The Bank of Nova Scotia
Global Equity
Scotia Plaza
40 King Street West, 68th Floor
Toronto, ON M5H 1H1

Scotiabank
GLOBAL BANKING AND MARKETS

August 23, 2021

Market Regulations Branch
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
marketregulation@osc.gov.on.ca

and

David Nolan
Chief Compliance Officer
MATCHnow
Equinix TR2, 45 Parliament Street, Suite 13155
c/o Cboe Flex Office #13155
Toronto, ON M5A 0G7
dnolan@cboe.com

Via Email

Re: Request for Comments – Proposed New Conditionals Offering

Scotiabank appreciates the opportunity to comment on the proposal by MATCHNow to introduce a conditional block-trading offering for Canadian buy-side clients operating under the sponsorship of a Subscriber (the "New Conditionals Offering" or the "BIDS Canada Model").

General Remarks

We are supportive of the principles behind the BIDS Canada Model as we believe it provides buy-side clients with flexibility and choice in how they seek block liquidity in Canadian equities. While the benefits of dark trading have been extensively debated, one common thread is a general recognition that block trading and size discovery benefit from various dark trading models, both electronic and traditional. To date, the Canadian landscape has seen relatively limited innovation in electronic models for multilateral block trading.

We believe that, the BIDS Canada Model (subject to certain specific issues of implementation) addresses several of the hurdles to the growth of electronic size discovery. Crucially, the proposed model carries the advantage of allowing investors to preserve their existing dealer relationships, including managing the issues of commission allocation and bundled payment for services. This aspect of the proposal is novel to Canada and represents a welcome middle road between direct access to

The Bank of Nova Scotia
Global Equity
Scotia Plaza
40 King Street West, 68th Floor
Toronto, ON M5H 1H1

liquidity and the practical aspects of dealer relationships. Ultimately, the proposed model offers clients choice and latitude, including options which may have previously not been available.

Given our overall support for the development of electronic block trading tools, and our assessment that the proposed model provides a reasonable approach to addressing the traditional challenges of creating electronic block markets, we support the model in principle. However, we offer certain implementation suggestions below.

Risk Management Framework

The New Conditionals Offering is structured in a manner that conflates a marketplace function (the New Conditions Offering) with a function that is the responsibility of a dealer (the contemplated risk controls discussed in the proposal). While the proposal appears to support compliance with requirements for dealers to maintain control over their DEA clients' activities, we believe in practice it introduces issues, which are avoidable (through a change to the system design) and where the requisite changes would, in our view, significantly simplify dealer adoption of the BIDS Canada Model.

First, by introducing an additional risk management framework used only for the BIDS Canada Model, MATCHNow would make it more difficult for dealers to run a single and unified risk management system for all DEA client activities. Quite simply, existing systems, which permit a unified pre-trade risk layer, would be bypassed in the BIDS Canada Model until after execution (when a drop copy becomes available). While this may be acceptable for some dealers' policies & procedures, there will be others where policies & procedures require a unified view. We believe that marketplace models should fit the practices of dealers (who bear responsibility for risk controls), rather than asking dealers to adapt their policies & procedures to fit the marketplace's preferred risk management suite.

Said differently, we do not believe it is best for a marketplace to dictate how their subscribers manage the risk of their clients' activities when accessing the marketplace. It is particularly concerning given that marketplaces do not take liability for system failures, which in this case could extend to failures within the risk management platform. The risk will be borne entirely by the dealer, but without the ability for the dealer to introduce their own preferred approach.

For dealers, MATCHNow's proposal is a de-facto risk technology vendor solution tied to a marketplace offering. To access the marketplace offering, dealers would be required to onboard the risk management offering provided by the same marketplace. This tie-in is unprecedented in Canada, as all past and present marketplace-sponsored risk tools have been strictly optional, and not a condition of access to a marketplace feature.

For many dealers, onboarding a de-facto risk technology vendor (in this case MATCHNow) is a rigorous process of vendor oversight, audit requirements, controls over private information, etc. This additional step of vetting, integrations and possible policy changes will be burdensome. These additional steps

The Bank of Nova Scotia
Global Equity
Scotia Plaza
40 King Street West, 68th Floor
Toronto, ON M5H 1H1

Scotiabank
GLOBAL BANKING AND MARKETS

will hinder adoption of the BIDS Canada Model in the Canadian marketplace, and increase costs for both dealers and MATCHNow (who would become routinely involved in dealers' periodic vendor audits and related activities).

Finally, the sponsored access model proposed would leave MATCHNow responsible for certain dealer functions that marketplaces do not currently perform, and which are dealer responsibilities. These include:

- Responsibility for managing the encryption and tagging of client LEIs on firm orders entered through the BIDS Canada Model.
- Responsibility for ensuring correct order marking, including insider & significant shareholder tags, which are currently handled through dealer risk management systems.
- Responsibility for compliance with dealer restricted lists or Cease Trade Orders.

While MATCHNow may offer tools to mitigate these issues, in practice we believe that Subscribers would remain responsible for these aspects and reliant on MATCHNow's risk tools or on the correct order marking practices of access persons for compliance.

In light of the above, we ask whether, if the model is approved, Canadian regulatory bodies would publish confirmation that the portions of UMIR which dealers lose explicit control over in this model would cease to apply to this flow?

Proposed Solutions

We believe the model as proposed – sponsored access with an integrated and stand-alone risk management system – unreasonably conditions and restricts access to the beneficial trading features being otherwise proposed in the BIDS Canada Model by imposing a significant compliance burden on sponsoring dealers, which cannot be addressed through dealers' existing workflows, since those workflows are being bypassed. Additionally, it sets a precedent for a sponsored access model in Canada which does not currently exist, without the rigorous and holistic policy development process which resulted in the establishment of National Instrument 23-103 and related UMIR provisions.

We believe that the above concerns can be resolved by amending the proposal to allow the following alternative workflow:

- All aspects of the BIDS Canada Model, up to the point of firm-up submission by the Subscriber, are preserved as follows.

The Bank of Nova Scotia
Global Equity
Scotia Plaza
40 King Street West, 68th Floor
Toronto, ON M5H 1H1

Scotiabank
GLOBAL BANKING AND MARKETS

- Upon submission of firm-up order by the subscriber, and selection of Sponsoring Subscriber, the Cboe LIS Powered by BIDS engine forwards the firm order to a dedicated connection to the Sponsoring Subscriber, for validation.
- Upon validation by the Sponsoring Subscriber, and in compliance with their existing policies & procedures related to DEA, the firmed up order is forwarded back to the Cboe LIS Powered by BIDS Conditional Engine, re-entering the flow in the Proposal at stage 7.
- All trade execution & post-trade activities remain unchanged.

We believe this workflow would provide a turnkey solution to dealers wishing to access the BIDS Canada Model without the added requirement of onboarding a separate & distinct risk management platform integrated into MATCHNow, and preserving their existing risk management processes. For dealers wishing to adopt the model as-is, and assuming the risks identified above, the existing tools may be provided as an option.

Further, the alternative workflow described above would preserve the essential elements of the model: pre-trade information on clients' interests remains invisible to the broader market, and clients' anonymity is preserved. The sponsoring dealer's DEA infrastructure would be aware of the firmed-up order only at the time of execution, which is contemporaneous with the existing proposal, where it is being provided via drop copy at the time of the firm-up.

This reduction to dealers' barriers to entry to the BIDS Canada Model could significantly ease adoption hurdles and lead to faster and more effective ramp-up of this marketplace innovation, to the benefit of clients.

We appreciate the opportunity to comment on this matter.

Respectfully,

Alex Perel, CFA
Head of ETF Services
Scotiabank Global Banking and Markets
(416) 862-3158
alex.perel@scotiabank.com