



February 21, 2023

**VIA ELECTRONIC SUBMISSION**

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of 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  
Office of the Superintendent of Securities, Service NL  
Northwest Territories Office of the Superintendent of Securities  
Office of the Yukon Superintendent of Securities  
Nunavut Securities Office  
C/O Ontario Securities Commission  
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**Re: CSA Consultation Paper 21-403, *Access to Real-Time Market Data***

Cboe Global Markets, Inc., NEO Exchange, Inc., and MATCHNow (collectively, “Cboe”) appreciate the opportunity to respond to the Canadian Securities Administrators’ (“CSA” or “CSA Staff”) Consultation Paper 21-403, *Access to Real-Time Market Data* (“Consultation Paper”).<sup>1</sup> Cboe applauds the CSA for undertaking this rigorous review of access to Real-Time Market Data (“RTMD”) in Canada and for seeking feedback from market participants and exchanges to help inform any actions that the CSA may eventually undertake.

As a global markets operator, Cboe is eager to offer a perspective on the options covered in the Consultation Paper as we are familiar with differing market data regulatory constructs. For instance, as an EU exchange operator Cboe is familiar with the negative implications of not having a consistent source of consolidated market data. Conversely, as an operator of four U.S. equities

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<sup>1</sup> Cboe Global Markets is a provider of trusted market infrastructure and tradable products. Cboe delivers trading, clearing and investment solutions to market participants around the world and across multiple asset classes including equities, derivatives, FX and digital assets. Both NEO and MATCHNow are Cboe companies.

exchanges, we have insight into how functional and reliable consolidated tapes can be over-reformed in a way that adds unnecessary operational complexity.

Cboe believes that the most pressing issue related to the existing market data regulatory framework in Canada is to ensure that retail investors and retail investor advisors (“Retail Stakeholders”) have ready access to consolidated Level 1 core real-time market data (“Consolidated RTMD”). To that end, we submit the following:

- Without a consolidated, holistic view of market pricing, liquidity and volume, the ability of Retail Stakeholders to make sound investment decisions is critically impaired. The result is insufficiently informed investment decisions and potentially inferior execution quality. This harms investors.
- The lack of access to Consolidated RTMD has a negative impact on Canadian public companies and issuers of Exchange Traded Products in that a partial view of the marketplace can lead to misconceptions about a security’s true liquidity. When investors are unaware of available quotes and trading activity away from the listing exchange, it may lead to an issuer’s security being perceived as less desirable. This harms issuers.
- Insufficient access to Consolidated RTMD leads to less resilient markets. As noted, dealers typically provide Retail Stakeholders with RTMD from the listing exchange only, making trading heavily reliant on that exchange’s data and causing trading in that exchange’s listed securities to largely stop should it suffer an outage<sup>2</sup>. This harms the entire marketplace.

Cboe believes that urgent regulatory action is needed to address the concerns outlined above, and that any such regulatory action should be focused on Retail Stakeholders and their access to a consolidated view of Level 1 real-time market data. We stipulate that the pricing of such core data should be reasonable, fair and subject to a sensible level of regulation. Regulatory action in this regard is appropriate and wholly consistent with the CSA’s statutory mandate of investor protection and fostering fair, efficient, and competitive capital markets and confidence in those markets.

Retail Stakeholders’ lack of access to Consolidated RTMD is a significant issue in the Canadian marketplace. Because Canadian dealers are not currently required to provide investors with Consolidated RTMD, dealers typically provide retail investors with only minimum access, which is often only market data reported by the listing venue. As such, Cboe recommends that a regulatory requirement mandating the provision of Consolidated RTMD to Retail Stakeholders, for all Canadian listed issuers, be implemented. Without such a mandate, it is highly unlikely that dealers will voluntarily provide the Retail Stakeholders they service with access to Consolidated RTMD.

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<sup>2</sup> Recent examples where, in an environment without a Consolidated RTMD, a listing exchange outage brought trading in their listed issuers to what was largely a standstill: TMX – November 1, 2022; ASX – November 16, 2022; TMX – February 27, 2020; TMX – April 27, 2018. Trading in those listed issuers continued on other marketplaces but a large part of the investor community abandoned trading by lack of access to market data.

As implied above, Cboe is of the opinion that any regulatory mandate to access Consolidated RTMD should be limited to a defined set of “core data” elements that consists of the quote and trade information typically used by Retail Stakeholders (last sale, total traded volume, best bid and offer, and aggregate volume at those prices i.e., Level 1 Data) and only when required to inform a decision to enter an order and/or trade.

Mandating the provision of the specified Consolidated RTMD described above to Retail Stakeholders will only be achievable if today’s cost prohibitive and pass-through fees are addressed. As noted by the CSA, subscribers to Consolidated RTMD from the TMX IP (or leveraging any other solutions that allows them to consolidate data) are subject to the terms and conditions set by each individual marketplace, must contract with each individual marketplace, and are required to pay an amount equal to the aggregate of fees charged by each marketplace. Additionally, the TMX IP also charges administrative fees on top of each marketplace’s fees. The result is a sub-optimal and burdensome pricing and access model. Absent targeted fee reform, dealers will be required to either absorb these prohibitive costs or pass them through to investors. Therefore, Cboe believes that any near-term regulatory action must include enhancements to the DFM extending it to non-professional subscriber fees and treating retail investor advisor subscriber fees separately from all other professional user subscriber fees. Additionally, there should be intuitive and standardized definitions delineating professional users, other than retail investor advisor users, retail investor advisor users and non-professional users. Appropriate benchmarks will also need to be set for retail investor advisor users and non-professional users, that are meaningfully lower than those currently used for professional subscriber fees.

Longer term, Cboe is of the view that an Admin IP model focused on core Level 1 data would be beneficial – we discuss this further below.

**Initial Option (a): Enhance transparency of any fee proposals related to RTMD by requiring marketplaces, as part of the regulatory review and approval process, to publish proposed changes when they are filed and approved.**

***Question #1: Please identify any potential unintended consequences at the industry, marketplace, or firm level if we pursue this option.***

***Question #2: Would this approach satisfy the need for more transparency in relation to the proposed fee changes and their review process?***

As noted above, Cboe generally supports enhanced transparency for Level 1/core data. However, Cboe does not believe that the proscriptive list of informational points to be included in published fee changes are necessary to achieve the desired transparency. In our experience, a high percentage of fee changes are modest and involve minor calibrations, and to inject the proposed level of detail into fee change notifications would not only be cumbersome, but it would also be of little to no value to end users.

Additionally, any regulatory review and approval process must not consist of a subjective hurdle to the establishment of Consolidated RTMD fees. Specifically, if Consolidated RTMD fees are to

be subject to a regulatory review and approval process, there must be clear and objective standards by which such fees are reviewed, as well as dependable, statutory timelines for approval/disapproval.

**Initial Option (b): Retain external assistance to review the DFM and its relevance in the context of domestic and international developments in equity markets.**

**Question #3: What are your concerns, if any, with continuing to use the DFM? If the DFM were to continue to be used, what changes are necessary?**

Cboe is of the view that:

- While the DFM model was developed with the right intentions, it is not addressing the most significant issue of the Canadian market: Retail Stakeholder’s access to Consolidated RTMD.
- In the short-term, the DFM should be enhanced (“Enhanced DFM”) to address this issue by providing a separate model focusing on professional users acting as advisors to retail investors and including non-professional users.
- Once access of Retail of Stakeholders to Consolidated RMD is addressed, the focus should be on a long-term solution that will provide the Canadian market with a sustainable and equitable fee structure for Consolidated RTMD.

Cboe *does not see the DFM as part of the long-term solution* and therefore we do not see any benefits in retaining external assistance to review the DFM. Any assistance should instead focus on a long-term solution and on garnering any experience from other relevant jurisdictions. Indeed, as noted in the Consultation Paper<sup>3</sup>, there is no other jurisdiction that applies a DFM or similar approach. External assistance in relation to the DFM is unnecessary and over-complicates what should be an interim model.

**Question #4: Is the application of the DFM appropriate for both senior and venture market data?**

Cboe does not see the benefit of distinguishing between senior and venture markets within the framework of the DFM. Any differentiated treatment would add unnecessary complexity and burden.

**Question #5: Should the application of the DFM be extended beyond subscriber fees? For example, should the DFM be applied to non-display and distribution fees (whether internal and/or external distribution fees) given the potential challenges noted above?**

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<sup>3</sup> See Section 6.2 (a): “We are not aware of another jurisdiction that applies a DFM or similar formula to assess professional RTMD user fees.”

Cboe believes extending the application of the DFM beyond subscriber fees would come with major challenges, as noted in the Consultation Paper<sup>4</sup>, and would delay addressing Retail Stakeholders' access to Consolidated RTMD. We recommend considering any other data fee categories (other than subscriber fees) as part of the long-term solution for Consolidated RTMD.

**Question #6:** *What are the potential benefits or risks of making the fee ranges calculated under the DFM transparent? Should there be greater transparency of other inputs to the DFM (e.g., reference points or key input metrics)? If so, please comment on the potential benefits and risks.*

Cboe has no immediate concerns with greater transparency as it relates to the DFM.

**Question #7:** *Should we consider adopting a methodology for non-professional subscriber fees? If yes, what should be factored into such a methodology? If not, why not?*

Please see our general considerations and answers to previous questions.

**Initial Option (c): Create an industry group to help standardize key terms and definitions for access to and use of RTMD between marketplaces and market participants.**

**Question #8:** *Should standardized key terms and definitions, such as professional and non-professional users, be developed for the access to, receipt, distribution, and use of RTMD products? If yes, please explain what the benefits of such an approach would be. If not, please explain why not.*

**Question #9:** *What other key terms and definitions should be standardized? What factors or industry legacy issues should be considered in standardizing such terms?*

**Question #10:** *Would this approach help address market participants' concerns with respect to the administrative burden related to the access to and use of consolidated RTMD? Please explain your answer.*

**Question #11:** *What would be the unintended consequences, if any, of standardizing these types of key RTMD terms and definitions?*

While the goals of an industry group created to standardize key RTMD terms are in principle worthwhile, convening such a diverse array of market participants could result in excessive self-posturing from its various constituents, and an added level of bureaucracy that will only hinder the industry group's efficiency in accomplishing its goals. That being said, Cboe generally agrees that the standardization of key terms and definitions could help to address some of the barriers, burdens, and uncertainties industry stakeholders currently face. Provided a standardization exercise takes into account international standards and is limited to foundational terms and definitions to allow for competitive differentiation and innovation, Cboe would generally support such an initiative.

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<sup>4</sup> See Section 7.1 (a): “[Overview of challenges]. As a result, the application of the DFM may remain limited to professional subscriber fees, *but it could be extended to non-professional subscriber fees* [emphasis added].”

**Longer-term Option (a): Leverage the current IP model by introducing a TIP+ Model.**

**Question #12: *Would caps on fees charged by marketplaces for their RTMD consumed through the consolidated TIP products affect the consumption and use of consolidated RTMD? If so, how? If not, why not, and are there alternatives that should be considered?***

**Question #13: *Under this approach, do you believe data vendors would begin to offer TIP-based products and pass cost savings on to the end user? If not, what drivers would be necessary to encourage this? Do you envision any potential unintended consequences under this approach?***

**Question #14: *What means of establishing caps and what factors for establishing cap levels should be considered?***

Based on our experience as an exchange operator in multiple jurisdictions, Cboe is sensitive to the meaningful operational and compliance related costs associated with providing reliable and resilient market data. We understand that the question of fees is both a sensitive and complex matter to address as many factors inform these fees and total trading costs. While we believe that exchange operators are best positioned to determine the cost and value of their data, we submit that Level 1-type data merits careful regulatory review. Data offerings beyond core do not.

Arguably, the U.S. SIPs have achieved demonstrably better outcomes for investors, public companies, and market resiliency than the Canadian IP model which today acts solely as a standardized technology solution to access multiple markets.

**Longer-term Option (b): Introduce a new model for data consolidation through the use of an Admin IP.**

**Question #15: *What are your views on the appropriateness of an Admin IP model for Canada? What would be the key benefits and challenges and how could any challenges be addressed?***

**Question #16: *What are the unintended consequences or risks that should be considered?***

**Question #17: *Are there any other key responsibilities that should be considered for an Admin IP model?***

**Question #18: *What governance model could be introduced that would be fair and help overcome conflicts such that the Admin IP could achieve its regulatory obligations?***

**Question #19: *Based on the size and scale of the Canadian market, should the CSA consider allowing for multiple TIPs to operate under the Admin IP approach?***

**Question #20: *Alternatively, should there only be a single TIP and, if so, should it be operated independently of the Admin IP?***

**Question #21: *If there is only a single TIP, should it operate as a for profit business or as a not-for-profit entity? Please explain your answer.***

The current TMX IP construct is not functioning well and must be evaluated and reformed to ensure Retail Stakeholders' access to Level 1/core data at a reasonable cost. Cboe believes that a properly designed Admin IP model is the long-term solution that will most benefit investors and the Canadian market. Cboe welcomes the opportunity to play a role in developing such a solution, however we believe that in the interim it is critically important to first prioritize the near-term solutions outlined above.

### **General Questions**

***Question #22: With respect to Staff Consideration 1, do you think that our review of RTMD costs and accessibility should consider the impact of regulatory requirements, such as OPR and best execution? What could drive changes in consumer behaviour (such as disconnecting from marketplaces that offer little benefit to the market compared with the costs or unprotected marketplaces)? What changes could impact the competition among data producers? What could incrementally increase consumer bargaining power? And ultimately, could any of these suggestions impact fees? Please explain your answer.***

As noted above, Cboe believes the most meaningful regulatory requirement is the one we are recommending here – the regulatory mandate requiring the consumption and distribution of Level 1 data by Retail Stakeholders, combined with an Enhanced DFM. We believe this mandate can be implemented without addressing questions regarding the OPR and Best Execution rules.

***Question #23: Would any of the options outlined above assist dealers with moving retail orders to other marketplaces during a marketplace outage?***

Mandating Retail Stakeholders' access to Consolidated RTMD, as per our recommendations discussed above, is one condition that needs to be fulfilled to allow trading to continue during the market outage of a listing exchange. Without access to consolidated market data, investors can simply not trade.

When a marketplace experiences an outage, there must also be a clear, industry-wide, protocol to declare that marketplace as inaccessible and non-operational, including messaging around the validity of “live” orders previously submitted to that marketplace. Recent outages in Canada have demonstrated that a marketplace experiencing an outage is reluctant to take the decision to stop operations for the day, leaving dealers unable to manage and move their orders; the TMX outage of April 27, 2018, is a perfect example of this issue. Between the time of the outage and when TMX eventually declared it would not reopen that day dealers were effectively held hostage. Until there was certainty about whether the orders had already traded or could still trade on the TSX or TSXV, there was no way any dealer could send those client orders to other marketplaces without facing the risk of getting multiple duplicate fills. Only when the TMX self-declared it would not re-open for the day did we see some orders migrate to other marketplaces.

We also believe that when these conditions are in place, IIROC should include, as part of its Industry Business Continuity Planning Test, a scenario where a listing exchange is out to validate that dealers can migrate their orders to other marketplaces.

**Question #24: *Are there any other options to address industry's concerns about the access to and cost of RTMD that we have not considered? Please explain your answer.***

Cboe applauds the CSA Staff for addressing the complex issues regarding access to RTMD and believes the Consultation Paper provides a detailed and thorough analysis. Cboe welcomes a continued dialogue on this important issue but has no further suggestions to provide at this time.

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We commend the CSA's efforts to address the RTMD issues in the Canadian marketplace and welcome the opportunity to further discuss our views. Please do not hesitate to contact us if you have any additional questions or comments.

Sincerely,



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