THE SECURITIES ACT	)	Order No. 7643
	)	
NI 21-101	)	August 18, 2022

CO-ORDINATED REVIEW

DETERMINATION

Nasdaq CXC Limited

The Manitoba Securities Commission makes the same determination on the application as the Principal Jurisdiction, a copy of which is attached, and opts in on the attached Decision Document.

_____
Director

Citation: 2022 BCSECCOM 343

Headnote

Application for relief under s. 15.1 of National Instrument 21-101 Marketplace Operation,— relief from the application of s.7.1(1) of NI 21-101— relief granted subject to terms and conditions.

Applicable Legislative Provisions

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

August 18, 2022

In the Matter of

the Securities Legislation of

Ontario, Quebec, British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon (the **Jurisdictions**)

and

In the Matter of

the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
Nasdaq CXC Limited (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 Conditional 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*, Multilateral Instrument 11-102 - *Passport System*, National Policy 11-203 *Process for Exemptive Relief in Multiple Jurisdictions* and NI 21-101 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 established under the *Canada Business Corporations Act*.

2. The Filer's head office is in Toronto, Ontario, Canada.

3. The Filer operates a "recognized exchange" as defined in NI 21-101 (the **Exchange**).

4. The Filer is not in default of securities legislation in any jurisdiction.

5. The Filer proposes to introduce a trading functionality whereby participants may enter non-committed orders that generate an invitation to send a firm order when there is a contra-side match (**Conditional Order**).

PureStream Orders and Conditional Orders

1. The Filer proposes to offer the "PureStream" order type to Nasdaq Canada members (**Members**) on the Nasdaq Canada CXD Trading Book (**CXD**), which is a 'dark' book.

2. PureStream orders will only interact with other PureStream orders. Purestream orders will not interact with any other order types on CXD.

3. PureStream orders are paired with one another based on a specified liquidity transfer rate, instead of a specific price. A liquidity transfer rate, or "**LTR**" indicates the percentage volume of a Reference Trade (see below) a user is willing to trade.

4. A Reference Trade is any trade of at least one standard trading unit of a particular security displayed in a consolidated market display other than a reported trade resulting from a match between two PureStream orders (subject to certain exceptions).

5. When orders are paired, streams are established which are held by the Nasdaq Canada system until a Reference Trade occurs. When a Reference Trade occurs, a match is generated from orders paired in a stream based on their LTR and printed on the market at the price of the Reference Trade as bona fide trades.

6. Exchange Members are able to use a conditional parameter that can be added to any PureStream order.

7. Liquidity Seeking Orders (or "**LS Orders**") are PureStream orders where an infinite LTR parameter is applied. Because LS Orders are not constrained by a LTR, they are immediately available to match with any contra-side LS Orders at the midpoint of the protected National Best Bid Offer (**NBBO**) and do not require a Reference Trade to match. While LS Orders can trade against one another at the midpoint immediately, they can also be paired in a stream and trade in response to a Reference Trade at the paired LTR for that stream.

8. A conditional order parameter that is added to any PureStream order is eligible to interact with any other PureStream order with the exception of Liquidity Seeking Orders marked Immediate-or-Cancel and orders marked Stream-or-Kill. For those, a Member must communicate the intention to interact with Conditional Orders explicitly.

9. Whereas other contra-side PureStream orders immediately pair with one another when eligible to establish a stream, a Conditional Order does not require a firm commitment to trade. Instead, when it is possible for a Conditional Order to be paired with one or more orders, a 'firm-up' request will be sent to the Member who entered the Conditional Order and the Member will be given a short time window in which to act on the firm-up request by entering a new order that is then considered firm.

10. The only information that is shared through the firm-up request is symbol and side. The firm-up request does not display the size of the order, the price or the identity of the potential counterparty.

11. When a new order is sent in response to a firm-up request, a Member is able to modify the order instructions, which may or may not impact the order's pairing priority or opportunity to pair. If the Member does not respond to a firm-up request in the time window provided, the Conditional Order will be rejected and not treated as an order. Conditional Orders are able to be paired with both Conditional Orders and other orders.

12. Conditional Orders will facilitate large-sized trades, as they will only be available in respect of PureStream orders which are subject to a minimum order size (**Minimum Order Size**) that is either (a) greater than 50 standard trading units and $30,000 in nominal value, or (b) greater than $100,000 in nominal value.

13. Only the Member 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

14. Where a Conditional Order receives a firm-up request from a PureStream order that has not added a conditional parameter (the **Conditional Order Interaction**), this could be considered to be a "display" of the PureStream order that generated the firm-up request.

15. The Conditional Order Interaction will give Members the opportunity to seek price improvement on large size orders while minimizing market impact. If the Filer were required to comply with the pre-trade transparency requirements in subsection 7.1(1) of NI 21-101 with respect to a Conditional Order Interaction, the anticipated benefits of Conditional Orders would be lost.

16. 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.

17. The Filer believes that the Exemptive Relief Sought can be granted because:

    (a) a Conditional Order Interaction will be limited to the Minimum Order Size;

    (b) PureStream orders that are available to interact with Conditional Orders have consented to the Conditional Order Interaction. We consider a participant to have opted into interacting with Conditional Orders by nature of entering a PureStream order in the system. If the participant does not want to interact with a Conditional Order we expect that participant not to use the PureStream order type. Liquidity Seeking Orders marked Immediate-or-Cancel and orders marked Stream-or-Kill must explicitly opt-in to interacting with Conditional Orders.

    (c) when a firm-up invitation is provided to the Member who entered the Conditional Order, such invitation will only provide symbol and side (i.e., buy or sell), of the PureStream order. The size of the PureStream order cannot be inferred with precision, other than that it meets the Minimum Order Size for all PureStream orders (i.e., (a) greater than 50 standard trading units and $30,000 in nominal value, or (b) greater than $100,000 in nominal value.)

    (d) when a firm-up invitation is provided to the Member who entered the Conditional Order, the Member receiving the invitation will be unable to determine whether the contra side order is another Conditional Order or a firm PureStream order and therefore, will not be able to determine whether the contra-side liquidity is immediately actionable, and

    (e) there can be no guarantee that the Member who entered the Conditional Order will 'firm up' the invitation in a Conditional Order Interaction.

18. 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 Minimum Order 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. Interaction with Conditional Orders applies to participant orders that have consented to interact with Conditional Orders. We consider a participant to have opt-ed into interacting with Conditional Orders by nature of entering a PureStream order in the system. If the participant does not want to interact with a Conditional Order we expect that participant not to use the PureStream order type. Liquidity Seeking Orders marked Immediate-or-

Cancel and orders marked Stream-or-Kill must explicitly opt-in to interact with Conditional Orders.

b. PureStream orders and Conditional Orders meet the Minimum Order Size.

c. An invitation to firm up through a Conditional 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 Conditional Order Interaction does not enable the recipient to determine whether the contra-side liquidity is immediately actionable.

e. The Filer will test the Conditional Order Interaction feature prior to implementation to ensure the functionality works as designed.

f. The Filer will analyze the impact of the Conditional 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 Makers no later than 90 days after the signing of this decision.

"Michelle Alexander"
Manager, Market Regulation
Ontario Securities Commission