

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.2 Marketplaces

13.2.1 TMX Select Inc. – Notice of Completion of Staff Review – TMX Select Initial Operations Report

**TMX SELECT INC.
NOTICE OF COMPLETION OF STAFF REVIEW
TMX SELECT INITIAL OPERATIONS REPORT**

On March 4, 2011 TMX Select Inc. announced its plans to begin operations as an Alternative Trading System (ATS). An Initial Operations Report was published for comment in accordance with OSC Staff Notice 21-703 – *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems*. Four comment letters were received, and a summary of these comment letters and responses prepared by TMX Select is included at Appendix A to this notice.

OSC staff have completed their review of the Initial Operations Report and have no further comments. TMX Select will publish a notice indicating the intended launch date.

APPENDIX A

TMX SELECT INC.

SUMMARY OF COMMENTS AND RESPONSES

INITIAL OPERATIONS REPORT

Issue	Comment	Response
<u>CNSX Markets</u>		
New marketplace functionality should not conflict with stated policy objectives of the regulators	Changes to the regulatory framework must be established and take precedence over the approval of new marketplace functionality that conflicts with stated policy objectives.	We agree that it is important for the CSA to establish rules for dark orders as soon as possible. TMX Group is also discouraged that new marketplace functionality that contradicts stated CSA policy objectives is currently being approved. If the CSA is prepared to disallow all new dark order functionality that conflicts with the views espoused in the Joint CSA/IIROC Position Paper 23-405, then TMX Select would abide by that position and be prepared to remove any aspects of dark order functionality that conflicts with proposed rules until such rules are finalized.
Minimum size requirement for dark orders needed	Dark limit orders and dark mid-point orders on TMX Select should align with the proposed amendment to NI 21-101 Marketplace Operation wherein the CSA proposed "to include a requirement that orders meet a size threshold in order to be exempted from the transparency requirements..."	In line with other marketplaces operating dark orders today (Chi-X, TSX/TSXV, MatchNow), TMX Select dark orders do not have a minimum size requirement. If a minimum size requirement is set by IIROC or the CSA, TMX Select will change its functionality to comply.

Issue	Comment	Response
Minimum price improvement on dark orders	The TMX Select dark mid-point order should execute at minimum price increments specified for orders entered into a marketplace for meaningful price improvement.	At this time, there is no requirement for minimum price improvement nor is there any guidance on minimum price increments for price improvements. When the CSA finalizes rules on this topic, TMX Select will change its dark order functionality as required to comply.
Price improvement should be consistent across all marketplaces	Price improvement should be consistent across all orders and marketplaces.	TMX Select is supportive of this view and awaits further guidance from IIROC / OSC on price improvement increments. Until such a time, TMX Select will not introduce any Dark Order functionality that does not already exist in the market today.
<u>TriAct</u>		
Crosses are not subject to interference	A client should have priority over the non-client portion of a cross. TMX Select should institute automated enforcement of the UMIR 5.3 client priority rules.	Crosses on TMX Select will not be subject to interference, regardless of account type. While cross interference based on account type could help enforce client priority within the same broker and marketplace, this is only a partial solution as it will not protect the client interest across marketplaces and does not replace a broker's due diligence in complying with UMIR 5.3. It was determined to remove cross interference altogether from TMX Select to be consistent with its strict price-time allocation methodology. This is consistent with Chi-X's strict price-time allocation model which does not offer cross interference.
Minimum price improvement on dark orders	The CSA should provide clarity and certainty on the requirement for price improvement on dark orders and apply this to all ATSS.	We agree. TMX Group strongly supports the CSA and IIROC in developing a rule with clear minimum price improvement requirements. Until such a time, TMX Select dark orders will function according to our current model.
<u>CIBC</u>		
Data Costs	TMX Select could be used as a mechanism to force the acquisition of additional market data and thereby increase data costs to the industry.	At this time, TMX Select does not intend to change for real-time data fees. In the future, the TMX Select data fee model will be reassessed and any changes will be made in compliance with National Instrument 21-101.
Cancel on Disconnect	TMX Select should offer cancel on disconnect functionality.	TMX Select does not currently offer automated cancel on disconnect functionality. We are; however, assessing the introduction of this feature post launch.
Cancel and reprice functionality (Order Protection Rule)	We request clarity on cancel and reprice features for the Order Protection Rule (OPR)	TMX Select offers two OPR options: "Directed Action Order" and OPR Route-Out. TMX Select does not offer cancel and reprice features as an OPR solution. This approach is consistent with OPR options available at other ATSS.
Last sale price reference used in short sale protection	TMX Select should use a consolidated last sale price for short sale protection.	TMX Select's proposal of referencing the last sale price on the listing exchange and on TMX Select for short sale protection is consistent with IIROC Notice 10-0095 and was chosen in consultation with IIROC.

Issue	Comment	Response
Discretion to cancel trades without consent	We request clarity on the use of discretion to cancel an impacted trade without the consent of both parties. How would this apply if the technical issue was at TMX Select?	In the event of a technical failure at TMX Select, TMX Select will have the discretion to cancel an impacted trade without the consent of both parties and will notify IIROC of the decision. The decision to cancel the trade will be made with the best interests of all parties involved while striving to maintain market integrity, and will be done with IIROC's guidance where needed.
<u>TD</u>		
TMX Select results in increased fragmentation	A new ATS fragments the market further. This may cause harm to price discovery.	The equities market in Canada is a competitive multi-marketplace environment. This complex market supports a variety of business models that offer different value propositions to a variety of participants that can benefit from additional choice.
Broker preferencing	Removal of broker preferencing encourages high frequency trading and invites dealers to set up internalization mechanisms outside of marketplaces.	Broker preferencing is an allocation methodology that is not used currently by all Canadian marketplaces. Strict price/time priority is one manner in which TMX Select will differentiate itself from TSX/TSXV and other Canadian marketplaces.
Market data costs	TMX Select will cause data costs to rise.	At this time, TMX Select does not intend to charge real-time data fees. In the future, the TMX Select data fee model will be reassessed and any changes will be made in compliance with National Instrument 21-101.