

13.2 Marketplaces

13.2.1 TriAct Canada Marketplace LP – Change to the MATCHNow Trading System – Notice of Proposed Change and Request for Comment

TRIACT CANADA MARKETPLACE LP
NOTICE OF PROPOSED CHANGE AND REQUEST FOR COMMENT
CHANGE TO THE MATCHNOW TRADING SYSTEM

TriAct Canada Marketplace LP (operating as **MATCHNow**) has proposed to implement a significant change subject to public comment to its Form 21-101F2, to allow conditional orders to interact and match with firm (resting) dark orders, as more fully described in the notice below. In connection with this proposed change, MATCHNow has also applied for an order granting exemptive relief, pursuant to section 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), from the application of subsection 7.1(1) of NI 21-101.

Part 7 of NI 21-101 sets out the information transparency requirements for exchange-traded securities. One of these requirements is that where a marketplace “displays” orders, that marketplace must provide information about these displayed orders to an information processor. The Companion Policy to NI 21-101 (**21-101CP**) provides additional guidance with respect to conditions that the securities regulatory authority may take into consideration in granting an exemption from the pre-trade transparency requirements in section 7.1.

While comment is requested on all aspects of MATCHNow’s proposed functionality, we note the discussion relating to the considerations that MATCHNow has articulated below in support of exemptive relief from the pre-trade transparency requirements of subsection 7.1(1) of NI 21-101.

Details on submission of comments are provided below.

TRIACT CANADA MARKETPLACE LP
NOTICE OF PROPOSED CHANGE AND REQUEST FOR COMMENT
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TriAct Canada Marketplace LP (operating as **MATCHNow**) hereby announces plans to implement the change described below, following approval by the Ontario Securities Commission (the **OSC**). MATCHNow is publishing this Notice of Proposed Change in accordance with the "Process for the Review and Approval of Rules and the Information Contained in Form 21-101F2 and the Exhibits Thereto." Market participants are invited to provide the OSC with comments on the proposed change.

Comments on the proposed change should be in writing and submitted by **May 10, 2021** to:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Email: marketregulation@osc.gov.on.ca

A copy should also be provided to:

David Nolan
Chief Compliance Officer
MATCHNow
222 Bay Street, Suite 2605, P.O. Box 33
Toronto, Ontario, M5K 1B7
Email: dnolan@cboe.com

Comments received will be made public on the OSC website. Upon completion of the review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of OSC staff's review and to specify the intended implementation date of the change.

Any questions concerning the information below should be addressed to Vince Poil, Head of Products for MATCHNow, at (416) 861-1010 or at vpoil@cboe.com.

Opt-In Feature for Conditionals

A. Detailed description of the proposed change

MATCHNow proposes to implement a "Significant Change subject to Public Comment" to its Form 21-101F2 (the **Form F2**), to allow conditional orders (**Conditionals**) to interact and match with firm (resting) "dark" orders, known within the MATCHNow system as "Liquidity Providing Orders" (and referred to herein as **Firm Orders**), where the MATCHNow Subscriber that placed the Firm Orders has activated a feature that will allow it to opt in to such matching (the **Opt-In Feature**).

Background

MATCHNow previously proposed the Opt-In Feature as part of its original notice in support of its Conditionals filing, published for comment in May 2018. See [In re TriAct Canada Marketplace LP – Change to the MATCHNow Trading System – Notice of Proposed Change and Request for Comment, \(2018\), 41 OSCB 3936 \(May 10\)](#) (the **Original Conditionals Filing**) at 3937 ("The proposed Conditionals destination will be implemented by adding a Conditionals engine as a new layer between the existing FIX engine and matching engine, with a new Conditionals book set up within that matching engine, along with the optionality to allow standing MATCHNow liquidity to interact with Conditionals.").

However, during the regulatory review process, MATCHNow elected to remove the Opt-In Feature from the Original Conditionals Filing; that filing, as revised, was approved by the OSC on September 13, 2018. See [In re TriAct Canada Marketplace LP – Proposed Change to the MATCHNow Trading System – Notice of Approval, \(2018\), 41 OSCB 7435 \(Sept. 20\)](#) (the **Notice of Approval**). The Notice of Approval acknowledged that MATCHNow reserved the right to "revisit the Opt-In Feature in the future." See Notice of Approval at 7435. MATCHNow has chosen to do so at this time.

Description of the Opt-In Feature

The Opt-In Feature, if approved, will be implemented by introducing a new FIX Tag that will provide Subscribers with the option of making their Firm Orders available for interaction with Conditionals by selecting a designated alphanumeric value (i.e., to make the Opt-In Feature "active").

To be eligible for the Opt-In Feature, a Firm Order will be required to meet the following new minimum size threshold: 51 standard trading units *and* \$30,000 in notional value; or \$100,000 in notional value.¹ Similarly, only Conditionals that satisfy the same threshold will be permitted to match with Firm Orders for which the “Opt-In Feature” has been activated.²

Where the threshold for a Firm Order is met, a Subscriber will have the ability to activate the Opt-In Feature either (1) on an order-by-order basis or (2) as a default for all orders associated with any specified Trader ID number(s) (in which case the default selection will continue to apply until it is de-activated). However, Firm Orders will not be available for interaction with Conditionals unless and until a Subscriber affirmatively activates the Opt-In Feature by selecting the appropriate value in the new FIX Tag. The system will default to “inactive” for all Firm Orders if no selection is made.

Where the Opt-In Feature is activated for a particular Firm Order and the MATCHNow system detects a potential match with one or more contra-side Conditionals, the system will automatically generate an invitation to “firm up” and send it to the relevant contra Conditional(s). If one or more Conditionals get firmed up within the allotted one-second time period, the system will then immediately execute the match between the firmed-up Conditional(s) and the relevant Firm Order.³ At the firm-up stage, however, a Subscriber that receives an invitation to firm up will not know whether the (potential) contra liquidity is an opted-in Firm Order or another Conditional, and it will only be able to infer the minimum size and mid-point price of that (potential) contra liquidity, but not the exact size or price. Following a match, all of the standard audit trail data (execution price, number of shares, broker ID, etc.) will be reported for the executed trade, just like any other trade executed on the MATCHNow system.⁴

It should also be noted that, due to the architecture of the MATCHNow system, with its separate liquidity pools created by its distinct Conditionals matching engine and Firm Order matching engine, a Firm Order cannot be permitted to run in the two separate pools at exactly the same time. As a result, a Firm Order for which the Opt-In Feature is activated will be shielded or “locked in” for the milliseconds (up to 1 second maximum) necessary to communicate with tradeable Conditionals on the Conditionals book. In such a circumstance, there is a risk that the Firm Order could miss out on matching with a contra order in the Firm Order matching engine during that small communication window (i.e., 1 second or less) necessary to carry out the Conditional matching process, and Subscribers will be made aware of that via MATCHNow’s client-facing documentation (i.e., the *In Detail*).

B. Expected implementation date

The proposed change is expected to be implemented approximately 60 days after approval by the OSC.

C. Rationale for the proposed change and any supporting analysis

The Opt-In Feature will promote liquidity and fair access by allowing MATCHNow to unlock certain untapped liquidity for large-size orders, without disturbing the pricing mechanism of existing dark and lit markets in Canada. Moreover, as explained in greater detail below, it is a feature that has been requested by multiple Subscribers, and which is already offered by other marketplaces, both within and outside Canada.

D. The expected impact, including the quantitative impact, of the proposed change on market structure, subscribers, and, if applicable, investors and capital markets

The impact on market structure, Subscribers, investors, and capital markets is expected to be positive, through the resulting expansion of liquidity and increased matching and price improvement opportunities for large-sized orders. Through MATCHNow Conditionals and the enhanced functionality, we anticipate further electronification and growth of the block market in Canada, which presently represents approximately 5% to 10 % of overall volume.

E. Expected impact of the proposed change on MATCHNow’s compliance with Ontario securities law requirements and in particular requirements for fair access and maintenance of fair and orderly markets

The proposed change will have no impact on MATCHNow’s continuing compliance with Ontario securities law, including requirements for fair access and the maintenance of fair and orderly markets. In particular, MATCHNow submits that the Opt-In Feature is based on “reasonable standards for access” and does not “unreasonably create barriers to access to the services provided by the marketplace,” consistent with the guidance provided in subsection 7.1(1) of [National Instrument 21-101 Marketplace Operation \(NI 21-101\)](#).

¹ While the threshold is modeled after the threshold established by [UMIR 6.6](#) for “dark” orders that do not provide price improvement, Firm Orders for which the Opt-In Feature is activated do provide improvement (as explained in greater detail below). Therefore, the Opt-In Feature’s threshold is independent of UMIR 6.6 and will not necessarily change automatically in the event that IROC implements a change to UMIR 6.6 in the future.

² As part of this Significant Change subject to Public Comment, MATCHNow is proposing to increase the threshold applicable to all Conditionals (including Conditional-to-Conditional matches) from the current threshold of 5,000 shares or \$100,000 to the new threshold of 51 standard trading units and \$30,000 or \$100,000. The rationale for this is explained in note 7 below.

³ Where a Conditional is not firmed up (i.e., where the invitation lapses or “falls down” without a firm-up during the one-second response period), the Firm Order will remain in the standard order book. Moreover, unless a standard exception applies (e.g., in the case of a trade-away discovered on another marketplace using the existing one-second “lookback” process), each such failure to firm up will count towards a Subscriber’s fall-down rate for purposes of the existing Conditionals Compliance Mechanism, as usual. No changes are being made to any of these aspects of the Conditionals functionality.

⁴ The Opt-In Feature will not affect scenarios where a Conditional is interacting with another Conditional; as is currently the case, where the first Conditional is firmed up, the Subscriber on the other side will also need to firm up its Conditional within the allotted time before a match will occur.

MATCHNow recognizes, however, that subsection 7.1(1) of NI 21-101 sets out certain pre-trade transparency requirements for equity securities, the purpose of which is to ensure that investors have information that enables them to make informed trading decisions.⁵ MATCHNow further acknowledges that, from a bird's eye view, where an invitation is automatically sent to a Subscriber that has entered a Conditional because the system has detected a potential match with a Firm Order subject to the Opt-In Feature, that invitation could be considered to be a "display" of the Firm Order that generated it, in which case subsection 7.1(1) would require MATCHNow to immediately transmit that order information to an information processor—something that MATCHNow, as a "dark" marketplace, does not do.⁶ Therefore, to the extent that the Opt-In Feature conflicts with the pre-trade transparency requirements of subsection 7.1(1) of NI 21-101, under separate cover, MATCHNow has applied to the OSC (with the requisite notice to all other Canadian securities regulatory authorities) for an order granting exemptive relief from that provision pursuant to section 15.1 of NI 21-101. The considerations that MATCHNow has articulated in support of its exemptive relief application may be summarized as follows:

- 1) The Opt-In Feature will facilitate large-sized trades, as only Firm Orders that meet the designated threshold (51 standard trading units and \$30,000 or \$100,000) may opt in to interact with Conditionals, which will also be required to meet the same threshold.⁷
- 2) The Opt-In Feature, to be activated, requires a Subscriber to take the affirmative action of electing to have its Firm Orders interact with Conditionals (on an order-by-basis, or as a "default" for all Firm Order flow associated with a particular Trader ID).
- 3) When an opted-in Firm Order offers contra-side liquidity for a Conditional, the invitation to firm up sent to the Subscriber that placed the Conditional will only provide symbol and side (i.e., buy or sell), while size and price will only be inferable without precision (i.e., the Subscriber will be able to infer that the contra is at least 51 standard trading units and \$30,000 in notional value or at least \$100,000 in notional value, and that the contra's price is at or better than the mid-point of the Protected National Best Bid and Offer).
- 4) When an opted-in Firm Order offers contra-side liquidity for a Conditional, the invitation to firm up sent to the Subscriber will leave it unable to determine whether the contra liquidity is immediately actionable (i.e., the Subscriber will be blind as to whether the contra order is a Firm Order or another Conditional).
- 5) The final step required to achieve an execution—namely, the firm-up by the Subscriber that placed the Conditional—is not guaranteed and, therefore, it is not a mere formality.

Furthermore, the compliance mechanism that applies to Conditionals provides an additional measure of protection in favour of the policy objective underlying subsection 7.1(1) of NI 21-101—namely, fair access to pre-trade information—by allowing MATCHNow to monitor and combat abusive order-cancellation behaviour, which could indicate a Subscriber's attempt to gain an unfair informational advantage.

In addition, the Opt-In Feature is expected to encourage greater adoption of Conditionals by MATCHNow Subscribers and thereby provide more price-improved matching opportunities for these large orders⁸, without any significant erosion of price discovery.

⁵ See [In re Liquidnet Canada Inc. – Targeted invitation functionality for trading of equity securities – OSC Staff Notice of Proposed Change and Request for Comments](#), (2016), 39 OSCB 9826 (Dec. 1) at 9827.

⁶ See *ibid.* ("No pre-trade transparency is required by NI 21-101 if order information is only displayed to a marketplace's employees or persons or companies retained by the marketplace to assist in the operation of the marketplace. This exception allows for the operation of marketplaces without pre-trade transparency (dark pools), in recognition of the value they bring by facilitating the execution of large orders with limited market impact costs.")

⁷ As noted above, MATCHNow intends to align the threshold for all Conditionals (including Conditional-to-Conditional matches) with the threshold being proposed for the Opt-In Feature (i.e., 51 standard trading units and \$30,000 or \$100,000) as of the date of implementation of the Opt-In Feature, should it be approved. To be clear, MATCHNow will not change the existing threshold for Conditional-to-Conditional matches until then, in deference to our Subscribers that utilize Conditionals; however, any discrepancy between that existing threshold and the threshold applicable to the Opt-In Feature should be avoided, as it would create the potential for information leakage for orders pertaining to securities that trade at certain lower price levels. (For example, assume the threshold of 51 standard trading units and \$30,000 or \$100,000 applies to the Opt-In Feature, but the existing Conditional-to-Conditional threshold of 5,000 shares or \$100,000 is maintained; assume also that security XYZ trades for \$5 per share, and that Subscriber A places a Firm Order to sell 10,000 shares, with the Opt-In Feature activated. Now assume that Subscriber B places two Conditionals—one to buy 5,000 shares of XYZ and another to buy 45,000. In this scenario, Subscriber B would only receive a firm-up for its larger order, and it would therefore know with certainty that the contra side was a Firm Order that had opted in.) By aligning the threshold for all Conditionals to that applicable to the Opt-In Feature, MATCHNow will ensure that the Subscriber that has placed a Conditional will have no way to ascertain, at the moment when it receives an invitation, whether that invitation was generated by another Conditional or by a Firm Order that has opted in, regardless of the price of the security being traded.

⁸ By design, Conditionals always provide price improvement, given that, when they execute as trades, they always execute at the mid-point of the Protected National Best Bid and Offer. That is why it is appropriate that they be subject to a large threshold, but not necessarily the specific minimums set out in UMIR 6.6, which governs "dark" orders that do *not* provide price improvement. Indeed, in the guidance provided by subsection 5.1(4) of the [Companion Policy](#) to NI 21-101 (21-101CP), which sets out a general framework for exemptions from the pre-trade transparency requirements of subsection 7.1(1) of NI 21-101, the Canadian Securities Administrators (the CSA) refer to a "size threshold set by a regulation services provider as provided in subsection 7.1(2) of the Instrument." However, the CSA have acknowledged that no such threshold has ever been formally set. See e.g., [Amendments to NI 21-101 Marketplace Operation, Companion Policy 21-101CP, NI 23-101 Trading Rules and Companion Policy 23-101CP and Repeal of OSC Rule 21-501](#), (2012) 35 OSCB (Supp-1) (Mar. 23) at 2 ("In the Proposed Amendments, we proposed to revise the exemption from the pre-trade transparency requirements to include a requirement that orders also meet a size threshold in order to be exempt from the transparency requirements in NI 21-101. [...] We acknowledge the concerns that were raised by the commenters regarding the proposal for a size threshold, and note that we do not propose an actual threshold at this time. However, we continue to be of the view that it is important to establish a regulatory framework that would allow the CSA and IIROC to introduce a threshold when appropriate..."). Nonetheless, MATCHNow believes that the threshold proposed for the Opt-In Feature (51 standard trading units and \$30,000 or \$100,000) is appropriate for the type of exemption contemplated in subsection 5.1(4) of 21-101CP.

This represents a net benefit to the Canadian capital markets as a whole.

The proposed change will not be implemented until the exemptive relief has been granted, or it has been determined in consultation with OSC staff that such relief is not required.

F. Summary of consultations undertaken in formulating the proposed change and the internal governance process followed to approve it

MATCHNow has been asked by multiple Subscribers for the Opt-In Feature, starting as far back as early 2018, when the Original Conditionals Filing was still in the planning stages, and the requests from Subscribers have continued since that time.

In our ensuing discussions with Subscribers in 2019 and 2020 about the possibility of revisiting the Opt-In Feature, they have been strongly in favor of it, and MATCHNow believes that most public comments on the proposed change will reflect this strong support.

The proposed change was also fully re-reviewed and approved by MATCHNow's senior management in 2020.

G. If the proposed change will require subscribers or service vendors to modify their systems after implementation, the expected impact on the systems of subscribers and service vendors together with an estimate of the amount of time needed to perform the necessary work and how the estimated amount of time was deemed reasonable in light of the expected impact of the proposed change on MATCHNow, its market structure, subscribers, investors or the Canadian capital markets

MATCHNow notes that making use of the feature that the proposed change will create is voluntary. For Subscribers and vendors that elect to make use of the Opt-In Feature, any impact on their systems will be minimal, as it will simply require creating the ability to enter a value for the new FIX Tag that MATCHNow will establish for the Opt-In Feature. MATCHNow believes that a reasonable estimate of the time needed for Subscribers and vendors to modify their own systems in this way is 30 days or less, based on previous experiences with the creation of new FIX Tags.

H. Where the proposed change is not a Significant Change subject to Public Comment, the rationale for why the proposed Significant Change is not considered a Significant Change subject to Public Comment

Not applicable.

I. Alternatives considered

None.

J. If applicable, whether the proposed Significant Change would introduce a feature that currently exists in other markets or jurisdictions

Liquidnet Canada Inc., which operates as a recognized ATS in Canada, has for several years now offered its subscribers a feature similar to the Opt-In Feature through what it calls its "broker blocks functionality." See [In re Liquidnet Canada, Notice of Proposed Change and Request for Comment, \(2018\), 41 OSCB 8756 \(Nov. 1, 2018\)](#) at 8756-57 ("As previously approved by the Commission, IIROC-registered brokers seeking to execute blocks (currently known as Canada broker blocks participants) can send resting orders (on a firm or conditional basis) in Canadian equities to the Liquidnet Canada ATS. [...] Once submitted by the Canada broker blocks participant, these resting orders are available for matching with indications and orders already at Liquidnet, and any executions occur at the mid-price. Buy-side participants (known as Members or customers) of the Liquidnet Canada ATS can choose whether to interact with order flow from Canada broker block participants via Liquidnet's Transparency Controls tool. [...] Upon receipt of notification of a broker block opportunity, a Member can create a broker block accept."). See also [In re Liquidnet Canada Inc. – Notice of Proposed Changes and Request for Comment, \(2012\) 35 OSCB 6204 \(June 28\)](#) (proposing broker blocks functionality), approved by [notice](#) published on September 27, 2012. It is our understanding that Liquidnet Canada Inc. affiliates in European jurisdictions have offered a similar functionality to market participants in those jurisdictions for a number of years as well. See e.g., [In re Liquidnet Canada – Notice of Proposed Changes and Request for Comment, \(2017\), 40 OSCB 3315 \(Apr. 6\)](#) at 3316 (proposing expansion of access for certain sell-side orders to buy-side orders, including functional equivalent of conditional orders, to "align with current practice in the US and European markets").

Marketplaces in the United States have also allowed firm orders to interact with conditional orders for several years now. See e.g., [SEC Release No. 34-83663, Regulation of NMS Stock Alternative Trading Systems, 17 CFR Parts 232, 240, 242, and 249 \(July 18, 2018\)](#) at 296 ("ATSs may only permit conditional orders to execute against other conditional orders, but some ATSs allow conditional orders to interact with other order types.").

The functionality that the Opt-In Feature embodies has thus become a common standard both in Canada and around the world, and MATCHNow has become an outlier in not being able to offer this optionality to its Subscribers.