

February 15, 2013

Alberta Securities Commission
Autorité des Marchés Financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission
Registrar of Securities, Department of Justice, Northwest Territories
Registrar of Securities, Government of Yukon Territories
Registrar of Securities, Prince Edward Island
Registrar of Securities, Legal Registries Division, Department of Justice, Nunavut
Saskatchewan Securities Commission
Superintendent of Securities, Newfoundland and Labrador

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin,
Corporate Secretary
Autorité des Marchés Financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
E-mail: consultation-en-cours@lautorite.qc.ca

Re: Request for Comments on the CSA Staff Consultation Paper 21-401 *Real-Time Market Data Fees*

Dear Sirs/Mesdames:

Chi-X Canada ATS Limited (“Chi-X Canada” or “we”) welcomes the opportunity to comment on CSA Staff’s Consultation Paper 21-401 Real-Time Market Data Fees (“Consultation Paper”). We commend CSA Staff’s approach in consulting with the industry as a first step to address the very important issue of whether or not to introduce any additional regulatory tools or adopt a framework to regulate real time market data fees. We believe that by taking this approach the CSA will be able to obtain some of the information it needs in order to decide if any further action is necessary. We also believe that continuing to seek additional information is important to complete a full understanding of the issue and to avoid any unnecessary regulatory intervention which could impact the competitive landscape in Canada for marketplace services. The effects of competition are undeniable, as we have seen with level 1 data fees

dropping over the last 4 years not only in Canada but also in places like Australia where competition has been introduced.

We believe that it is more important than ever for the CSA to take a measured approach when considering any new regulation as it will not only have direct implications for the competitive landscape in Canada but also may set a precedent for other jurisdictions as well. As already demonstrated by the CSA on other regulatory initiatives, the decision on whether or not to intervene in this area is another opportunity to demonstrate thought leadership and reason to its international peers.

As previously mentioned, we believe that the Consultation Paper should be considered as a first step in the analysis of market data fees. Although the Consultation Paper mentions Feed fees and non-professional user fees, the scope of the analysis is limited to professional end user fees for equity securities, and is limited to marketplace commercial policies within Canada only. Given the scope and scale of certain marketplaces in Canada, revenues are not only generated from equity trading and market data services but also from other asset classes such as derivatives. In order to complete the CSA's analysis we believe that a holistic and comprehensive approach needs to be taken looking at all fees for all on-exchange traded products and across all user types. From a policy perspective, should multiple trading platforms offer trading services for derivatives; similar issues will likely emerge and would be affected by any decision made by the CSA to regulate equity market data fees. From a commercial and competitive perspective, it is important that any economic impact that could result from new regulation for market data for equity trading is not cross subsidized by an increase in market data fees for other asset classes or cross-border increases in data fees.

Finally, we note that although the methodology used in the cost analysis made of each marketplace based on market share appears reasonable, that the numbers presented for certain marketplaces have changed significantly due to changes in market share since 2011. In the case of Chi-X Canada we have increased our market share from 7% in the period of analysis to almost 15% today. We believe that a more recent period should be used for analysis to more accurately represent the cost of market data today and that trends in market share should be considered in any determination of reasonability.

Given the complexity of the issues raised in the Consultation Paper, we have chosen to provide our comments as follows:

- History of market data fees charged by Chi-X Canada;
- Concern with the current regulatory model;
- Response to issues raised in the Consultation Paper relating to the cost of market data; and
- Proposed action for CSA to take going forward

History of Market Data Fees Charged by Chi-X Canada

Chi-X Canada ATS began operating in February 2008 when it became the second lit Alternative Trading System ("ATS") in Canada to offer trading services in TSX listed securities. After introducing the first marketplace Smart Order Router, a decision was made to expand the universe of Chi-X Canada traded securities in June 2011 by offering trading of TSX-V listed securities. Understanding that certain costs are incurred by the industry with the addition of a new marketplace, we have always believed that a balance needs to be struck between value provided by a service and its associated fee. Keeping this philosophy in mind, we only introduced market data fees for TSX listed securities for the first time in February 2011, 3

years after the marketplace launched. At that time, we were the last marketplace to charge for market data although being the third largest marketplace.

Without a transparent regulatory model for approving market data fees and while being in a competitive disadvantage by foregoing market data revenue being charged for market data by other marketplaces, we decided to introduce market data fees for TSX listed securities. Our market share was 7% in the month preceding the implementation of these new fees and increased to 8% the month the fees were introduced. The level of these fees has not changed since implementation despite the fact that our market share has doubled over the period. Applying a similar approach to TSX-V market data fees, we waited almost 18 months to introduce new fees for these securities at a significantly lower price than TSX fees and proportionate to our market share of this family of listed securities.

The following beliefs are inherent in the approach that was taken:

- given the added costs to participants by the introduction of new market data fees, a marketplace should justify the value of its market data by achieving a certain threshold of market share deemed to be significant;
- after achieving a certain level of market share a marketplace's market data should be recognized as significant warranting charging fees for its provision;
- the approval process by the CSA should consider changing trends in market share to ensure that they are not overpriced due to a falling trend and discriminatorily low due to a growing trend;
- by considering trends in market share in the approval process, marketplaces would be able to charge fair prices while participants could more accurately forecast costs

We believe that these principles should underlie any framework the CSA may consider introducing.

Concern with the Existing Regulatory Approach to Market Data Fees

As outlined in the Consultation Paper, currently any decision made by the OSC whether or not to approve any new marketplace fee or change in an existing fee is made with consideration of compliance with the fair access rule set out in subsection 5.1(1) of National Instrument 21-101. As outlined in the Consultation Paper, this rule requires that marketplaces must not unreasonably prohibit, condition or limit access to their services. Given the concerns from the dealer community we understand the need for the regulator to intervene. However, we believe that the application of the fair access rule has expanded beyond its original intention and that the approval process being based on it has become inconsistent with a fair access standard.

Canada's fair access rule that was introduced as part of the Marketplace Rules permitting the entry of ATS's and other alternative marketplaces to compete with the legacy exchange following a similar rule introduced earlier in the United States in Regulation ATS. The original intention of this rule was to ensure that no marketplace would prohibit access to quotes and trading on its marketplace in order to guarantee that all participants had access on fair and equal terms. The expansion in the scope of this rule to apply to marketplace fees should require a determination of reasonability and not be overly prescriptive. In addition, by taking this approach the OSC has de facto become a fee regulator. This is a significant divergence with what has been done in the past. We note that the objection of setting a fee cap for trading fees within the context of the Order Protection Rule ("OPR") was explained due to the inability of the OSC to regulate fees. We do not necessarily object to this approach; however we note that a different

analysis is necessary to make determinations of which fees may be reasonable and which may not.

It is a delicate balance when deciding to introduce regulation for any commercial product as such regulation can significantly impact the natural competitive market forces that result in price setting by service providers. Intervention of any kind can have consequences that in turn can stifle or create an imbalance of pricing power between competitors. Still, we agree that for certain products some regulation is necessary in order to protect against inefficiencies in pricing due to manipulation, collusion, or exploitation that may detrimentally impact the efficiency of the market and the ability to access certain services.

We concur with the Consultation Paper that certain regulation should be in place. For this reason we are not opposed to the OSC expanding the fair access rule to marketplace fees. However we believe this rule should not be applied by taking an overly prescriptive approach but instead should result in making single determinations of reasonability. In the context of market data fees we believe that under the rule, a certain threshold or cap should be introduced to prevent a grossly unreasonable fee. We also believe that the methodology for setting this kind of threshold or cap should be transparent to both the marketplace and its participants. Marketplaces will need to consider setting their fees under the cap and the competitive environment. Participants will be able to know what maximum level of fees could be permitted and in turn should be in a better position to forecast costs.

We welcome the opportunity to propose that such an approach be taken going forward as it is not our experience that approvals have been made based on an approach of what is unreasonable but instead using a prescriptive formula determining the specific fee that can be charged. The lack of transparency regarding the methodology used by the regulator has resulted in a longer and more inefficient approval process as marketplaces have been asked to explain why a proposed change is reasonable and in accordance with fair access without knowing what criteria is being used by the regulator to determine reasonability. Going forward we believe that if the CSA, after its information gathering process is complete, still believes that added regulation is necessary then we would suggest that a methodology behind a cap be created and published for comment to hear the industry views and to ensure all parties are able to ascertain the level of the cap.

Response to Issues Raised in Consultation Paper Relating to the Cost of Real Time Data

Part IV of the Consultation Paper sets out three major themes relating to the cost of real time market data. We have provided our views below addressing each of the three issues.

1) Market Data Fees are too high

We commend the research and presentation of the global comparison of real time market data fees across several jurisdictions and support the CSA's conclusion that the cost of real time market data in Canada is fairly priced in relation to its international peers. Although no two markets are identical due to differences in their competitive landscapes, regulatory frameworks and size, we believe that this comparative approach is accurate and fair. It is important to note that despite differences in regions that have an order protection rule and those that do not, the price of the data is relatively the same. Should the CSA decide to implement any new regulation, there is a risk that this balance may be disturbed which in turn may threaten the quality of the market data being produced. We would encourage the CSA to consider this

risk.

2) Participants are a "Captive Market"

It may be true that although OPR does not require dealers to consume all lit marketplace data, in practice there is a small segment of professional traders that do require this data in order to compete and to comply with the order protection rule. However, this segment may represent only a small portion of the aggregate cost of the market data fees paid by the dealer.

It is an unfair representation that the majority of market data users demand or require consolidated real time market data in order to fulfill their regulatory requirements; a large number of data consumers only view indicative quotes from a single market today. As a result, it is normal practice for these customers to subscribe to either one or only a few marketplaces for a level 1 market data or request a number of single quotes that do not aggregate to the monthly fee for a level 1. These customers are empowered to decide which and how many market data venues they need and therefore are able to determine their aggregate market data costs.

It is often argued that sufficient competitive forces do not exist in order to prevent a marketplace from arbitrarily setting an unreasonably high fee for its market data. We do not agree. Although the need may exist for institutional traders to consume consolidated real time market data from all lit marketplaces, as mentioned previously, other participants such as investment advisors are empowered to choose which market feeds to subscribe to. This decision will largely be influenced by two factors; the relevance of the marketplace data determined by overall market share or market share in a specific sector or class of securities, and the price. These two factors create natural competitive forces that place important limits on what a market can charge professional users. If a market is not relevant to a user it will be unable to charge a very high price for its data. Similarly, the price that is charged for market data must be taken into consideration with prices charged by other marketplaces.

3) Transparency of Fee Proposals and Fee Models

One of the questions asked in the Consultation Paper is whether marketplace fee proposals and fee models should be transparent and published for public comment prior to approval. Currently, marketplace fee changes are exempt from this requirement even though they are considered a significant change. The rationale for this exemption is that the publication of a proposed fee change has a detrimental impact and can unfairly penalize the first mover advantage while rewarding a competitor that follows. As it is not reasonable to expect a fixed time period for a regulatory review given differences in the complexity of analysis of different fee changes and fluctuating staff resources given changing demands; it would be highly likely that at times a marketplace attempting to introduce a fee change may have to wait to implement the change while a competitor implements either a similar change or a proposed fee change in response to its own published proposed change first. In addition, we would ask what value the comment period would have given the clear agenda of different stakeholders. It is fair to conclude that dealers would not be supportive of any fee that would add to their costs and competing marketplaces would comment based on their assessment of the competitive impact of another marketplaces change. For both of these reasons we do not see value in the proposal.

We are highly supportive of making existing fees transparent. Customers should be able to ascertain a list of fees in order to price compare and also to facilitate understanding of different fee models charged by

different customers. It is not unusual for customers to be surprised at having to pay a fee they did not know existed which is perceived to be a hidden charge and may have influenced their decision to have signed an agreement that hold them responsible for payment. We also support this type of transparency for enterprise agreements. In order to ensure that customers are treated fairly and equally, the methodology used to qualify for a wholesale discount should be understandable and apply to any customer that qualifies based on the calculation.

Options Proposed to Address Market Data Fee Issues

As stated in the previous section we do not agree that the three groups of issues related to the cost of real time market data are in fact issues that need to be addressed. Still, should the CSA decide to change the current regulatory environment and consider implementing one of the 8 proposed options set out in the Consultation Paper; we encourage consideration of the following points that are raised in the options proposed:

1) The difficulty of a "core data" product

The creation of a "core data" product is problematic and unlikely to achieve the stated objective. Practically the definition of "core data" will clearly not be static and if it entails marketplaces needing to undertake development in order to create this standalone product in the first instance and then maintain and update it in addition to their standalone offerings it seems likely that the objective of it being made available at a lower price would be undermined.

2) Using thresholds or caps

As stated previously we believe that a marketplace must justify the value of its market data before introducing fees for provision. We therefore support option 2 that data fees should be capped for all marketplaces until they reach and maintain a market share above a certain level. This would prevent a marketplace from being able to continue to operate because of market data revenues even though its product offering lacks the traction to add meaningful value to participants. If the fair access rule is continued to be used it should only be used to make determinations of reasonability and not overly prescribe fee levels. In addition, growth trends should be considered instead of static data points in the methodology used to determine these levels.

3) Publication of Amendments to Marketplace Pricing Models and Fee Changes.

Please see explanation above in previous section for our view on this issue.

Proposed Action for CSA to Take Going Forward

Given our view that a balance needs to be struck between value provided by a service and its associated fee we believe that a minimum standard level of market share should be exceeded in order for a marketplace to charge for market data. We believe that by introducing this new requirement that marketplaces will have to compete on performance for trading services and that it will remove a subsidy that exist today from market data fees that do not bring value to participants. We note that this view runs contrary to our own interests as Chi-X Canada has announced that it will begin operating its second market, CX2 Canada ATS on May 3, 2013. Still, given our core belief that there needs to be a balance between the value of services and fees charged, we are comfortable being held to the same standard that would impact several existing marketplaces today.



We would like to thank the CSA for the opportunity to respond to the Rule Proposal and welcome a meeting to discuss our submission with the staffs.

Sincerely,

Chi-X Canada