

August 17, 2015

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority (Saskatchewan)  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission (New Brunswick)  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon  
Superintendent of Securities, Nunavut

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> Floor, Box 55  
Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
comments@osc.gov.on.ca

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Re: Proposed Amendments to the Companion Policy to National Instrument 23-101 *Trading Rules*  
(NI 23-101)

Dear Sirs/Mesdames:

Chi-X Canada ATS Limited (“Chi-X Canada” or “we”) welcomes the opportunity to provide comments on the Canadian Securities Administrators (CSA) proposed amendments to NI 23-101 (Proposed Amendments) which if implemented will not recognize marketplaces that apply systematic processing delays (speed bumps) as protected for Order Protection Rule (OPR) purposes.

In our response to Alpha Exchange Inc.’s (Alpha) proposed changes, which among other things included the introduction of a speed bump for all active orders, we stated that although we disagree with limitations or restrictions being placed on access to marketplaces, we did not see a reason why other marketplaces such as Alpha could not introduce other competitive offerings given the OSC’s approval of Aequitas Neo Exchange.<sup>1</sup> At that time we also recommended that any marketplace that chooses to implement restrictions on access should not be recognized as a protected marketplace for OPR purposes. We

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<sup>1</sup> [http://www.osc.gov.on.ca/documents/en/Marketplaces/com\\_20141205\\_chi-x-canada.pdf](http://www.osc.gov.on.ca/documents/en/Marketplaces/com_20141205_chi-x-canada.pdf)

therefore are supportive of Proposed Amendments that will fairly and equally apply to all marketplaces that choose to support a speed bump.

Given the Aequitas precedent, we believe the decision to introduce a speed bump is now a commercial decision where the risks, including the potential that the marketplace may not be protected, are known considerations ahead of time. In the case of Alpha, its objective is to implicitly segment the market and attract retail orders where posted liquidity will be of sufficient size to provide for full execution. As outlined by many commenters to the Alpha proposal (including Chi-X Canada), this feature creates issues for institutional sized orders that sweep multiple venues. The speed bump decreases the ability for active orders to access passive orders resting on Alpha because it gives participants the ability to fade their orders in response to information gathered from orders being executed at the same price level by the same dealer on other marketplaces. To address this issue we believe that not protecting Alpha and other marketplaces that employ speed bumps is the best decision at this time as it offers dealers' choice whether or not to send orders to Alpha and be forced to be subjected to greater uncertainty. Although we recognize complexities are created by the introduction of non-protected visible marketplaces operating alongside protected marketplaces (two NBBOs, locked markets etc.), given the Aequitas precedent we acknowledge these as the natural consequences of permitting a limitation to access in the first place.

We also support the proposal to not protect a marketplace that applies a speed bump only to a class of market participant. We believe that all participants should have access without limitation or restriction in order for OPR to apply.

In its approval notice of Alpha's proposed changes published on April 21, 2015, the Ontario Securities Commission (OSC) included a term and condition where Alpha would be approved only if it was unprotected under OPR in Part 6 of NI 23-101.<sup>2</sup> We understand Proposed Amendments as the CSA's effort to formalize the policy decision made under this rule review into the National Instrument. In 2010 the TMX in its response letter to Alpha ATS Limited Partnership's (Alpha ATS) proposal to introduce the Intraspread facility made the point (which we agree) that public policy should not be made in the context of a rule review.<sup>3</sup> Although a notice for public comment for significant changes is now required for both ATSS and exchanges, and in consideration of the time the public policy process can take to complete, we would have liked to have seen proposed amendments for the policy issues raised by Alpha's proposed changes before approval was granted. This being said, we encourage the CSA to follow the public policy process outside of a rule review for significant policy developments going forward.

Finally, in the past, whether or not we have agreed with a regulatory position, we believe it is essential that the position is applied fairly and equally to all marketplaces. Given recent developments where 1) Alpha was approved without protected status and that 2) Proposed Amendments now stand to formalize the CSA's policy position how any marketplace that apply speedbumps will be treated for OPR purposes, we believe that any other marketplace that operates a speed bump on its marketplace should also not be protected. We entrust that the CSA will ensure this will be the case in September with Alpha's new launch.

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<sup>2</sup> [http://www.osc.gov.on.ca/en/Marketplaces\\_alpha-exchange\\_20150421\\_noa-proposed-changes.htm](http://www.osc.gov.on.ca/en/Marketplaces_alpha-exchange_20150421_noa-proposed-changes.htm)

<sup>3</sup> [http://www.osc.gov.on.ca/documents/en/Marketplaces/com\\_20100817\\_alpha-ats\\_tmx.pdf](http://www.osc.gov.on.ca/documents/en/Marketplaces/com_20100817_alpha-ats_tmx.pdf)



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We thank you for the opportunity to provide comment and would be happy to our positions further with you in person.

Sincerely,

Chi-X Canada