

1.1.2 Notice – Variation of Exchange Recognition Orders, ATS Protocol, and Revocation of OSC Staff Notice 21-706

NOTICE

VARIATION OF EXCHANGE RECOGNITION ORDERS,  
ATS PROTOCOL, AND  
REVOCAION OF OSC STAFF NOTICE 21-706

Introduction

On August 31, 2020, the Commission made orders under subsection 144(1) of the *Securities Act* (Ontario) varying the Commission's orders recognizing TMX Group Limited, TSX Inc., Alpha Exchange Inc., Neo Exchange Inc., CNSX Markets Inc., and Nasdaq CXC Limited as exchanges.

The variation orders are the outcome of the Commission's initiative to reduce regulatory burden for the various regulated entities that it oversees. As indicated in the Commission's report *Reducing Regulatory Burden in Ontario's Capital Markets*, published November 19, 2019, the Commission committed to streamlining oversight of various regulated entities through revising and updating recognition orders with the goal of eliminating unduly burdensome and duplicative regulatory requirements.<sup>1</sup>

As part of this process, the Commission consulted with stakeholders to identify appropriate burden reduction opportunities for regulated entities. Several exchanges submitted comment letters following publication of OSC Staff Notice 11-784 – *Burden Reduction* on January 14, 2019 and opportunities for burden reduction for regulated entities were further identified and discussed during the Commission's burden reduction roundtable on May 27, 2019. Many of the changes made to the recognition orders respond to stakeholder feedback raised through these consultations.

The burden reduction changes to the Commission's orders recognizing TMX Group Limited, TSX Inc., Alpha Exchange Inc., Neo Exchange Inc., CNSX Markets Inc., and Nasdaq CXC Limited (**Exchange Recognition Orders**) are also tied to the Commission's commitment to reduce regulatory burden for regulated entities through revisiting burdensome or unnecessary requirements in certain rules. The Commission has recently amended National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) to remove burdensome and duplicative reporting requirements for marketplaces.<sup>2</sup> The changes to the Exchange Recognition Orders and the amendments to NI 21-101 will work together to streamline regulatory requirements for marketplaces and eliminate the duplication of requirements for exchanges, while maintaining a robust regulatory framework for the Commission's oversight of marketplaces.

The changes to the Exchange Recognition Orders are described in further detail below. Also described are corresponding changes made to the *Process for the Review and Approval of the Information Contained in Form 21-101F2 and the Exhibits Thereto* (**ATS Protocol**) as well as the revocation of OSC Staff Notice 21-706 – *Marketplaces' Initial Operations and Material System Changes*.

The variations of the Exchange Recognition Orders and the ATS Protocol, together with the revocation of OSC Staff Notice 21-706, will take effect on September 14, 2020.

**Exchange Recognition Orders**

The changes to the Exchange Recognition Orders are intended to reduce regulatory burden by streamlining reporting and other requirements that do not sufficiently support the Commission's oversight of the exchanges, eliminating requirements duplicated by the requirements for marketplaces in NI 21-101, and eliminating unnecessary constraints on the operations of the exchanges.

Notable changes to the Exchange Recognition Orders include:

- Eliminating terms and conditions imposed directly on the significant shareholders of an exchange;
- Streamlining financial reporting and financial viability requirements to eliminate duplication with similar requirements in NI 21-101; and
- Eliminating unnecessary constraints on exchange operations, including requirements for Commission pre-approval of changes to cost allocation models, reorganizations of businesses or operations, and outsourcing arrangements.

The orders varying the Exchange Recognition Orders are published in Chapter 2 of this Bulletin.

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<sup>1</sup> Revising the terms and conditions of exchange recognition orders to remove burdensome and duplicative reporting requirements for exchanges is identified as initiative M-1 in the report.

<sup>2</sup> Amending NI 21-101 to remove burdensome and duplicative reporting requirements for marketplaces is identified as initiative M-5 in the report.

## ATS Protocol

The Commission also varied its order, dated September 29, 2015, requiring each of CanDeal.ca Inc., EquiLend Canada Corp., Instinet Canada Cross Limited, Liquidnet Canada Inc., MarketAxess Canada Company, Omega Securities Inc., Perimeter Markets Inc., and TriAct Canada Marketplace LP to comply with the ATS Protocol.

The primary purpose of the changes to the ATS Protocol is to conform its requirements to recent changes made to NI 21-101, including the requirements that changes to Exhibit L of Form 21-101F2 be filed 15 business days before implementation and that non-significant changes to Form 21-101F2 be filed quarterly rather than monthly. Changes have also been made to the process for the Commission's review and approval of fee changes made by alternative trading systems (ATSS) to conform to similar changes to the *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto (Exchange Protocol)*. Lastly, the ATS Protocol has been changed to reflect the revocation of OSC Staff Notice 21-706, described below.

The Commission's order varying the requirements of the ATS Protocol is published in Chapter 2 of this Bulletin.

## OSC Staff Notice 21-706 – Marketplaces' Initial Operations and Material System Changes

By way of this notice, Staff is also revoking OSC Staff Notice 21-706 – *Marketplaces' Initial Operations and Material System Changes*, effective September 14, 2020.

The purpose of the staff notice is to provide guidance regarding information and timing requirements associated with the launch of new marketplaces and the implementation by existing marketplaces of material changes to their trading-related systems. In Staff's view, much of the guidance in the staff notice has been superseded by requirements in NI 21-101 and the Exchange Protocol and the ATS Protocol (together, the **Protocols**) and is no longer necessary. In particular, as part of the changes to the Exchange Recognition Orders and the ATS Protocol described above, the Protocols have been revised to clarify the requirements associated with the implementation of material systems changes by marketplaces and the kind of information marketplaces are required to provide to the Commission in support of the proposed timing for the implementation of material systems changes.