

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – relief from subsection 7.1(1) of National Instrument 21-101 *Marketplace Operation* to permit TSX Inc. to implement a new functionality that allows for the interaction between conditional orders and firm dark orders.

Applicable Legislative Provisions

- Section 7.1 of NI 21-101
- Section 15.1 of NI 21-101
- Sections 3.4 and 3.6 of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*

Citation: Re TSX Inc., 2021 ABASC 176

Date: 20211118

In the Matter of
the Securities Legislation of
Ontario, Quebec, British Columbia, and Alberta (the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
TSX Inc. (the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from the requirement in subsection 7.1(1) of National Instrument 21-101 - Marketplace Operation (**NI 21-101**) to provide accurate and timely information regarding orders for the exchange-traded securities displayed by the marketplace to an information processor as required by the information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider in respect of a Dark Order Interaction (as defined below) (the **Exemptive Relief Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 - Definitions have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

The Filer

1. The Filer is a corporation existing under the Business Corporations Act (Ontario).
2. The Filer's head office is in Toronto, Ontario, Canada.
3. The Filer is an exchange recognized by the Ontario Securities Commission, and a wholly-owned subsidiary of TMX Group Limited.
4. The Filer operates the Toronto Stock Exchange.
5. The Filer is not in default of securities legislation in any jurisdiction.
6. The Filer proposes to introduce a trading functionality whereby participants may enter a non-committed order that generates an invitation to send a firm order when there is a contra side match (each, a **Conditional Order**).

Conditional Orders

7. The Filer 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.
8. Conditional Orders must meet a minimum size determined by the Filer and approved by the applicable regulator, from time to time. As of the date of this Order, a Conditional Order must have a minimum order size (the **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.
9. The ability to enter Conditional Orders will start at 7:00 am ET and end at 4:00 pm ET (the **Conditional Order Period**).
10. 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 must accept the invitation within the time specified by the Filer, as such may be changed from time to time.

11. 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.
12. Participants may also, at their election, opt-in to have their Remaining Order interact with the Filer'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.
13. 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.
14. All unmatched Conditional Orders will expire at the end of the Conditional Order Period.
15. A participant may also elect to opt-in to have its dark orders interact with a Conditional Order (a **Dark Order Interaction**). In order to do so, the dark order (1) must meet the Global Minimum Size, (2) will not receive an invitation to 'firm up', and (3) will execute at the mid-point if there is a contra side Conditional Order match.
16. Only the participant who entered the Conditional Order can see the size of the order and the price, which they entered, and the contra side of a Conditional Order will not have any visible information.

Policy Rationale

17. The lack of visibility to the contra side of a Conditional Order will give participants the opportunity to seek price improvement on large size orders while minimizing market impact. If the Filer is required to comply with the pre-trade transparency in subsection 7.1(1) of NI 21-101, the anticipated benefits of Conditional Orders would be lost.
18. Guidance in subsection 5.1(4) of Companion Policy 21-101CP (**21-101CP**) outlines criteria that the securities regulatory authority may consider in granting an exemption from the pre-trade transparency requirements in subsection 7.1(1) of NI 21-101.
19. The Filer believes that the Exemptive Relief Sought can be granted because:
 - (a) a Dark Order Interaction will be limited to the Global Minimum Size;
 - (b) a 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 the 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 side 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.
- (f) In addition, subsection 5.1(4) of 21-101CP provides that, in granting an exemption, the securities regulatory authority may consider whether each order entered on the marketplace meets the size threshold set by a regulation services provider as provided in subsection 7.1(2) of NI 21-101. As of the date of this Order, no size threshold has been set. However, the Filer believes that the Global Minimum Size is an appropriate size threshold for an exemption contemplated in subsection 5.1(4) of 21-101CP.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted provided that:

- (a) A Dark Order Interaction will only apply to dark orders for which a participant has affirmatively consented to using the functionality.
- (b) A dark order will only be eligible for a Dark Order Interaction where it meets the Global Minimum Size.
- (c) An invitation to firm up through a Dark Order Interaction conveys only symbol and side as known order elements; information about price or quantity is not conveyed and may only be inferable without precision.
- (d) An invitation to firm up through a Dark Order Interaction does not enable the recipient to determine whether the contra-side liquidity is immediately actionable.
- (e) The Filer will test the Dark Order Interaction feature prior to implementation to ensure the functionality works as designed.
- (f) The Filer will analyze the impact of the Dark Order Interaction feature and will share the results with the Decision Makers. The manner and format of the analysis will be agreed to with staff of the Decision Maker no later than 90 days after the signing of this decision.

“Tracey Stern”

Manager, Market Regulation
Ontario Securities Commission