then only where the current fee caps for those securities exceed a certain threshold outlined below. This would generally limit the scope of change, and allow instead for study of the broader impacts of the US fee cap changes before making further reductions in Canada.

When the CSA last adjusted fee caps, the decision was made to leave the caps on interlisted securities untouched at 30 mils per share. In doing so, the CSA acknowledged concerns about the potential negative effect on liquidity provision if caps on interlisteds in Canada were reduced while the caps in the US remained unchanged. The CSA notice of approval[2] stated:

> *As liquidity providers are sensitive to rebates they receive for posting orders on certain marketplaces, a decrease in fees charged by those marketplaces would also result in a decrease in rebates available to liquidity providers. If the difference in rebates between Canada and the U.S. for Inter-listed Securities was too large, a shift of liquidity to U.S. marketplaces and widening spreads on Canadian marketplaces could result.*

Considering the above, leaving the caps generally unchanged while the US reduces its access fee caps and thereby facilitates a reduction in rebates for liquidity provision, could presumably create an opportunity for Canadian markets. Our wait-and-see approach would allow for study of both the impact of the broader US changes and the impact of differentials between the US and Canada before taking further action.

We acknowledge, however, and as was noted by the SEC in its proposal, that issues relating to unintended distortions and price transparency could arise if taking fees (and passive rebates) could be set at more than a half-trading increment. In order to address this concern for the limited set of interlisteds that would be subject to tick reductions in Canada, we would propose amending the current caps to incorporate a catch-all "lesser of" type of restriction on marketplaces that would require fees for affected interlisteds to be capped at the lesser of the current stated cap levels or half of a "trading increment".[3]

To demonstrate the effect, the application of this catch-all restriction for a security subject to a reduced tick size is as follows:

[2] CSA Notice of Approval – Amendments to National Instrument 23-101 Trading Rules and Companion Policy 23-101CP to National Instrument 23-101 Trading Rules, dated April 7, 2016.
[3] As that term is defined in UMIR.

		Under proposed catch-all approach		
	Current cap	**Trading increment = 1 cent**	**Trading increment = 0.5 cent**	**Trading increment = 0.1 cent**
Interlisted equities				
Price >= $1	$0.0030	$0.0030 *(lesser of ½ tick and current $0.0030 / share cap)*	$0.0025 *(lesser of ½ tick and current $0.0030 / share cap)*	$0.0005 *(lesser of ½ tick and current $0.0030 / share cap)*
Price < $1	$0.0004	$0.0004 *(lesser of ½ tick and current $0.0004 / share cap)*	$0.0004 *(lesser of ½ tick and current $0.0004 / share cap)*	$0.0004 *(lesser of ½ tick and current $0.0004 / share cap)*
Non-interlisted equities & ETFs				
Price >= $1	$0.0017	$0.0017 *(lesser of ½ tick and current $0.0017 / share cap)*	$0.0017 *(lesser of ½ tick and current $0.0017 / share cap)*	$0.0005 *(lesser of ½ tick and current $0.0017 / share cap)*
Price < $1	$0.0004	$0.0004 *(lesser of ½ tick and current $0.0004 / share cap)*	$0.0004 *(lesser of ½ tick and current $0.0004 / share cap)*	$0.0004 *(lesser of ½ tick and current $0.0004 / share cap)*

While our approach could result in some additional symbol-dependent fee schedule complexity, we note that this complexity already exists under the current cap whereby marketplaces are already required to manage fees for a list of interlisted securities, a list that can and does change as securities move from non-interlisted to interlisted, or back to non-interlisted.

As indicated in our response to Question 7, we also do not think it is necessary to cap liquidity-taking rebates for securities subject to reduced tick-sizes to keep fees in reasonable proportion to tick sizes in order to avoid excessive distortive effects. We expect that market and competitive forces will cause inverted marketplaces to reduce posting fees for securities subject to reduced tick sizes in order to ensure liquidity providers continue to quote at best prices, and thereby avoid a loss of market share and revenue that will otherwise result. For example, Omega continuing to charge posting fees of 3/10$^{\text{ths}}$ of a penny per share for securities priced over $1 with a tick size of 1/10$^{\text{th}}$ of a penny could cause its liquidity providers to post at prices that are 3/10$^{\text{ths}}$ of a penny worse than prices available on a make-take market. It may not be in Omega's best interests to maintain its posting fees at that level in that case.

Lastly, regarding a potential move to notional percentage-based fees for securities priced under $1 to harmonize with the US, we suggest maintaining the current fee-per-share cap approach to avoid unnecessary impact on dealers, vendors and marketplaces. Further, if the CSA were to decide to move to notional percentage-based caps for low-priced securities, any such proposal should include requirements that marketplaces adopt percentage-based fees for low-priced securities as opposed to being permitted to charge on a fee-per-share basis so long as it doesn't violate the % cap. This would simplify the application and integration of the models into vendor / dealer routers.

C. Transparency of Better Priced Orders

Question 10: *Please discuss if you share our assessment and provide any additional considerations in this area.*

We question the view reflected in the RFF that transparency of odd lot order and trade data is sufficient in Canada due to its availability in marketplace data feeds and the lack of off-exchange trading.

Odd lot information is certainly provided in marketplace Level 2 data feeds, but we understand that downstream retail customer data users often may only have access to view top of book board lot quotes, and only from the listing markets.

Regarding the SEC proposal to reduce board lot sizes for higher priced securities, we note that there were only 7 symbols with traded prices greater than first $250 threshold under the SEC proposals during November, with 2 of these having traded prices that consistently exceeded the next $1,000 threshold. Of the 7 symbols, all had a higher than average percentage of its continuous traded volume and value traded as odd lots, with the highest seeing approximately 50% of its continuous traded volume and value having traded in odd lot sizes.[4] While we expect that most of these traded odd lot orders may have crossed the spread and transacted at the NBBO against liquidity providers in guaranteed auto-execution facilities, we note that these high-priced securities often have wider spreads that could instead allow retail customers more opportunity to post and display their smaller-sized orders at better prices in board lot books if the board lot size was reduced.

In our view, a principles-based perspective would suggest adopting a similar approach for reduced board lot sizes for high-priced securities, but it may not be worthwhile to do so at this time when considering the additional costs (incl. costs of education) to accommodate a change in board lot size for a very small set of symbols.

If there is truly an interest in increasing transparency of better priced odd lot orders and encouraging increased order competition for odd lots (which are currently typically executed in auto-execution facilities under a one-to-many model that precludes true order competition), we suggest that a broader review of the regime for the execution of odd lots in Canada is warranted.

D. Regulation Best Execution

Question 11: *Please discuss if you share our assessment and provide any additional considerations in this area.*

We defer to our subscribers and their clients on this topic.

[4] SEC saw approximately 50% of its continuous traded volume and value in November trade in odd lot sizes, while CTC was the next highest at 46% of continuous traded volume and value, followed by ELF at 37%. In terms of number of trades, 92% of continuous trades in CTC were odd lots, followed by ELF and SEC with 81% and 80%, respectively.

E. Disclosure of Order Execution Information

Question 12: *Please discus if you share our assessment and provide any additional considerations in this area.*

We agree with the assessment that because we do not have disclosure requirements equivalent to SEC Rule 605, the SEC Proposed Amendments with respect to disclosure of order execution information should not affect Canadian markets. Any efforts to consider the introduction of more robust reporting requirements by dealers and marketplaces pertaining to order execution information should be considered separately from this initiative and should not necessarily seek to copy the US regime.

F. SEC Order Competition Rule

Question 13: *Please discuss if you share our assessment and provide any additional considerations in this area.*

We agree that concerns underlying the SEC's proposed order competition rule do not as arise here because the regulatory regime in Canada prevents the types of off-marketplace executions that the SEC's proposal is intended to address.