

**Headnote**

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – relief from the requirement to engage one or more qualified external auditors to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices – relief subject to systems reviews similar in scope to that which would have applied to an independent systems review – National Instrument 21-101 Marketplace Operation.

**Applicable Legislative Provisions**

- Section 12.2 of NI 21-101; and
- Section 15.1 of NI 21-101.

**Citation: Re Instinet Canada Cross Limited , 2021 ABASC 13**

**Date: 20210129**

In the Matter Of  
the Securities Legislation of  
British Columbia, Alberta, Manitoba,  
Québec and Ontario  
(the **Jurisdictions**)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Instinet Canada Cross Limited  
(the **Filer**)

**Decision****Background**

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the requirements in the Legislation that the Filer, on a reasonably frequent basis and, in any event, at least annually, engage one or more qualified external auditors to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices (collectively, an "ISR") for each year from 2020 to 2021 inclusive (the **Exemptive Relief Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- (a) the Ontario Securities Commission ("**Commission**") is the principal regulator for this application, and

- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

### **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

### **Representations**

This decision is based on the following facts represented by the Filer:

1. Instinet Canada Cross Limited ("ICX") is a corporation established under the laws of Canada and its principal business is to operate an alternative trading system ("ATS") as defined in National Instrument 21-101 Marketplace Operation.
2. The head office of ICX is located in Toronto, Ontario;
3. ICX is a member of the Investment Industry Regulatory Organization of Canada, the Canadian Investor Protection Fund and is registered in each of the Jurisdictions in the category of investment dealer;
4. The ICX System is an ATS offering three order types – VWAP Cross, Conditional Orders and Continuous Block Cross – that do not affect the national best protected bid and best protected offer for the security traded<sup>1</sup>;
5. The ICX System is not connected to any other marketplace, and cannot affect another marketplace or be affected by another marketplace;
6. For each of its systems that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, ICX has developed and maintains:
  - reasonable business continuity and disaster recovery plans;
  - adequate internal controls over those systems; and
  - adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, cyber resilience, change management, problem management, network support and system software support.
7. In accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually, ICX:
  - makes reasonable current and future capacity estimates;

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<sup>1</sup> "Protected bid" and "protected offer" are defined in National Instrument 23-101 *Trading Rules*.

- conducts capacity stress tests to determine the processing capability of those systems to perform in an accurate, timely and efficient manner;
  - tests its business continuity and disaster recovery plans; and
  - reviews the vulnerability of the ICX System and data centre operations to internal and external threats including physical hazards, and natural disasters;
8. ICX's current trading and order entry volumes in the ICX System are substantially less than 1% of the current design and peak capacity of the ICX System and ICX has not experienced any failure of the ICX System;
  9. ICX's current trade volume is currently substantially less than 1% of total market activity on Canadian equities marketplaces;
  10. The estimated cost to ICX of an annual independent systems review by a qualified external auditor would represent a material impairment to ICX's business on an annual basis;
  11. The ICX System is monitored 24 hours a day, 7 days a week to ensure that all components continue to operate and remain secure;
  12. ICX shall promptly notify the Commission of any failure to comply with the representations set out herein; and
  13. The cost of an ISR is prejudicial to ICX and represents a disproportionate impact on ICX's revenue.

### **Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted provided that:

1. ICX shall promptly notify the Commission of any material changes to the representations set out herein, including any material changes to ICX's annual net income or to the market share or daily transaction volume of the ICX System; and
2. ICX shall, in each year from 2020 to 2021 inclusive, cause Instinet Incorporated to complete a review of the ICX System and of its controls, similar in scope to that which would have applied had ICX undergone an independent systems review and in a manner and form acceptable to the Commission, for ensuring it continues to comply with the representations set out herein and prepare written reports, of its reviews which shall be filed with staff of the Commission no later than (i) 30 days after the report is provided to ICX's board of directors or audit committee or (ii) the 60th day after the calendar year end.

DATED this 29<sup>th</sup> day of January, 2021

*“Tracey Stern”*

Manager, Market Regulation  
Ontario Securities Commission