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VIA EMAIL

David Nolan

Chief Compliance Officer
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Re: TriAct Canada Marketplace LP (operating as MATCHNow) Notice of Proposed Amendments and Request for Comment – Introduction of New Cboe LIS Powered by BIDS ("Notice")

Dear Mr. Nolan:

Nasdaq CXC Limited ("Nasdaq Canada" or "we") welcomes the opportunity to provide comments on MATCHNow's proposal to introduce changes to its existing conditional orders supported by a new "large-in-size" trading technology, developed by BIDS Trading L.P. ("MATCHNow Proposal").

As a marketplace operator we believe that competitive forces drive innovation and lower costs – ultimately benefiting market participants. Recognizing the value of new innovative marketplace features we understand the MATCHNow Proposal, in its published form today, will introduce new trading tools to the Canadian equity market targeting use by the institutional investor community by assisting them to better source natural orders; a challenge that has become more difficult in a multiple marketplace electronic trading environment where liquidity is fragmented across venues. To foster robust long term competitive forces, it is essential that marketplaces are treated consistently and that new marketplace features receive the same level of regulatory scrutiny. Where regulatory concerns are raised about a new feature proposed by one marketplace, equivalent concerns should be raised, and consistent decisions should be made for similar features proposed by other marketplaces.

The importance of a market's fairness has been endorsed by the Ontario Securities Commission (OSC) in both the context of market structure policy reform and in the context of fostering a healthy competitive environment. Staff has made reference to fairness as an attribute of an efficient market when consulting on market structure developments such as the development of dark liquidity, internalization practices and the impact of the order protection rule. When proposing new policies, Canadian regulators have highlighted the importance of fairness in the market – defined as the perception, and reality, that all participants are subject to the same rules and conditions and that no one participant or group of participants has an unfair advantage or disadvantage.[1] While the importance of competition has been recognized as a contributing factor to market efficiency in the past, on April 27, 2021 legislative amendments were made to the Ontario Securities Act expanding the mandate of the OSC to explicitly include a responsibility to foster competitive markets in addition to those that are fair and efficient. Permitting competition between traditional exchanges and other marketplaces was the underlying purpose for introducing the ATS rules whose objective was to enhance market efficiency by providing investors increased choice of marketplace and trading tools. We believe that in order for this purpose to be fulfilled it is essential that marketplaces are treated fairly and that rules are applied consistently.

Nasdaq Canada recently published two proposals that did not receive regulatory approval because of staff concern that certain features were inconsistent with fair and efficient markets and fair access principles. We raise awareness about these proposals and related concerns because several features of these proposals are included in the MATCHNow Proposal.

FAIRNESS ISSUES RAISED BY SIZE PRIORITY

Earlier this year Nasdaq Canada proposed to introduce size priority for large orders meeting a minimum size threshold on the CX2 Trading Book ("CX2 Size Priority Proposal"). The MATCHNow Proposal includes a similar feature where the pro-rata matching priority model used today will be replaced with a broker/size/time priority model. As MATCHNow outlines in the Notice, this model will replace the existing one-to-many matching process with a primarily one-to-one matching process for all conditional orders.

In the context of the CX2 Size Priority Proposal, regulatory concerns were raised about the impact that size priority may have on a fair and orderly capital market as this priority allocation creates a winner-takes-all approach that can impede competition. Although the application of this priority matching model would apply equally to all marketplace participants subjecting them to the same rule and condition, an individual order may enjoy continuous matching priority that could disadvantage others.

While we recognize there are differences in the application of size priority in the context of lit and dark markets, we believe fairness concerns are accentuated for dark markets. A participant must incur the economic risk of execution by exposing an order "out loud" on a lit marketplace in order to secure execution priority. In contrast, a large size order is not exposed to the same level of execution risk because of the lack of pre-trade transparency on a dark market. In the case where size priority is used for matching conditional orders on a dark venue, execution risk is eliminated as the use of a conditional order is indicative in nature and not firm. Subscribers are free to cancel a conditional order even when contra-side liquidity is sourced, and a firm-up invitation is received. Another difference between the application of size priority on a lit venue versus dark is that information about the size of the order holding execution priority is made available to all participants giving them an equal opportunity to enter an order with a larger size if they want to gain execution priority.

While we believe that differences in the ability for participants to compete with one another is a natural result of competition, size priority raises other fairness concerns if a view is taken that all participants should

[1] Most recently cited in Joint CSA/IIROC Consultation Paper 23-406 – *Internalization within the Canadian Equity Market.*

be able to compete equally. A winner-takes-all model will provide advantages to larger buy-side participants and to the dealers that service them. Buy-side accounts managing more assets will be able to enter larger sized orders and trump the execution priority of smaller client orders entered first. Similarly, this model will advantage dealers with larger sized institutional clients that typically require a dealer to have access to more capital reserves and have made a greater investment in services in order to achieve greater scale. While this outcome is a natural result of competition, in the Canadian context it will accentuate the challenges for smaller sized dealers to compete.

CONCERNS ABOUT EXPLICIT SEGMENTATION

In 2020 Nasdaq Canada proposed to introduce new options on CXD for Members that use Minimum Acceptable Quantity and Minimum Quantity order types with Mid Peg Orders permitting certain contra-side orders that do not meet the minimum size parameter to be eligible to trade ("CXD Proposal"). These options included an exception for certified retail orders to trade regardless of the minimum size parameter that would result in price improvement for retail accounts and size improvement opportunities for institutional accounts. While these benefits were recognized by both industry and regulator, the CXD Proposal was not approved because of concerns about the ability for a particular class of participant to be excluded from the opportunity to interact with available liquidity by being able to selectively choose a class of trading counterparty. Staff historically has been of the view that exposure of liquidity to the widest variety of contra-side participants supports efficiency in the price formation and discovery process (on a pre and post trade basis) while also promoting investor confidence in the fairness of our market as a whole.

The MATCHNow Proposal includes an option for Sponsored Users (buy-side accounts) to selectively choose to exclusively interact with other Sponsored Users. While this option will likely benefit buy-side accounts, it will also restrict access to certain liquidity by other participants in addition to contributing to increasing segmentation of institutional order flow. While we understand the rationale for restricting access to buy side accounts in the MATCHNow Proposal, if staff's view that any corresponding benefit derived from restricted access does not outweigh the cost to the market as a whole, we expect this feature of the MATCHNow Proposal to not be approved.

We thank the OSC for the opportunity to provide comments and would welcome the opportunity to discuss our views further with MATCHNow or with staff.

Sincerely,

Nasdaq Canada