

**VIA ELECTRONIC MAIL**

July 16, 2019

Alberta Securities Commission  
Autorité des marchés financiers  
British Columbia Securities Commission  
Financial and Consumer Services Commission (New Brunswick)  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Nova Scotia Securities Commission  
Nunavut Securities Office  
Ontario Securities Commission  
Office of the Superintendent of Securities, Newfoundland and Labrador  
Office of the Superintendent of Securities, Northwest Territories  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Department of Justice and Public Safety, Prince  
Edward Island

c/o

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Ontario Securities Commission  
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Toronto, Ontario M5H 3S8  
E-Mail: [comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

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Dear Sirs and Mesdames:

**Re: CSA Notice and Request for Comment – Proposed Amendments to  
National Instrument 21-101 *Marketplace Operation* and Proposed  
Changes to Companion Policy 21-101CP *Marketplace Operation***

MATCHNow (also known as TriAct Canada Marketplace LP) is an Alternative Trading System (“**ATS**”) registered as an investment dealer in the provinces of Ontario and Alberta. We are grateful for this opportunity to comment on certain amendments (the “**Proposed Amendments**”) being proposed by the

Canadian Securities Administrators (the “**CSA**”) to National Instrument 21-101 *Marketplace Operation* (the “**Instrument**”), certain forms relating to the Instrument, and the Instrument’s Companion Policy 21-101CP *Market Operation* (the “**Companion Policy**”) (collectively, “**NI 21-101**”), recently published for public comment in the OSC Bulletin.<sup>1</sup>

**A. Streamlining reporting requirements**

i. Quarterly reporting of Housekeeping Changes

MATCHNow fully supports the proposal to move from monthly to quarterly filings of non-significant changes to Form 21-101F2 (commonly referred to as “Housekeeping Changes”<sup>2</sup>). While an ATS would be free to file Housekeeping Changes more frequently where appropriate or desirable, we agree that shifting from a 12-filings-per-year schedule to a 4-filings-per-year schedule will save time and resources for both the ATS and its regulators, by reducing some of the duplicative work that inevitably arises when amendment materials must be filed every month (as opposed to quarterly).

For similar reasons, we also appreciate the new proposed subsection (6) to section 3.2 of the Instrument. This new provision will expressly allow an ATS to incorporate by reference information contained in a previously-filed consolidated Form 21-101F2, where such information has not changed, thereby saving time and resources for both the ATS and its regulators. In fact, on the basis of the same rationale, we would encourage the CSA to go even further and adopt a similar provision, either within the Instrument, the Companion Policy, or elsewhere, expressly allowing incorporation by reference between and among Exhibits to any of the NI 21-101 forms with respect to information that is identical between or among specific Exhibits; this would also save time and resources, as well as avoid unintentional inconsistencies between or among Exhibits—for example, where updates to the text of one Exhibit are unintentionally omitted from the equivalent text of one or more other Exhibits.

ii. Changes to Exhibits C and D

MATCHNow applauds the CSA’s proposal to eliminate the requirement for an ATS to report (and, therefore, continuously update) certain corporate

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<sup>1</sup> See *CSA Notice and Request for Comment – Proposed Amendments to National Instrument 21-101 Marketplace Operation and Proposed Changes to Companion Policy 21-101CP Marketplace Operation*, (2019), 42 OSCB 3645 (Apr. 18, 2019).

<sup>2</sup> See *Process for the Review and Approval of the Information Contained in Form 21-101F2 and the Exhibits Thereto*, attached as Appendix A to an [order](#) issued by the Ontario Securities Commission on September 29, 2015, s. 2(d).

information, including historical employment information for its partners, directors, and officers and constating documents for its affiliated entities. As the CSA points out, filing this information has been burdensome for marketplaces, including MATCHNow, and it appears to provide little to no benefit in terms of regulatory oversight.

MATCHNow is also supportive of the amendments being proposed for Exhibit B to Form 21-101F2 that clarify the type of information required to be disclosed by ATs that are partnerships, as is the case for MATCHNow. The amendments will make it undeniably clear that the information that MATCHNow has been disclosing in Exhibit B for years is precisely what the form calls for. And although MATCHNow is not a corporation, we support the clarifications proposed for the owner (shareholder) information required to be disclosed by ATs that are corporations in Exhibit B to Form 21-101F2. Overall, the clearer distinction between ATs that are corporations and ATs organized in a different manner is helpful, as are the distinct descriptions for the information to be reported by these different entities, respectively.

iii. Streamlining of reporting in Form 21-101F3

MATCHNow fully supports the Proposed Amendments' simplification of Form 21-101F3, and in particular, the elimination of the requirement for an ATs to report details of trading activity for exchange-listed equity securities and exchange-traded funds ("ETFs"), details of the types of orders for such securities executed on the ATs, and details of the trading activity of the ATs' top-10 participants (based on the volume of securities traded), given that such information is also required to be reported by ATs to the Investment Industry Regulatory Organization of Canada. We agree that such duplicative reporting is unnecessary and inefficient, and the changes being proposed to Form 21-101F3 will eliminate this trading-related duplicative reporting that presently occurs under NI 21-101.

MATCHNow would further advocate for a streamlining of the filing process for all NI 21-101-related forms, including Form 21-101F2 amendment filings and annual consolidated filings. For example, to better manage the process on both sides, it would be desirable for the CSA to eventually adopt an online portal that would allow marketplaces to upload all new filings pursuant to NI 21-101, and allow the CSA to better index and manage the documents filed.

iv. Earlier deadline for Fee Change filings

MATCHNow is not opposed to the proposal to require an ATs to file an amendment to the information contained in Exhibit L (a "**Fee Change**") to its Form 21-101F2 fifteen business days before the intended implementation

date of the Fee Change, which is a longer notice period than the current seven business days. In our experience, staff of the Ontario Securities Commission generally requires approximately five to ten business days to review and approve Fee Changes, and that period may be even slightly longer during holidays. Thus, it makes sense to require ATSS to file Fee Changes with slightly more lead time than ten business days.

## **B. Financial reporting**

MATCHNow has no comment on proposed new section 4.3 of the Instrument or on any of the corresponding changes to the Companion Policy, as these proposed changes do not affect or pertain to MATCHNow (which is neither a recognized exchange nor a recognized quotation and trade reporting system).

## **C. Systems requirements**

### **i. New concept of “cyber resilience”**

MATCHNow has no objection to the Proposed Amendments to explicitly add “cyber resilience” to subparagraph 12.1(a)(ii) and subparagraph 14.5(1)(a)(ii) of the Instrument, as one of the necessary information technology general controls that an ATS must develop and maintain. MATCHNow has a robust Business Continuity Policy and Disaster Recovery Plan, with extensive procedural controls for addressing the types of considerations that we would expect to be encompassed in this new concept of “cyber resilience,” and we agree that an ATS’s need to ensure its computer systems’ integrity is paramount in the marketplace ecosystem in Canada.

Nevertheless, the term “cyber resilience” is not clearly defined in the Proposed Amendments, nor is it a term with a common or generally accepted definition. As such, MATCHNow requests that the CSA include a clear and measurable definition of “cyber resilience” within NI 21-101, which will enable MATCHNow to ensure that its existing internal controls will achieve the regulatory goal with respect to the new concept of “cyber resilience” and/or assist MATCHNow in designing and implementing new internal controls to achieve that goal.

### **ii. New concept of “security incident”**

MATCHNow has no objection to the expansion of the reporting requirements under paragraphs 12.1(c), 12.1.1(b), and 14.5(1)(e) to include the concept of “security incident”—which, as explained in the Proposed Amendments, is considered broader than the standard of “security breach” currently included in those provisions. We understand why the CSA wants to be apprised of

incidents that do not quite rise to the level of security “breaches,” but which are nevertheless material “incidents,” as such matters may warrant regulatory oversight. We also appreciate the guidance concerning the meaning of “security incidents” being proposed for paragraph 14.1(2.1) of the Companion Policy (which makes reference to the definition of the concept of “security incident” in use by the National Institute of Standards and Technology of the U.S. Department of Commerce). These changes, while theoretically expanding reporting obligations, will nevertheless permit ATs to continue to exercise reasonable business judgment and common sense when determining which security-related matters are “material” in nature and, therefore, required to be reported to regulators, as opposed to matters that are non-material and, therefore, non-reportable.

iii. New record-keeping and external assessment requirements

MATCHNow supports the proposed new requirements for ATs to keep records of any systems failures, malfunctions, delays, or security incidents and, if applicable, to document reasons why such matters were considered not to be material. MATCHNow also appreciates the enhancements made to the guidance in paragraph 14.1(2.1) of the Companion Policy concerning what constitutes a material system failure, malfunction, delay, or security incident; we also value the additional guidance in that same provision concerning the expected timing of the reporting of such occurrences and the requirements for a “post incident” review (or what MATCHNow refers to colloquially as a “post-mortem”). As a matter of course, and consistent with existing policies and procedures, MATCHNow already effectively monitors for systems failures, malfunctions, delays, and security incidents, is equipped to—and does actually—report promptly any such matters to regulators where material, and keeps meaningful records of such matters, which would include the reasons for any determination that a matter was not a material occurrence (and therefore is not required to be reported to regulators). We also conduct a “post-mortem” for each such occurrence, and report each post-mortem to our primary regulator (the Ontario Securities Commission) promptly. Consequently, the new requirements pose no issue for MATCHNow.

Furthermore, we understand why the CSA has decided to explicitly require such record-keeping. In particular, we believe that such records will act as an appropriate safeguard for both regulators and ATs: on the one hand, these records will ensure that information about a given security-related incident or similar matter, as well as information supporting an AT’s decision to report (or not to report) such a matter, is memorialized in a contemporaneous fashion and maintained for reference by regulators conducting routine examinations and other regulatory oversight activities; on the other hand, such records will also be available to marketplace management and

compliance personnel, leading to more well-reasoned and more consistent decision-making by ATs over time with respect to technology, reporting, and other business matters.

MATCHNow also supports the proposed amendment to section 12.1.2 of the Instrument to require every marketplace to periodically engage one or more qualified parties to perform appropriate assessments and testing to identify security vulnerabilities and measure the effectiveness of information security controls that assess the marketplace's compliance with paragraphs 12.1(a) and 12.1.1(a) of the Instrument. This is something that MATCHNow already does on a bi-annual basis. While the Proposed Amendments require that vulnerability assessments be done annually, in light of industry practice and the cost of these assessments, we would suggest making them a bi-annual requirement (rather than annual). We would also request that this new requirement, especially if it is to be annual, be adopted with an appropriate notice and implementation period, e.g. at least twelve months.

iv. Clarification of expectations regarding "qualified external auditors"

MATCHNow has no objection to the proposed amendments to subsection 12.2(1) and paragraph 14.5(1)(c) of the Instrument clarifying the CSA's expectation that ATs will engage one or more "qualified external auditors" (as opposed to simply a "qualified party") to conduct and report on independent systems reviews. We also welcome the clear and consistent guidance, in subsection 14.1(3) of the Companion Policy, concerning what constitutes a "qualified external auditor" (namely, "a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal controls in a complex information technology environment"). We also support the clarification in the Companion Policy of the CSA's expectation that, before engaging a qualified external auditor, an AT will discuss with the CSA its choice for qualified external auditor and the scope of the systems review mandate. In fact, these are procedures that MATCHNow already follows.

In the spirit of maintaining a level playing field, MATCHNow would further advocate that, in the event that any AT is granted an exemption from this requirement, this should be made public so that all users are made aware that the marketplace(s) in question is (are) not being reviewed by a qualified external auditor.

**D. Non-substantive changes**

MATCHNow has no objection to any of the non-substantive changes included in the Proposed Amendments.

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Thank you in advance for your consideration of MATCHNow's comments regarding the Proposed Amendments.

Yours truly,

A handwritten signature in black ink, appearing to read 'B. Blake', followed by a period.

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