Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2   Marketplaces

13.2.1   TSX Inc. – Notice of Proposed Amendments and Request for Comments

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TSX INC.

**NOTICE OF PROPOSED AMENDMENTS
AND
REQUEST FOR COMMENTS**

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TSX Inc. ("**TSX**") is publishing this Notice of Proposed Amendments and Request for Comments in accordance with the "Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto".

Market participants are invited to provide comments. Comments should be in writing and delivered by June 21, 2021 to:

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Denno Chen
Director, Regulatory Affairs
TMX Group
100 Adelaide Street West, Suite 300
Toronto, Ontario M5H 1S3

Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:
Market Regulation Branch
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Email: marketregulation@osc.gov.on.ca

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Comments will be made publicly available unless confidentiality is requested. Upon completion of the review by staff at the Ontario Securities Commission ("**OSC**"), and in the absence of any regulatory concerns, a notice will be published to confirm approval by the OSC.

Background and Rationale

Conditional orders are not new to the trading industry. Conditional orders enable users to search for liquidity in multiple venues while representing their orders on TSX as conditional. Users can attach one or more criteria to an order that must be satisfied before the order can be 'firmed up'. If a counterparty order meets the criteria, the user will be invited to 'firm up' and commit their order. Conditional orders will allow dealers to electronically disseminate interest to buy or sell a large sized order without a firm commitment.

TSX anticipates that the Amendments will provide participants with the opportunity to seek price improvement on large size orders while minimizing market impact. The nature of the Conditional Orders (as defined below) minimizes information leakage, and therefore should reduce any negative impacts that may otherwise be applicable when a participant attempts to transact a large sized orders.

Details of Amendments

TSX proposes to introduce a conditional order type that must have a minimum size ("**Global Minimum Size**") of either (a) greater than 50 boardlots and greater than $30,000 in value, or (b) greater than $100,000 in value (each, a "**Conditional Order**"). TSX will create a new order book for Conditional Orders (the "**Conditional Order Book**"), and Conditional Orders will not interact with orders in the visible Central Limit Order Book. The ability to enter Conditional Orders will start at 7:00 am ET and end at 4:00 pm ET (the "**Conditional Order Period**").

When there is a potential match in the Conditional Order Book, each applicable participant who entered a Conditional Order will receive an invitation to 'firm up' the desired size and price at which they wish to trade. Participants will have 0.5 seconds to 'firm up' their orders. All 'firmed up' orders in the Conditional Order Book will execute at the mid-point price of the protected National Best Bid and Offer (the "**mid-point**"). Subject to the Opt-in (as defined below), any remaining unfilled portion of the Conditional Order (a "**Remaining Order**") will be cancelled.

Participants may also, at their election, opt-in to have their Remaining Order interact with TSX's dark book (the "**Opt-in**") with price improvement. If there are no matches in the dark book for the Remaining Order, the Remaining Order will be cancelled.

Orders in the Conditional Order Book will be allocated first to offset orders from the same participating organization (i.e., broker preferencing), and then on a pro rata basis.

During the Conditional Order Period, CFOs and CXLs will be allowed.

All unmatched Conditional Orders will expire at the end of the Conditional Order Period.

Participants may also elect to opt-in to have their dark orders (each, a "**Dark Order**") interact with Conditional Orders (a "**Dark Order Interaction**"). If a participant has opted-in to have its dark orders interact with a Conditional Order, such dark order (1) must meet the Global Minimum Size, (2) will not receive an invitation 'firm up', and (3) will execute at the mid-point if there is a contra side Conditional Order match**.**

TSX will have the ability to suspend a participant's ability to enter Conditional Orders if TSX determines, in its sole discretion, that Conditional Orders are being misused. In particular, TSX will monitor participants' Score (as defined here). If a participant (by Trader ID) does not maintain a threshold percentage (the "**Threshold**") Score, TSX may, in its sole discretion, suspend a participant's ability (by Trader ID) to enter Conditional Orders for one trading day (a "**Suspension**"). A score will be calculated based on the aggregate firm volume 'firmed up' by a participant over the aggregate Conditional Order volume entered by such participant (the "**Score**"). TSX anticipates that legitimate trades on other marketplaces that reduce the 'firm up' volume will be excluded from the Score calculation. Prior to a Suspension, participants will be alerted by TSX if their Score falls below the Threshold. TSX anticipates that Suspensions will, initially, be applied to the trading day immediately following the day on which the Threshold is breached, and Suspensions may, in the future, be applied intraday. Repeated breaches of the Threshold may result in longer periods of Suspension. Commencing on the date of implementation of Conditional Orders, TSX will undertake a 90-day assessment period whereby it will such time to analyze usage and patterns of Conditional Orders to better determine an appropriate Threshold, and an appropriate number of orders to use for the Score calculation. TSX may, in its sole discretion, amend the Threshold or the number of orders to use for the Score calculation, from time to time, to minimize misuse of Conditional Orders. Any change in the Threshold will be communicated to participants. TSX anticipates that it will provide participants with quarterly reports on their usage and Score.

Below is an example of the how the Amendments would operate:

Conditional Order to Conditional Order

Conditional Order book				
NBBO Mid-point 10.01				
Order	**Broker**	**Volume**	**Side**	**Price**
1	A	40,000	Buy	10.01
2	B	50,000	Buy	10.01
3	C	75,000	SELL	10.01

Step 1 – Invitation

- Orders 1 and 2 are eligible for an Invitation to Firm up and Buy

- Order 3 is eligible for an Invitation to Firm up and Sell

Step 2 – Firmed up order confirmation

- Orders 1 and 2 sends a Firmed up response for full Buy Volume, cancel residual volume

- Order 3 sends a Firmed up response for full sell Volume, cancel residual volume

Step 3 – Pro-rata allocation and resulting trades at Mid-point price 10.01

- Calculation for pro-rata allocation (being [Individual orders/total buy volume] x total sell volume)

Total Buy Volume = 90,000		
Total Sell Volume = 75,000		
Order	**Broker**	**Resulting Trades** **(partial fills are rounded to the nearest boardlot as per TSX's rules)**
1	A	partial fill for 33,300 shares (being [40,000 shares / 90,000] x 75,000)
2	B	partial fill for 41,700 shares (being [50,000 shares / 90,000] x 75,000)
3	C	full fill for 75,000 shares

Orders 1 and 2 residual untraded volumes are cancelled back to Brokers if they have not opted-in for the dark book.

Remaining Order Opting-in to Interact with Dark Order

Conditional Order book				
NBBO Mid-point 10.01				
Order	**Broker**	**Volume**	**Side**	**Price**
1	A	40,000	Buy	10.01
2	B	50,000	Buy	10.01
3	C	75,000	SELL	10.01

Dark Order book				
NBBO Mid-point 10.01				
Order	**Broker**	**Volume**	**Side**	**Price**
4	D	10,000	SELL	10.01

Step 1 – Invitation
- Orders 1 and 2 are eligible for an Invitation to Firm up and Buy

- Order 3 is eligible for an Invitation to Firm up and Sell

Step 2 – Firmed up order confirmation
- Order 1 sends a Firmed up response for full Buy Volume, opt-in residual sweep dark

- Order 2 sends a Firmed up response for full Buy Volume, cancel residual volume

- Order 3 sends a Firmed up response for full sell Volume, cancel residual volume

Step 3 – Pro-rata allocation and resulting trades at Mid-point price 10.01

- Calculation for pro-rata allocation (being [Individual orders/total buy volume] x total sell volume)

Total Buy Volume = 90,000		
Total Sell Volume = 75,000		
Order	**Broker**	**Resulting Trades** **(partial fills are rounded to the nearest boardlot as per TSX's rules)**
1	A	Partial fill for 33,300 shares in Conditional book (being [40,000 shares / 90,000] x 75,000) Remainder fill for 6,700 shares in dark book
2	B	Partial fill for 41,700 shares (being [50,000 shares / 90,000] x 75,000)
3	C	Full fill for 75,000 shares
4	D	Partial fill for 6,700 shares

Order 1 opted-in to trade with the dark book. Remaining Order sweeps dark book.

Order 2 residual untraded volumes are cancelled back to Broker as they have not opted-in for the dark book.

Dark Order Opting-in to Interact with Conditional Order

Dark Order book					
NBBO Mid-point 10.01					
Order	**Broker**	**Volume**	**Side**	**Price**	**Opt-In**
1(booked)	A	10,000	Buy	10.01	True
4(booked)	D	5,000	Buy	10.01	False

Order 1 is a Passive DRK Midpoint order that has opted-in to interact with the conditional book.

Conditional Order book				
NBBO Mid-point 10.01				
Order	**Broker**	**Volume**	**Side**	**Price**
2	B	15,000	Sell	10.01

Step 1 – Invitation

- Order 1 meets the global minimum size and issues an invitation to order 2.

Step 2 – New DRK order Arrives (Invitation outstanding)

NBBO Mid-point 10.01					
Order	**Broker**	**Volume**	**Side**	**Price**	**Opt-In**
3(Active)	C	1,000	Sell	10.01	NA

New DRK active order arrives during the period where the invitation has not expired, and is still outstanding. Firm DRK orders will execute against DRK orders that have issued an invitation to the conditional book. Order 1 has time priority over order 4 and receives a partial fill for 1000, and order 3 receives a full fill.

Order	Broker	Resulting Trades (partial fills are rounded to the nearest boardlot as per TSX's rules)
1	A	Partial fill for 1,000
3	C	Full Fill for 1,000

Step 3 – Conditional order firms

Order 2 firms for full sell volume, and Opts to sweep DRK. Order 1 still meets global minimum size and is fully executed against the firm conditional order 2. Order 2 receives 9,000 share partial fill.

Total Dark MP Buy Volume = 9,000		
Total Conditional Sell Volume = 15,000		
Order	**Broker**	**Resulting Trades (partial fills are rounded to the nearest boardlot as per TSX's rules)**
1	A	Full fill for 9,000 shares
2	B	Partial fill for 9,000 Remaining 6,000 sweeps DRK and is executed against order 4
4	D	Executes against order 2 for a full fill of 5,000

Expected Date of Implementation

The Amendments are expected to be implemented following receipt of regulatory approval, and are anticipated to be implemented in Q4 2021.

Expected Impact

The Amendments are expected to have a positive impact on market participants. The Amendments are anticipated to provide market participants with the opportunity to seek price improvement on large size orders while minimizing market impact. As such, participants who utilize Conditional Orders may see price improvement for their large size orders.

Expected Impact of the Amendments on TSX's Compliance with Ontario Securities Law

The Amendments are in compliance with Ontario securities laws and do not impact fair access to markets or the maintenance of fair and orderly markets.

TSX has applied to the OSC for an exemption order in respect of the requirement in subsection 7.1(1) of National Instrument 21-101 – *Marketplace Operation* ("**NI 21-101**") that requires a marketplace that "displays" orders of exchange-traded securities to provide accurate and timely information regarding orders for the exchange-traded securities displayed by the marketplace to an information processor (the "**Pre-Trade Information Transparency Requirement**"). In a Dark Order Interaction, the invitation sent to the Conditional Order could be considered to be a "display" of the Dark Order that generated it, and could be subject to the Pre-Trade Information Transparency Requirement, which is at is at odds with the anticipated benefits and appeal of using Conditional Orders and Dark Orders. Therefore, to the extent that the benefits of a Dark Order Interaction conflict with the Pre-Trade Information Transparency Requirement, TSX has applied to the OSC, in its capacity as principal regulator, for an exemption order pursuant to section 15.1 of NI 21-101 in regards to the Pre-Trade Information Transparency Requirement.

In support of its exemption application, TSX has noted that:

(a)   the Dark Order Interaction will be limited to the Global Minimum Size;

(b)   the Dark Order Interaction only becomes available if a participant has opted-in to have its Dark Orders interact with a Conditional Order, and such opt-in must be done on an order-by-order basis;

(c)   when an invitation is provided to the participant who entered the Conditional Order in a Dark Order Interaction, such invitation will only provide symbol and side (i.e., buy or sell), of the Dark Order. The size of the Dark Order may be inferred since the Dark Order Interaction will be limited to the Global Minimum Size. However, such inference will not be precise;

(d)   when an invitation is provided to the participant who entered the Conditional Order in a Dark Order Interaction, the participant receiving the invitation will be unable to determine whether the contra size order is another Conditional Order or a Dark Order; and

(e)   there can be no guarantee that the participant who entered the Conditional Order will 'firm up' the invitation in a Dark Order Interaction.

Furthermore, the mechanism TSX intends to implement to minimize misuse and cancellations of the Conditional Orders align with the policy objective of fair access to pre-trade information.

Estimated Time Required by Members and Service Vendors to Modify Their Own Systems after Implementation of the Amendments

Participants will need to adjust their trading workflows and strategies to benefit fully from the Amendments. As certain other Canadian marketplaces already provide for conditional orders, TSX anticipate that the technological changes for participants will be minimal as participants' technology may already contemplate entering conditional orders. TSX does not anticipate that service vendors would need to make any technology changes.

Do the Amendments Currently Exist in Other Markets or Jurisdictions

Conditional orders already exist in Canada. Liquidnet, MatchNow, and Instinet currently provide for conditional orders on their respective marketplaces.

APPENDIX A

BLACKLINE OF AMENDMENTS TO TSX RULE BOOK

<u>PART 1 - INTERPRETATION</u>

[…]

(2) In all Exchange Requirements, unless the subject matter or context otherwise requires:

[…]

<u>"Conditional Order" means a non-committed order entered in the Conditional Order Book that generates an invitation to send a firm order when there is a contra side match.</u>

> <u>Added ([●], 2021)</u>

<u>"Conditional Order Book" means the non-displayed electronic file that holds Conditional Orders. Orders in the Conditional Order Book must meet a minimum size determined by the Exchange and approved by the applicable regulator, from time to time.</u>

> <u>Added ([●], 2021)</u>

[…]

<u>DIVISION 13 - Large Sized Orders</u>

<u>Rule 4-1301 - Conditional Orders</u>

(1) <u>Conditional Order Entry</u>

 (a) <u>Conditional Orders may only be entered, cancelled, or modified in the Conditional Order Book on each Trading Day from starting from 7:00 a.m. and ending at 4:00 p.m. Remaining Conditional Orders will expire at 4:00 p.m.</u>

 (b) <u>A Conditional Order may specify a minimum order quantity that must be satisfied in order to receive a contra side invitation.</u>

 (c) <u>Participating Organizations may opt-in to have interaction between Conditional Orders (or residuals thereof) and dark orders.</u>

 (d) <u>When there is a match with the contra side of a Conditional Order, and the conditions (if any) are satisfied, an invitation will be sent to the Participating Organizations to accept the order and execute the trade. Invitations will not contain information regarding the contra side's price and quantity. Participating Organizations must accept the invitation within the time specified by the Exchange, as such may be changed from time to time. If no invitation is accepted within the specified time for a Conditional Order, no trade will occur.</u>

 (e) <u>Conditional Orders will execute at the mid point of the protected National Best Bid and Offer. Where a Participant has opted-in, any residual volume of a Conditional Order will interact in the dark book with dark price improving liquidity.</u>

 (f) <u>Notwithstanding anything to the contrary in this rule book, Conditional Orders entered for execution in the Conditional Book will be allocated as follows:</u>

  (i) <u>to offset orders entered in the Conditional Book by the same Participating Organization; then</u>

  (ii) <u>on a pro rata basis.</u>

 (g) <u>If the Participating Organization has elected to opt-in for interaction with the Exchange's dark book, any residual quantity will be subject to the allocation priorities for the Exchange's dark book. If no match is found within the dark book, the residual quantity will be cancelled.</u>

 (h) <u>Where a dark order has opted-in to interact with a Conditional Order, such dark order (1) must meet a minimum size determined by the Exchange, from time to time, (2) will not receive an invitation 'firm up', and (3) will execute at the mid-point if there is a contra side Conditional Order match.</u>

(2)   Misuse of Conditional Orders

    (a)   If, in the sole opinion of the Exchange, an Approved Trader is misusing Conditional Orders, the Exchange may:

        (i)   temporarily or permanently suspend an Approved Trader's ability to enter Conditional Orders; or

        (ii)   impose terms and conditions, as the Exchange may determine appropriate, from time to time, on a Participating Organization or an Approved Trader for its use of Conditional Orders.

Added ([●], 2021)