

October 10, 2000

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, North West Territories
Registrar of Securities, Yukon Territories
Registrar of Securities, Nunavut
c/o John Stevenson
Secretary, Ontario Securities Commission
20 Queen Street West
Suite 800
Box 55
Toronto, Ontario
M5H 3S8

And To:

Claude St. Pierre
Secretary
Commission des valeurs mobilières
du Quebec
800 Victoria Square
Stock Exchange Tower
P.O. Box 246
22nd Floor
Montreal, Quebec
H4Z 1G3

British Columbia Securities Commission et al.

October 10, 2000

Dear Sirs/Mesdames:

Re: Proposed National Instrument 21-101 Market Place Operation, National Instrument 23-101 Trading Rules, Ontario Securities Commission Rule 23-501, Designation as Market Participant and Discussion Paper entitled “Consolidation Plan for a Consolidated Canadian Market” and related companion policies and forms (collectively, the “2000 Proposal or the Proposal”)

I Introduction

Instinet Canada Limited (“ICL”) is pleased in this letter to respond to the issues and questions concerning Alternative Trading Systems (“ATS”) in the 2000 Proposal published on July 28, 2000 by the Ontario Securities Commission (the “OSC” or the “Commission”) and by the Canadian Securities Administrations (“CSA”) at (2000) 23 OSCB (Supp).

ICL together with its affiliates is represented on 20 exchanges around the world and eight international financial centers. Instinet is a pure agency broker, serving its global client base by consistently reducing transaction costs and thereby increasing investment performance for investors and their proxies.

ICL’s comments are presented under two headings: (i) general comments and (ii) specific comments including answers to those questions concerning the trading of equities raised in the Proposal.

II General Comments on the 2000 Proposal

ICL is in general agreement with those aspects of the 2000 Proposal that affect the regulation of the equities markets. For ICL, there are two principal issues presented by the 2000 Proposal. The first is the identification of a market regulator for the equities market. The second is the proposed handling of the cross interference rule.

With respect to the selection of a market regulator, ICL supports the suggestion in the 2000 Proposal that industry participants consider and discuss possible solutions. The market

regulation divisions of existing Canadian stock exchanges continue to present the most immediately available candidates for the market regulator responsibility. But stock exchanges have widely recognized conflicts of interest which they must confront decisively before they can be considered. The CSA should support whatever constraints the industry formulates to address perceived conflicts of interest. ICL anticipates that these suggestions will most particularly concern the corporate governance model the regulator adopts and also suitable means for settling any controversy in which a conflict of interest is said to be impeding effective market regulation. Such controversies would have to be settled by securities regulators on an expeditious basis.

On the question of cross-interference rules, the New Proposal is a definite improvement over the 1999 version. The recognition that certain transactions are too large in size to accommodate a cross-interference rule of the sort proposed in 1999 is welcomed by ICL. The proposed display rules in the 2000 Proposal would operate to relieve orders in high priced stocks from display requirements. Block orders in low priced stocks are deserving of similar relief from display obligations. In the comments below ICL makes some suggestions for handling this issue.

III Comments on Specific Questions

Question 1:

**Should broker ID numbers be collected and disseminated by the data consolidator?
If yes, should the customer decide whether the broker ID is disseminated?**

ICL supports the collection and dissemination of broker ID numbers in the market place on the ground that this practice contributes to market place competition. The majority of commenters on the 1999 Proposal agreed with this position.

Question 2:

Who should provide market regulation for ATSS? Please provide reasons for your answer.

The 1999 proposals elicited comments from parties that are not stock exchanges underlining their concerns about conflicts of interest¹ on the part of the stock exchanges. ICL notes that these concerns about SRO conflicts of interest are not confined to Canada. For example, NASDAQ's proposal in relation to a new order display and matching facility commonly referred to as SuperMontage puts in question whether NASDAQ is using its regulatory position to obtain a significant and unfair commercial advantage over other market participants². In the last round of comments on the 1999 Proposal, a number of commentators captured the dangers posed by self interest in similar terms. We believe that in order to pass muster with the CSA, the equities market regulator must be publicly committed to a position of neutrality, must have a corporate governance structure that is consistent with that public commitment and must agree to a form of oversight by CSA members that affords prompt resolution of any perceived conflict of interest issue.

Question 13:

Should there also be an exception based on number of shares traded (in addition to value of shares trades)? Are there any exceptions to the display requirements that should be included?

The decision to abandon the cross-interference rule and substitute broader display requirements is useful and ICL welcomes it. The 2000 Proposal correctly raises the issue of whether an exemption based on number of shares traded is needed. ICL believes that a sliding scale is needed based on the price of the shares of the particular issuer as follows:

Market Price	Minimum Order Size to rely on display exemptions
\$0.50 or less	20,000
\$0.51 to \$2.00	10,000
above \$2.00	5,000

¹ See New Proposal - Summary of Comments and CSA Responses at pp. 343-344.

² Instinet comment letter to Securities and Exchange Commissions at p. 2 attached as Exhibit 1.

These numbers, while somewhat arbitrary balance order size and value considerations appropriately.

Question 16:

Should special order audit trail requirements be adopted? Under what circumstances should the requirements be imposed? To whom should the requirements apply? What additional information should be collected?

Question 17:

Should the audit trail requirements be established by the CSA or should the requirements be determined by the exchange, approved agent or the IDA?

ICL believes these questions are related and should be considered together. ICL is unaware of a situation in the market place that requires the imposition of special audit requirements. Dealers already typically record details of every order received, the time of receipt and the time the order was conveyed to the market for execution. ICL anticipates that the audit trails of marketplaces will be sufficiently detailed to allow the reconstruction of the trading environment which a particular order faced when it was sent for execution by a market participant. The approved agent could set up the audit trail working to a specification satisfactory to the CSA.

Question 18:

Should the display requirements for over-the counter orders or trades be expanded from market makers to all dealers?

Question 19:

Should the information be sent to the data consolidator or another party?

ICL considers these to be related questions. The display requirements for over-the-counter orders should not differ from those applicable to orders executed in organized marketplaces. The information should be sent to the data consolidator as there does not appear to be any justification for sending it to another party.

British Columbia Securities Commission et al.

October 10, 2000

Question 20:

Should the short selling provision be limited to trades facilitated on a marketplace or should they apply to dealers trading outside of a marketplace?

A distinction between short selling in over-the counter equity securities and marketplace-traded securities does not seem justifiable to ICL.

IV Concluding Remarks

ICL continues to believe that many of the comments contained in its comment letter of November 2, 1999 remain relevant especially as regards the principles of consolidation and the technological and cost burden they may carry with them.

ICL believes that the CSA should be encouraged to complete its deliberations at the earliest opportunity.

We would be pleased to discuss any of the comments of this letter with Commission or its staff. If we can be of further of assistance to the Commission in this regard, please do not hesitate to contact the undersigned at (416)368-2211.

Yours very truly,

Joie P. Watts, CFA
Managing Director