



CIBC
World Markets

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Sent by email to rulecomments@sec.gov

Nancy M. Morris, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File Number SR-NASD-2004-130

Dear Ms. Morris:

CIBC World Markets Corp., a registered broker-dealer and NASD Member Firm, and its affiliate CIBC World Markets Inc., a member of the Investment Dealers Association of Canada, (together, "CIBC World Markets") jointly submit this letter in response to the request for comments by the U.S. Securities and Exchange Commission ("SEC" or "the Commission") regarding the above-referenced amendment to Rule 2320(g) ("Three Quote Rule") originally filed by the National Association of Securities Dealers, Inc. ("NASD") on August 27, 2004, and amended on May 8 and October 19, 2006.¹ In Canada, CIBC World Markets is consistently among the top five dealers in terms of trading volume on the Toronto Stock Exchange ("TSX"). In the United States, we are a registered market maker in more than 1,200 Nasdaq-listed securities.

As you know, NASD is proposing to amend the Three Quote Rule, and the corresponding recordkeeping requirements under Rule 3110(b), to exclude from the Three Quote Rule's coverage transactions in foreign securities of a foreign issuer that are part of the FTSE All-World Index. We commend NASD's effort to revise the Three Quote Rule; however, we object to the NASD staff's plan to withdraw the long-standing exemptions to the Three Quote Rule that relate to execution of customer orders in Canadian securities on Canadian exchanges.²

¹ See Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Amendments to Rule 2320(g) (Three Quote Rule) and Corresponding Recordkeeping Requirements Under Rule 3110(b), SEC Release No. 34-54650; File No. SR-NASD-2004-130, 71 Fed. Reg. 63812 (Oct. 31, 2006) (the "Release").

² See *id.* 71 Fed. Reg. at 63813 n.13.

As noted in the Release, NASD has granted seven exemptions from the Three Quote Rule for customer transactions in Canadian securities executed on a Canadian stock exchange.³ These exemptions were issued pursuant to NASD's exemptive authority under Rule 2320(g)(5). When the SEC granted this authority, the SEC noted that one of its principal uses would be where a "foreign exchange market may constitute the best market for the securities that are listed on that market, and the time delay involved in contacting three dealers in advance of a customer transaction could hinder obtaining the best execution for the customer."⁴

NASD followed the logic of that view when it issued the Canadian exchange exemptions from the Three Quote Rule. In 2000, NASD explained that these exemptions were "based on representations that executions on a Canadian exchange at the exchange price ordinarily result in customers obtaining best execution of their orders."⁵ The NASD staff noted that an analysis had concluded that "in virtually all cases, the [Canadian] exchange had the best price."⁶ Notably, the NASD staff stated that the exemptions were warranted because any rule to the contrary would not be in the customer's best interest, since "obtaining quotes from three dealers would result in significant delays and *would be a hindrance to achieving best execution for the customer.*"⁷

If the NASD staff were to withdraw these exemptions, it would dramatically alter the way U.S. customers currently receive executions in Canadian stocks, adding unnecessary and potentially harmful delays and expenses. Under the existing rules, the standard practice among U.S. dealers is to auto-route orders in Canadian securities to Canadian dealers for execution on the TSX, the primary market for most Canadian stocks. In many cases, these trades are "flipped" to U.S. customers by converting the Canadian dollar execution into U.S. dollars on a riskless principal basis. The U.S. dealers rely on the Canadian executing firm to obtain the best execution in the local market, without double-checking whether there are three quotes available in a U.S. inter-dealer quotation system. In the future, it would be incumbent upon U.S. dealers to obtain three quotes for these riskless principal executions, adding time and expense, without any

³ *Id.* (citing, e.g., Letter to Mr. Kenneth W. Perlman, General Counsel, Mayer & Schweitzer, Inc., from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, Inc., on May 29, 1998). The exemptions were conditioned upon the NASD Member Firms' periodically monitoring customer executions to assure best execution and executing customer transactions in Canadian securities on an agency or riskless principal basis.

⁴ *Order Granting Approval to Proposed Rule Change to Amend NASD Rule 2320(g) to Provide Authority to the Staff of NASD Regulation to Grant Exemptions from such Provision*, SEC Release No. 34-39266 (Oct. 22, 1997), 62 Fed. Reg. 56217 (Oct. 29, 1997).

⁵ *NASD Regulation Requests Comment On A Proposed Amendment To NASD Rule 2320(g) To Exclude Certain Transactions In Foreign Securities*, NASD Notice to Members No. 00-84 (Dec. 2000).

⁶ *Id.*

⁷ *Id.* (emphasis added).

reason to believe that the over-the-counter market will provide any better prices than the execution received on the TSX.⁸

We believe that existing practices adequately address best execution concerns of U.S. customers and that the proposed change would act as a hindrance to their interests, as was the belief heretofore expressed by the SEC and NASD.⁹ Today, as when NASD granted the exemptions, the TSX remains the primary market for nearly all Canadian securities. Informed by our position in the Canadian and U.S. markets, CIBC World Markets does not believe that the Canadian market structure is any less effective at obtaining best execution than is the U.S. over-the-counter market. Indeed, Canadian dealers are subject to robust best execution obligations under the Part 5 of the Universal Market Integrity Rules (UMIR) of Market Regulation Services, Inc. of Canada.¹⁰ Furthermore, the anticipated opening of the new Pure Trading platform by Canadian Trading and Quotation System is anticipated to enhance competition in execution of TSX-listed securities. On the other hand, we have never seen evidence that the U.S. inter-dealer market would provide prices or liquidity sufficient to justify the expense and time needed to obtain three quotes before passing on the price obtained by a Canadian dealer in the local market. Where the Three Quote Rule “hinders, rather than furthers, investor protection by causing significant delays in obtaining executions of customer orders,” granting an exemption is appropriate.¹¹

In the absence of new evidence, there is no suggestion that the original rationale for granting the Canadian exchange exemptions has changed. In the Release, the NASD staff simply states, without comment, that they will be withdrawing the relevant exemptive letters.¹² There is no discussion of the rationale for withdrawing the exemptions, nor is there an explanation of why the staff is changing the position it articulated in 2000. We believe that summarily changing the long-standing interpretation without any evidence to the contrary is an unnecessary departure from well-reasoned precedent. While we have not had an opportunity, in the short time that this proposal has been public, to conduct an in depth analysis of the issue, we believe that a study would

⁸ While NASD’s proposed amendment would include an exemption for stocks included in the FTSE All-World Index, this exemption would not be a benefit for U.S. customers trading most Canadian stocks. There are only 60 Canadian stocks included in the FTSE All-World Index. Nearly all of those stocks are listed on the NYSE or Nasdaq (in addition to the primary listing on the TSX) and, consequently, outside the scope of the Three Quote Rule. Thus, our letter addresses trading in the majority of Canadian stocks, which are only traded over-the-counter in the U.S. and are subject to the Three Quote Rule.

⁹ *Id.*

¹⁰ These regulations are available at on the Market Regulation Services, Inc. web site, at <http://www.rs.ca/en/mkt/pol/umir01.asp?printVersion=no&loc1=mktPol&loc2=umir&loc3=01>

¹¹ *Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. to Amend the Three Quote Rule for Transactions in Non-Nasdaq Securities*, Release No. 34-43319, File No. SR-NASD-00-20 (Sept. 21, 2000) (granting NASD’s request to amend the Three Quote Rule to exempt securities for which two or more priced quotations are displayed in an inter-dealer quotation system).

¹² See Release, 71 Fed. Reg. at 63813 n.13.

support our view. At a minimum, therefore, before approving the proposed amendment, we believe that the SEC Staff should call for additional study of the issue to determine whether best execution would be helped or hindered by implementation of the Three Quote Rule on Canadian exchange executions.

Sincerely,

/s/ Achilles M. Perry

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Associate General Counsel

cc: Richard Phillips, Managing Director, Head of Global Equities, CIBC World
Markets Inc.
Ronald Schwarz, Managing Director, Head of Canadian Equities, CIBC World
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