

Nasdaq CXD

NOTICE OF APPROVAL OF PROPOSED CHANGES

In accordance with the *Process for the Review and Approval of the Information Contained in Form 21-101F2 and the Exhibits Thereto* (Protocol), on July 26, 2016, the Commission approved significant changes to Form 21-101F2 to reflect the introduction of Nasdaq CXD, a dark trading facility. The approval of the midpoint Post Only functionality is subject to the completion of a review, which was published for comment on July 7, 2016.

A notice requesting feedback on the changes relating to the introduction of CXD was published to the Commission's website and in the Commission's Bulletin on May 5, 2016 at (2016), 39 OSCB 4359. Four comment letters were received. A summary of the comments prepared by Nasdaq, together with Nasdaq's responses, are attached at **Appendix A**.

Nasdaq CXC Limited is expected to publish a notice regarding the intended implementation date of the approved changes.

Appendix A

NASDAQ CXD SUMMARY OF COMMENTS AND RESPONSES

The following is a summary of comments received in response to Nasdaq CXD's Notice of Proposed Changes and Request for Comment (Notice) published on May 5, 2016 with responses to these comments. Since the publication of the Notice, Nasdaq CXD (CXD) has continued to seek out customer feedback on the proposal and in response has made the following changes to the original proposal:

- Trading Hours – CXD will be open for trading during primary trading hours from 9:30 a.m. through 4:00 p.m. The original proposal included trading hours from 8:30a.m. through 5:00 p.m.
- Order Types – CXD has removed the NCX2 Sweep Order (NCSO) from its offering

We would like to clarify that CXD will not accept new orders or modifications made to existing order during a trading halt. Cancellations are permitted. The Notice originally stated that CXD will accept new orders and modifications made to existing orders during a trading halt.

Commenters

We received four comment letters in response to the Notice. Commenters reflected views from two dealers, one marketplace and one professional trade association; ITG Canada Corp. (ITG), National Bank Financial Inc. (NBF), Triact Canada Marketplace LP (Triact) and the Canadian Securities Traders Association (CSTA).

ISSUE	COMMENTS AND COMMENT	Nasdaq CXD RESPONSE
Clarity around the priority of CX2 lit orders over CXD dark Orders	NBF – We believe that there is precedence within other ATSS and Exchanges to operate multiple independent books within one banner however would appreciate some added clarity from regulators. ITG – The proposed	The definition of a marketplace in National Instrument 21-101 includes an exchange, a QTRS and a person or company that provides a market for bringing together the orders of buyers and sellers of securities using established, non-discretionary methods under which the orders interact. In the case of an ATS, a legal entity must be registered as an investment dealer.

	<p>changes to Nasdaq CX2, appear to be in fact the introduction of an entirely new unique marketplace that is not connected with CX2, beyond sharing a common ownership. If the new dark pool, CXD were in fact connected to CX2, it would be subject to various aspects of the Canadian dark trading rules [and] would be similar to the relationship IntraSpread had with Alpha.</p> <p>CSTA – We note that as proposed, CX2 and CXD are seemingly a single marketplace, with CXD as a “facility” or “separate book” of the broader Nasdaq CX2 ATS. We therefore believe that the same priority model introduced by Alpha IntraSpread should apply: lit orders on CX2 should be filled in priority to dark orders on CXD.</p> <p>Triact – If Nasdaq CXD is operated as part of the Nasdaq CX2, IIROC Rule – Provisions Respecting Dark Liquidity must apply, otherwise it is in violation of UMIR.</p>	<p>The important issue with regard to the application of UMIR 6.6 is not whether or not a separate legal entity is registered to operate each trading book or which form is filed for regulatory purposes but rather whether or not the trading book operates independently of all other trading books operated by that legal entity.</p> <p>CXD is intended to operate completely independent of the CX2 lit book. The reason it has been described as part of the CX2 trading facility and included in the CX2 Form 21-101F2 is simply a regulatory filing decision. Given its independence from CX2 UMIR 6.6 which requires that lit orders on a marketplace be displaced before dark orders on that marketplace is inapplicable.</p>
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<p>Trading Hours outside primary trading hours</p>	<p>NBF – NBF take exception to the proposed market hours of 8:30 – 5p.m. as the PNBBO is not a reliable pricing mechanism prior to 9:30 a.m. or after 4:00 p.m.</p> <p>ITG – We would suggest that CXD’s proposed trading hours – 8:30 – 5 p.m. – create the need for a discussion around the appropriate reference price post the “market close.”</p>	<p>We have amended the Proposal to only support trading hours for CXD during primary trading hours between 9:30 a.m. and 4:00 p.m. We note however that mid peg orders were never intended to operate prior to 9:30 a.m. or after 4:00 p.m. (as is the case for both Nasdaq CXC and Nasdaq CX2 pegged orders today). The reason for the extended trading session was to allow intentional crosses and permit participants to enter hidden limit orders outside of regular trading hours if these orders would assist in meeting their trading objectives.</p>
<p>Support of the NCSO sweep order within a dark pool</p>	<p>ITG – We are concerned by the introduction of a sweep order type within a dark pool. The notion of a dark market, that executes trades relying only on pricing imbedded in the active order, without considering quotes from any of the lit venues doesn’t offer any obvious advantages <i>and</i> introduce(s) real concerns around the fairness of pricing and the potential competitive responses from other markets.</p> <p>CSTA – We fundamentally believe that it is inappropriate for a dark marketplace to</p>	<p>We have amended the proposal to remove the NCSO from the offering.</p>

	<p>relinquish its responsibility of independently verifying the PNNBO or UNBBO at the time of a trade and do not believe that it should be permitted.</p>	
<p>Estimated Time Required for Subscribers and Vendors to make changes to their systems is underestimated.</p>	<p>Triact – If our understanding is correct that the CXD will be launched on a separate technology, in a separate data center, the “Estimated Time” grossly underestimates the development effort and technological dependencies for market participants to connect, develop, test and certify to a new marketplace technology.</p>	<p>CXD is scheduled to launch in October 2016. It will be operated on INET technology and hosted at Equinix’s TR2 data center. At launch and until the completion of the Nasdaq CXC migration, access to the CXD trading book will only be made available from the Equinix TR1 data center and therefore will not require any connectivity changes by participants. There are no changes to the market data specification used today and only a minor and optional change is being made to the FIX order entry specification. Taken together we believe this approach will require limited testing and minor changes by participants. This explains our 3 – 4 week estimate for participants to make changes to their systems. We note that as CXD is a dark book and not a protected market, no subscriber is obligated to connect to the market.</p> <p>As a regulated entity Nasdaq CXC Limited is required to meet and will meet all regulatory requirements before beginning operations. These include making technical specifications publicly available on its website for at least three months before operations begin, making testing facilities available for at least two months before operations begin and waiting for a reasonable period of time before operation which Staff generally considers three months after Commission approval.</p>

		<p>We note that we did not receive any similar concerns about Estimated time by either the two dealers or trade association who provided comments. We interpret this to mean that the street does not share Triact's concern.</p>
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