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VIA EMAIL

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Attention: OSC Staff and Ms Pavalow

Re: Alpha ATS LP Notice of Proposed Changes and Request for Feedback on Alpha IntraSpread Facility (Revised Proposal)

We have reviewed the Revised Proposal. Although the Revised Proposal has been modified to remove the explicit exclusionary internalize-only feature, the Revised Proposal continues to operate as a dealer internalization model. TMX Group remains concerned that the Revised Proposal is designed to facilitate the selective matching of a dealer's retail order flow with its proprietary flow or other client order flow, rather than encouraging liquidity seeking opportunities, order exposure, order interaction, and fair access across all participants.

<u>Dealer Internalization</u>

As stated in the original TMX Group comment on the IntraSpread Facility, an internalization model supported at the marketplace level in Canada will lead to a two-tiered market, and will likely lead to weakened price transparency, decreased liquidity, and deteriorated price discovery on the visible marketplaces to the detriment of all investors. This threat is particularly pronounced in the Canadian market where retail order flow is concentrated among few dealers.

The Revised Proposal continues to support internalization practices by encouraging the redirection of retail flow away from the visible market to the exclusion of institutional investors and participants with less retail order flow. A practical result of the Revised Proposal is that, effectively, the only manner in which a liquidity provider posting dark liquidity will be able to effectively access retail order flow is by trading through the subscriber that owns that retail order flow. This encourages further concentration of order flow among a small group of dealers, and exacerbates a concern that TMX Group has been raising for some time.

Fair Access

Under the Revised Proposal, in theory, Seek Dark Liquidity (SDL) orders can interact with Dark orders from any Alpha subscriber. In practice, the structure of the Revised Proposal will significantly limit the likelihood of such interaction because matching will occur within those subscribers that support significant retail order flow, effectively preventing access by other subscribers to this retail flow.

The price improvement structure in the Revised Proposal will effectively result in dark orders booking at the same price, either at 10% of the spread, at the one trading increment cap, or at the mid-point. This effect becomes more pronounced on securities with wider spreads where giving up 50% of the spread through a mid-point order is not likely, resulting in all best priced dark orders resting at the $0.01 price improvement cap. By negating price priority, the broker preferencing feature within IntraSpread therefore becomes the deciding factor in fill determination. Any dealer, including one willing to offer a dark order at a better price or entering a dark order prior to another dealer's order, will have practically no opportunity to receive fill priority when attempting to access another dealer's SDL retail flow.

This combination of allocation/matching and price improvement and price cap restrictions will have the effect of severely limiting the opportunity for anyone other than the same dealer to interact with its retail order flow. This is particularly true in the Revised Proposal where SDL orders are retail orders and therefore, given their size, the likelihood of the SDL order needing to execute against more than a contra-side order from the same dealer in order to complete a fill, is extremely low. In addition, to further illustrate the internalization design and focus of the facility, by not permitting client-to-client matching of dark orders, the IntraSpread facility does not seek to maximize liquidity and execution opportunities to institutional investors or among those willing to trade with each other inside the spread, .

Meaningful Price Improvement

The Revised Proposal still permits fractional price improvement. In fact, the Revised Proposal encourages sub-penny executions by preventing price improvement of more than one trading increment for those not wanting to use a mid-point.

To reiterate TMX Group's position which has been repeated consistently over the past years, we believe that any dark trading, including internalizing features and practices, whether through a marketplace such as Alpha's proposed facility, or through a dealer's own systems, must provide meaningful price improvement over the displayed national best bid or offer (NBBO). It is critical that regulation encourages and supports the continued integrity and value of the visible market and price formation process by providing an incentive for the public display of liquidity. This requires internalized and non-displayed trading to provide meaningful price improvement over the displayed NBBO. Sub-penny price improvement is not adequate improvement to justify the yielding of priority of a previously posted visible quote. Meaningful price improvement should be required and enforced by regulators. On a review of the comments submitted in response to the CSA/IIROC *Position Paper 23-405 Dark Liquidity in the Canadian Market*, there appears to be wide support for the need to ensure meaningful price improvement on our markets.

As stated in our original submission, the mechanics of the Dark order and SDL order will permit dealers to execute on Alpha against their own client orders with less price improvement for the client than if the dealer had simply internalized the trade, because the UMIR rules that govern dealer internalization have the effect of requiring full tick price improvement, whereas the Alpha IntraSpread Facility permits executions at as little as one-tenth of one cent improvement. The Revised Proposal has not changed in this context. Therefore, these Alpha order types will enable dealers to do indirectly what they cannot do directly.

Sub-Penny Orders

As discussed above, the IntraSpread Facility allows for sub-penny price improvement. When there is a one cent spread on a stock, any orders within IntraSpread effectively become sub-penny orders, which is contrary to UMIR[1]. In MatchNow, which is a fully dark marketplace, these orders have been permitted, though this was established years ago through a non-public filing that was not subject to a comment period. Other continuous markets have effectively been allowed only half penny orders with their dark orders. The Revised Proposal continues to allow executions in IntraSpread in increments that are less than a half penny, which we believe to be contrary to the spirit of UMIR.

Last Sale Price

We do not agree with Alpha's position that executed trades in IntraSpread should not set the last sale price. In the Revised Proposal, Alpha advises that pegged orders have been treated like call market orders and compares its dark orders to MatchNow's orders. The rationale put forth in the Revised Proposal is flawed. The functionality of the order itself is not relevant for this purpose – it is the operation of the marketplace or facility (i.e. continuous or call market) that underlies the characterization of the order. The fact is that MatchNow is a call market. Alpha is a continuous market and the IntraSpread Facility similarly operates and matches dark orders on a continuous basis.

In UMIR, "Call Market Order" is defined as "an order for the purchase or sale of one or more particular securities that is entered on a marketplace on a trading day <u>to trade at a particular time or times established by the marketplace during that trading day</u> at a price established by the trading system of the marketplace."[2] (emphasis added). On a simple reading of this definition, the dark orders on Alpha are clearly not Call Market Orders because they can execute continuously throughout the trading day. To be considered Call Market Orders, the orders on IntraSpread would need to execute only at specific, pre-determined times during the day.

Conclusion

The modifications made to the IntraSpread Facility in the Revised Proposal do not address concerns regarding internalization or meaningful price improvement. TMX Group continues to believe that OSC staff should not approve the proposed Alpha orders as these order types have the effect of promoting dealer internalization at the expense of fair access to participants with less retail order flow, and at the expense of institutional investors. As we have stated previously, the unique composition of the Canadian trading market produces an unusually high

[1] UMIR section 6.1(1) Entry of Orders on a Marketplace. No order to purchase or sell a security shall be entered to trade on a marketplace at a price that includes a fraction or a part of a cent other than an increment of one-half of one cent in respect of an order with a price of less than $0.50.

[2] UMIR section 1.1 Definitions

concentration of retail order flow in relatively few dealers. The practical outcome of the Revised Proposal could very well be an increase in these levels of concentration and a pronounced two-tiered market, negatively impacting liquidity and price discovery across Canadian marketplaces.

We would be pleased to discuss our comments further at your convenience.

Yours truly,

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