September 28, 2000

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Officer of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut
c/o Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1900
Toronto, Ontario
M5H 3S8

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

Dear Mr. Stevenson:

Re: Response To OSC Questionnaire On Proposed National Instrument 21-101 Marketplace Operation etc.

The Ontario Teachers' Pension Plan Board is responsible for the future retirement income of approximately 150,000 elementary and secondary school teachers, 75,000 retired teachers and their survivors, and 90,000 inactive teachers with entitlements in the plan. The plan is sponsored by a partnership between the Ontario government and the plan members, represented by the Ontario Teachers' Federation.

With assets of over $70 billion, the Ontario Teachers' Pension Plan is the country's largest single invested pension plan.

In its last annual report, the pension board published its asset-mix policy consisting of 65 percent equities, such as shares in public and private companies and equity-return derivative contracts; 20 percent fixed income securities, largely federal and Ontario government bonds and debentures; and 15 percent inflation-hedge investments such as real estate, real-rate bonds and commodity-return derivative contracts.

It is our view that the Fund's response to the questionnaire should be provided in two parts to reflect the differences between structural features of equity and fixed income markets. Our response for equity markets is provided by Morgan McCague, Senior Vice President, Quantitative Investments Department. Our response for fixed income markets is provided by Sean Rogister, Vice President and Brian Olds, Portfolio Manager, of the Fixed Income Department.

Equity Markets:

Question 1

Yes, the broker ID numbers should be collected by the consolidator. Unfortunately, there will be occasions when there is an investigation of some trades to determine if an illegal practice has occurred. The investigations will be aided if the investigators have a record of which brokers were engaged in transactions in the security being scrutinized. In addition, a record of broker ID's will enable enforcement authorities to develop screens to help spot patterns of activity that might warrant further investigation.

The broker ID's should also be disseminated by the data consolidator. Currently, when an institution wants to transact a large block of stock, one of the first things that it does is to determine which broker has been active in the stock. Frequently this is the broker that the trade is directed to. Without this information the institution would be forced to search for that broker and in doing so provide information to a number of market participants that the institution was interested in a particular stock. The effect of this could be that the price of the stock moves away from levels that it would have maintained if this information had not given away. Unfortunately many participants within the market love to gossip, when orders are given to a broker the identity of the institution giving the order frequently is passed about. If an institution is now forced to find the broker that has been transacting in a particular stock this information will spread even quicker than it does at present, and with it the guess-estimates of the size of the order. The impact of this type of speculation could create even more volatility in the marketplace than we have at present.

The customer should not be able to decide whether the broker ID is disseminated. If the customer has additional stock to acquire or sell, the broker with whom the institution is transacting will be in a better position to achieve a better fill if that broker receives calls from other institutional traders because they are aware that the broker is presently active in a particular stock. We cannot have a system where broker ID's are published with some trades and not with others. On a practical basis it will be easier for the data consolidator if there is one common approach. There is also a perception issue, these trades will attract more curiosity i.e., why is the ID not available? (Is it a broker laying off a position they have acquired with their own capital? Is it a broker acquiring a position for a takeover bid on behalf of a client?)

Question 2

The following comments are directed towards the regulation of equity markets. There are two primary avenues to market regulation:

1. Establish a separate market regulator independent of the exchanges and the ATS's. The cost of funding the regulator could be covered by imposition of a small tariff on trading. Every year the regulator would report to the CSA on its activities for the past year and its plans for the next year. Every three years costs of the regulator would be examined to determine if the regulator was functioning efficiently and if the tariff needed to be adjusted for the next three years. With respect to exchange concern over market integrity and their competitive brand name we have the following comments. First of all the marketplace has changed. The market has been subdivided with the Montreal Exchange, Toronto Stock Exchanges and the Canadian Equity Exchange. One regulatory system rather than several should help to improve the competitive position of the overall Canadian equity market. The competitive threat to the exchanges is that trading is moving to U.S. markets. In addition to the re-organization of trading that has occurred in the past year, the Toronto Stock Exchange has plans to demutualize and become a public for-profit corporation. This plan has implications for the regulatory function that the TSE currently performs.

   > What assurance will investors have that the regulation function will be carried out with the same diligence concerning trades by the major shareholder versus trades by other investors?
   >
   > Regulation and surveillance is a cost center. What assurance will investors have that that this important function will receive the resources required?

   A secondary and equally important consideration is to be positioned for changes that are occurring in the trading of equities. We are moving towards trading equities - globally. Exchanges in different countries are merging or forming alliances (we presently have a hostile takeover bid for the London Stock Exchange by the OM Gruppen AB). Nasdaq is attempting to become a global exchange. These changes plus the arrival of ATS's in Canada mean that the current status of exchanges will change. In this environment, regulation should be transferred to a body that will not be subject to the uncertainties that will be a fact of trading in the foreseeable future.

2. The exchanges potentially are in a conflict of interest with ATS's. Therefore if they continue to have a regulatory role it should be moved to a separate division or subsidiary.

Question 13

The sole exception to the cross interference rule should be based on the value of the block being handled: $100,000 for equities and 100 contracts for options.

Question 16

Yes, audit trail requirements should be established. This should be a given. The information obtained would be used to ensure that the Canadian equity market operates at a level that investors can have confidence in. The audit should collect information on all trades reported to the consolidator including the time, nature of a trade (buy/sell), the size of the trade, the broker executing the trade and the bid/ask at the time.

Question 17

The minimum audit trail requirements should be established by the CSA. A minimum standard is required. Investors must have confidence regardless of where they trade in Canada that there is a quality standard that is there to protect them.

Question 18

Yes

Question 19

The information should be sent to the data consolidator. A notation from the data consolidator could indicate that the transaction was an over-the-counter transaction.

Question 20

Before responding to the Questionnaire a general comment on the manifest assumptions in the questions is in order.

Here ends the response for equity markets. The response differs substantially from that for the fixed income markets.

Fixed Income Markets:

Fixed income and the associated derivative markets trade differently than equity markets. Major differences come from the characteristics of each market and position risks. Hedging requirements of issuers and the growing number of sophisticated players on the institutional investor side in the debt market necessitates short positions. Moreover, relative value is a more defined component in fixed income markets than in the equities markets because of the

math implicit in the pricing of securities. The values of fixed income securities are established, first, by the underlying Government of Canada yield curve, and second, by the spread of an individual security off that curve.

Obviously short selling rules do not apply. Disclosure of the names of participants is of little benefit from the point of view of corporate control. Publishing names and transactions could seriously damage liquidity in the fixed income markets because the potential counterparty to a hedging strategy will be reticent to take on a position if the position is to be revealed to the market.

The premise that transparency is of primary importance is wrong. Liquidity and the ability to derive a relative value analysis is of primary importance – real time dissemination of macro rates and relative corporate or derivative spreads along the curve provides this information. Transparency is only important in auction processes and dealing practices.

Fixed income markets are made up of institutional players. Due to the size of the trades there is a high capital barrier to entry to fixed income markets. Retail products are usually structured from bank retail operations using structures devised at the institutional level. Consequently the complexity and quantitative aspects of the products and market are well understood by the participants. Extensive regulation and trading rules to protect small players are already in place.

Because of these factors the underlying assumptions in the questions and the study does not reflect the fixed income markets as we participate in them.

Question 1

The question assumes brokers will facilitate all trades. This is not necessarily the case, nor is it desirable – a market place may be established that allows for direct client to client transactions. These C to C trades may or may not be on a name give-up basis. Commitment to traditional industry structures is not required at this stage. Fixed income positions tend to be larger than those in equities and control issues are not as relevant. Activity levels of identified participants should not be disseminated, other than perhaps activities in GOC securities by primary dealers.

Question 2

Market regulation for ATSs should not be provided by the IDA. Members of this group collectively act as principals and therefore would not be expected to act in an objective manner. Concerns for the fair treatment of all sides would be better answered by an independent body, such as the OSC.

Question 3

Further to the response to Q2, it is wholly inappropriate for the IDA to assume the role of market regulator for all participants in the debt market. This is a market of sophisticated investors, and many of whom do not feel well represented by the IDA. In general, institutional money managers should not be regulated or represented by investment dealers, their agents or organizations associated with them who are direct market competitors.

Question 4

Presentation of transactional information from an electronic marketplace in standardized and relatively liquid securities such as benchmark GOC bonds is sufficient. The debt markets lend themselves to an OTC environment. A requirement of full disclosure of all activities is not necessary and could substantially reduce the efficiency of the market. It may be worthwhile to have some information available to indicate the level of general interest rates ie: market activity in GOC bonds on the inter-dealer bond market. Regulators cannot hope to collect all information on activity in all debt securities. Swap market activity is a broad example.

Where information is available on blocks of illiquid securities its presentation should be limited to transactions of a minimum size, say blocks of $5 million + (plus) traded

Question 5

The market maker definition on page 408 is appropriate. But the statement that "the market maker model remains common today" is incorrect because few players today will commit to providing a bid and offer at all times. There are a wide variety of practices followed by fixed income investment dealers, and different spectrums of risk are assumed.

Question 6

The proposed obligation will work for orders the IDBs and ATSs have but not for others. The obligation to present all trade interest is extremely difficult to fulfill and not always applicable. There is too much information going on in fixed income markets because of the depth of derivative markets and the sophisticated nature of the investors to ensure the resultant information is useful. The dealers already have a vehicle for the presentation of market interests in IDB screens. These, along with that information available on ATSs, are enough.

Question 7

It will be impossible to enforce capturing even a small portion of pre-trade information in the fixed income markets. Pre-trade information from clients and dealers should be presented only at the request of those who would wish to post their interest.

Question 8

Post-trade information should consist only of summaries of transactions on IDBs or ATSs. Disclosure of all transactions in all debt securities is unfair since such information could easily be used to the investor's or dealer's disadvantage in illiquid securities without material benefit to the market (given regular intra day reporting of activity in liquid securities).

Question 9

Yes – on GOC benchmark bonds.

Question 10

A similar approach is advisable.

Question 11

No response.

Question 12

This prohibition is no longer appropriate. Activity on IDB screens is largely public in the today's debt markets anyway.

Question 13

The display of large block orders is not advisable.

Question 14

It is worthwhile displaying inside bids or offers. This requirement should only apply to participants who wish to show the market their interest.

Question 15

If the client does not wish a limit order to be displayed – of course this means the market in the security in which they have an interest can trade through their level.

Question 16

We would like to see examples of contemplated “special orders” to provide a comprehensive reply.

Question 17

See Question 16. In any case the establishment of requirements should be the responsibility of an independent agency, not the IDA.

Question 18

This is not applicable to debt markets.

Question 19

See Question 18.

Question 20

See Question 18.

Yours very truly,

Robert G. Bertram
Executive Vice President, Investments

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