

By Email

September 2, 2010

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8
Attn: John Stevenson, Secretary
Email: jstevenson@osc.gov.on.ca

Re: Alpha ATS LP – Notice of Proposed Changes “Alpha IntraSpread™ Facility”

Ladies and Gentlemen:

Liquidnet Canada Inc. appreciates the opportunity to comment on Alpha ATS LP’s Notice of Proposed Changes, dated July 16, 2010, regarding its “Alpha IntraSpread Facility” (the “Alpha Proposal”).

Liquidnet Canada supports competition and innovation in the marketplace. In any competitive marketplace, it is important that entities performing equivalent functions are subject to equivalent levels of regulation. It also is important with respect to any new order types introduced to the marketplace that appropriate disclosure of order handling practices is made to customers.

Marketplace

Based on our understanding, Alpha is an organization which operates a Marketplace, as defined in National Instrument 21-101 (the “Instrument”), when it brings together orders for multiple buyers and sellers who agree to terms of a trade, and Alpha is thus appropriately registered as an ATS for that activity.

But not all of the activities of an organization operating an ATS are necessarily Marketplace activities. Our understanding of the Instrument is that a system meets the definition of a Marketplace only if it brings together the orders for securities of multiple buyers and sellers. In the case of the Alpha Proposal, the facility proposes to only allow the orders of a single subscriber to interact.

The Alpha Proposal will effectively provide technological facilities to its customers in order for those customers to systematically bring together *their* customers’ orders to interact with each

other, effecting a trade. Alpha's technology is merely technology; and by the Instrument's definition, the broker who uses Alpha's IntraSpread technology (or another vendors' technology) to bring together orders from its own clients and/or its own book, should be the Marketplace operator, not Alpha, which is merely the systems vendor.

This Marketplace would be offered by the broker exclusively to *its* customers, systematically internalizing against its own orders or crossing customer orders within the firm.

We believe that brokers who systematically internalize or cross the orders of multiple customers are effectively operating a Marketplace as defined in the Instrument.

Level playing field

The ATS rules exist to ensure a common set of standards and rules for Marketplaces, providing and balancing competitive choice with consistency to investors in the securities of companies who choose to list in Canada.

In our view, anyone who meets the criteria of the Marketplace definition in the Instrument, including brokers, should be able to operate crossing systems or to systematically internalize orders, whether they are using their own technology or technology provided for their sole use by a vendor (which may be another Marketplace operator).

As they are in the US and in Europe, we believe that all persons or companies in Canada who bring together multiple buyers and sellers automatically to interact with each other and agree to the terms of a trade should conform to the same rules. Therefore, we believe that brokers who intend to bring together buy and sell orders of their customers using Alpha's IntraSpread system, should be registered as and governed by the rules of a Marketplace as set forth in the Instrument.

Our understanding is that such registration would not restrict the ability of participating brokers to operate as proposed in the Alpha Proposal. But registration with equivalent oversight would contribute meaningfully to a fair and level playing field across market participants performing equivalent activities.

Transparency of Order Handling

If the Commission chooses to approve the Alpha IntraSpread facility as part of the Alpha Marketplace (and not as a Marketplace of the broker which is internalizing/crossing the orders of such broker's customers), we believe that investors should be informed in advance of a broker using such a non-traditional order type. We identify some issues which should be discussed with investors:

- Investors should be expressly informed that their active orders are not interacting with all possible contras in the Alpha Marketplace, and be aware that orders placed on the same Marketplace with another broker may receive a better price;

- Investors with passive orders should agree in advance on their IntraSpread limit, and be informed that they may see less-aggressively priced orders execute on Alpha before theirs; and
- Customers of dealers who use the IntraSpread facility should be advised when placing orders, that prints of trades in the same securities reported through Alpha at better prices would indicate a likelihood of additional dark liquidity available in those securities.

With respect to this last point, IIROC has expressed the view that *“a Participant in discharging its best execution obligation should consider possible liquidity on marketplaces that do not provide transparency of orders”*, and *“a Participant would be expected to make . . . arrangements [for access to a marketplace, through another Dealer] if the particular marketplace had demonstrated that there is a reasonable likelihood that the marketplace will have liquidity.”*¹

In order to comply with best execution, dealers observing prints from likely dark liquidity should route their orders in such securities to providers of that dark liquidity. It is important that dealers have in place the means to access those better-priced orders, and communicate to their customers how those orders will be directed to interact with the likely Dark Order of another dealer, i.e. via jitney, should the customer wish to obtain the better price.

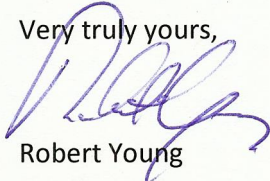
Finally, to help investors manage their execution costs, orders executed on Alpha’s IntraSpread facility should be clearly attributed, both using a broker ID (i.e. not “01”) and an IntraSpread flag, together explaining when the investor may have missed an opportunity to participate in a better priced trade offered by another contra party.

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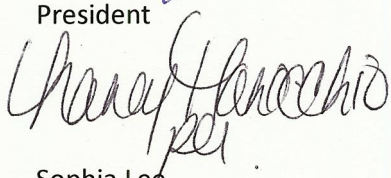
¹ IIROC’s Market Integrity Notice 2006-017 “Securities Trading on Multiple Marketplaces”, issued on September 1, 2006

We would like to thank the OSC and Alpha for providing us the opportunity to comment on the Alpha Proposal. Liquidnet welcomes the opportunity to discuss further any matters relating to the Alpha Proposal.

Very truly yours,



Robert Young
President



Sophia Lee
General Counsel