



January 29, 2021

**VIA EMAIL**

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**Re: TSX Inc. Notice of Proposed Amendments and Request for Comment – Proposed Alternative Closing Price (“Notice”)**

Dear Mr. Chen:

Nasdaq CXC Limited (“Nasdaq Canada” or “we”) welcomes the opportunity to provide comments on the TSX and TSX-V (Exchanges) proposal to incorporate an Alternative Closing Price (ACP) into its Incident Guidelines to be used in the event of a critical service interruption to trading resulting from a system failure (Proposal). We agree that the current use of the last board lot sale price on the Exchanges when trading has been interrupted negatively impacts market integrity by not reflecting the true value of securities determined by the price discovery mechanism when it continues to function while trading takes place on other marketplaces. Using consolidated last sale information from all marketplaces to determine the official closing price will benefit market participants by establishing a more accurate last sale price used for benchmarking purposes including the calculation of TSX-listed indices.

We believe that the Proposal’s use of consolidated market data is consistent with, and appropriately reflects, the application of the fair access rules set out in National Instrument 21-101 (NI 21-101) which require marketplaces to not unreasonably prohibit, condition or limit access to the services it provides.<sup>1</sup> We also believe that the reciprocal use of market data by marketplaces is required for marketplaces to maintain a fair and orderly market and in turn serves to provide investors choice of marketplaces and trading tools they use to execute trades which was a stated objective of NI 21-101.<sup>2</sup> Current examples of the reciprocal use of market data by marketplaces include market data used to calculate the NBBO and in turn comply with

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<sup>1</sup> Subsection 5.1(1) of National Instrument 21-101.

<sup>2</sup> Notice of Proposed Amendments to National Instrument 21-101 Marketplace Operation and Companion Policy 21-101CP and National Instrument 230101 Trading Rules and Companion Policy 23-101CP. (2006) 29 OSCB 5735

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Order Protection Obligations, pricing and re-pricing pegged orders and determining the price of mid-point executions.

We believe that where the reciprocal use of market data by marketplaces is not permitted, that any such restriction represents a violation of Canada's fair access principles – marketplaces, like other market participants, should be able to access other marketplace market data subject to commercial terms. For example, on April 21, 2015 the Commission approved changes proposed by Chi-X Canada ATS to introduce a market on close order type that referenced the listing exchange closing price to execute trades.<sup>3</sup> Commenters expressed unanimous support for the proposal. However, this new order type was not introduced because a required contractual permission for the use of market data from the listing exchange was not granted. Highlighting the inconsistency of this decision is the fact that the closing price was made available to other participants for similar use-cases. We strongly believe that marketplaces should not be restricted from accessing other marketplaces' market data (subject to commercial terms), and that marketplaces should not be able to arbitrarily choose who can, and who cannot, use the same market data product for the same reasons under the same commercial terms.

We recognize the ACP proposal as a positive development that will enhance the Canadian markets integrity and in turn help to strengthen investor confidence. We thank the OSC for the opportunity to provide comments and would welcome the opportunity to discuss further our views with staff.

Sincerely,

Nasdaq Canada

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<sup>3</sup> [https://osc.gov.on.ca/en/Marketplaces\\_ats\\_20150430\\_nca-pro-changes.htm](https://osc.gov.on.ca/en/Marketplaces_ats_20150430_nca-pro-changes.htm)