NATIONAL BANK
FINANCIAL MARKETS

September 26, 2024

BY ELECTRONIC MAIL

Market Regulation Policy
Canadian Investment Regulatory Organization
Suite 2600
40 Temperance Street
Toronto, ON M5H 0B4
market_regulation_policy@ciro.ca

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West
19th floor, Box 55
Toronto, ON M5H 3S8
marketregulation@osc.gov.on.ca

Capital Markets Regulation
B.C. Securities Commission
P.O. Box 10142
Pacific Centre 701 West Georgia Street
Vancouver, B.C. V7Y 1L2
CMRdistributionofSROdocuments@bcsc.bc.ca

Dear Sirs and Mesdames,

Re: **Proposed Amendments Respecting Net Asset Value Orders and Intentional Crosses**

National Bank Financial Inc. (NBF) appreciates the opportunity to comment on the proposed Universal Market Integrity Rules (UMIR) amendments respecting Net Asset Value (NAV) orders and intentional crosses (the "Proposals"). We support the Canadian Investment Regulatory Organization's ("CIRO") stated mission to promote healthy capital markets by regulating fairly and effectively so that investors are protected and confident investing in their futures.

NBF, through our affiliate group of companies, is a leading manufacturer, distributor and market-maker of ETFs in Canada, and among the most active trading participants on Canadian marketplaces. As such, we are well placed to comment on the Proposals and have a strong desire to work with CIRO in ensuring the final framework contributes to well-functioning markets that best serve the needs of ETF investors.

Overall, we are very supportive of CIRO's Proposals as they will help modernize UMIR to reflect the evolution of the ETF landscape in Canada and how market participants trade these products.

Our detailed responses to your set of questions are as follows:

1. *Should we impose any restrictions on the entry of a Net Asset Value Order? If so, please explain why and set out what the minimum size should be.*

It is our expectation that NAV orders will be large-in-size and will generally exceed 50 standard trading units. However, we do not believe that imposing a minimum size to make use of the NAV marker is necessary or appropriate.

It is important to note that NAV trades generally occur in connection with pricing and hedging activities conducted in a previous trading session. Because these trades do not have an economic connection to the prevailing prices in the market at the moment the trade is executed, we appreciate that these trades should not be subject to interference, should be excluded from the definitions of “Disclosed Volume” and “Dark Order,” and should not set the last sale price. We also agree that these trades should be exempt from UMIRs 5.3, 6.3, 6.6, and 8.1. We agree that no new restrictions should be created specifically for NAV orders.

2. *Should we impose any restrictions on the use of an intentional cross with jitney?*

The ability to make use of jitney markers on intentional crosses would greatly aid in the provision of block liquidity to clients of smaller Canadian dealers. Presently, dealers may provide block liquidity to their clients and put the resulting trades up as *intentional* crosses. However, when providing block liquidity to another dealer (who ultimately is trading for an end client), these trades must presently be entered as *unintentional* crosses, which introduces price and execution risk if the prevailing quote moves while the orders are being entered. This disadvantages smaller dealers who typically do not have a related market making desk, even as their best execution obligations and overall duty of care are similar.

For that reason, it is our belief that the restrictions on the use of an intentional cross with jitney should be the same as for all other intentional crosses.

We are conscious of the concern expressed by CIRO respecting activities that could approach the definition of marketplace pursuant to NI 21-101. We believe that permitting jitney crosses does not create any ambiguity respecting the definition of marketplace.

3. *While CIRO would generally expect that a Net Asset Value Order should be executed as soon as is practical after publication of NAV by the issuer of the ETF, should this be directly included as a requirement for entry of a Net Asset Value Order?*

In general, it is our view that prudent risk management will result in NAV orders typically being executed as soon as practical after publication of NAV, irrespective of whether such a requirement exists in regulation. In practical terms, this will mean that NAV orders will typically be executed before 9:30am on the morning following NAV publication.

However, due to operational factors, circumstances could arise that may necessitate execution of NAV trades later in the day. It is our view that, while such delays will be unusual, they are economically equivalent to trades having been entered earlier in the day. There is no market integrity rationale to restrict such activity. Accordingly, it is our view that CIRO need not impose such a restriction in regulation.

4. ***Have you identified any concerns with public disclosure of an order that is a "Net Asset Value Order"?***

It is our view that disclosures and transparency enhance the competitiveness of equity markets. Public disclosure of NAV trades would enable market participants to better assess flows and would enable dealers to understand the competitive environment in which they operate.

Moreover, should any market integrity concerns arise in connection with the introduction of NAV orders, public disclosure of NAV orders would enable market participants to independently assess this trading activity.

5. ***The definition of a "Net Asset Value Order" as proposed does not require the execution price to be the exact NAV as published by the issuer of the ETF, but instead at a price that references the published NAV. This reference price may include fees incurred by the executing Participant and/or commissions embedded in the execution price. Please identify any concerns with this proposed approach.***

Today, ETF block trades are routinely priced in such a way as to incorporate fees and commissions. As a result, ETF block trades may occur at prices linked to—but not necessarily identical to—the ETF's NAV. This pricing methodology creates operational efficiencies in ETF block trading.

Of course, NAV orders should be executed at prices directly and clearly connected to the NAV on the underlying ETF. It is our expectation that these price offsets will generally be small. It is well within CIRO's purview to make inquiries about NAV trades occurring at prices that are not clearly connected to the ETF's NAV. It is our belief that principles-based compliance and regulatory practices will promote a fair and efficient market.

6. ***Have we identified all the material impacts on clients, issuers, Participants, Access Persons, marketplaces or CIRO as a result of the Proposed Amendments? If not, please list any other impacts that you believe will materially impact one or more parties and why. In particular, please provide comments on the potential costs associated with the proposed introduction of a Net Asset Value Order, and associated designation requirements under UMIR 6.2.***

The Proposals introduce the creation of a new marker at order entry to identify NAV orders transmitted to marketplaces. This will require some development to our trading systems. We have reached out to our service providers to get their feedback on the efforts involved and await their responses. We suspect the cost of this development will not detract from the value this new order marker will bring to our markets.

Costs aside, we also need to ascertain from our vendors whether CIRO's proposed 90-day implementation period would suffice in making the necessary changes to our front-end systems. Given the reliance many CIRO members have on common trading system vendors, CIRO may want to have discussions directly with these vendors to ascertain industry-wide costs and appropriate implementation timeframes.

We do not believe the Proposals will require large-scale modifications to our current trade surveillance, record keeping or compliance framework. Any modifications to dealer policies, procedures or controls resulting from the Proposals should be the responsibility of the dealer based on their circumstances and structure.

7. ***Overall, do you agree with CIRO's qualitative assessment that the benefits of the Proposed Amendments are proportionate to their costs? Please provide reasons for your views.***

Yes, the costs associated with the proposed amendments are expected to be negligible in comparison to the operational and risk management improvements that will result from the Proposals. Furthermore, wee do not anticipate the changes imposing costs on dealers who do not presently engage in ETF block trades.

8. ***Would 90 days for implementation be sufficient time for: Participants and marketplaces to undertake required systems changes to support the new "Net Asset Value Order" designation, and participants to update their processes and policies and procedures to ensure the use, and supervision of, the new "Net Asset Value Order" designation as appropriate?***

Per our response to question #6 above, some CIRO members will have dependencies on external vendors in developing the Net Asset Value Order designation. These vendors may have competing priorities, including the Bourse's Client Identifier requirements which have a compliance date of March 31, 2025. We have already engaged our vendors in conversation to ensure they are aware of the Proposals so they can prioritize the required development should the Proposals become final.

It is our understanding that dealers who are unable to implement the NAV designation at order entry may continue to use existing workflows. We recommend that CIRO, in the final rule publication, clarify whether existing practices will be permitted in light of the new order designation. Should existing practices continue to be permitted, we do not have concerns about the contemplated 90-day implementation timeline.

As always, we would be happy to meet with you to discuss any part of our response in further detail or answer questions you may have.

Sincerely,

"Patrick McEntyre"

Patrick McEntyre, CFA
Managing Director
Institutional Equity Electronic
Services & Trading

"Jack Rando"

Jack Rando, CFA
Chief Advisor
Financial Markets Trade Surveillance