

B.11

CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.2 Marketplaces

B.11.2.1 Cboe Canada Inc. – Completion of Staff Review of Proposed Changes – DIOI – Deemed Withdrawal – Notice

CBOE CANADA INC.

NOTICE OF COMPLETION OF STAFF REVIEW OF PROPOSED CHANGES

On October 24, 2024, OSC staff (**Staff**) published a notice of Proposed Public Interest Rule Amendment and Request for Comments from Cboe Canada Inc. (**Cboe Canada**) regarding the introduction of a new order type to Cboe Canada's MATCHNow trading book (**MATCHNow**) called Directed Indication of Interest (**Directed IOI**). Six comment letters were received and copies are posted on our website.

Staff have completed our review of the proposed changes and provide the comments below in response to some of the issues that were raised.

Subsection 5.1(1) and paragraph 5.1(3)(a) of National Instrument 21-101 *Marketplace Operation* establish fair access requirements for marketplaces and provide that marketplaces “must not unreasonably prohibit, condition, or limit access by a person or company to services offered by it” and “must not permit unreasonable discrimination among clients, issuers and marketplace participants”. In our view, the Directed IOI proposal is inconsistent with this principle because it specifically provides the ability for a Cboe Canada Member, or a client of a Cboe Canada Member, to choose the counterparties and certain attributes of orders with which they wish to interact and ultimately trade against, which represents an unreasonable condition and limitation. The principal concern is not only about the Directed IOI functionality being available to all who choose to use it, but also whether marketplace participants ought to be able to intentionally restrict an order from interacting with the orders of other market participants via the use of this functionality. Staff have articulated similar views on proposals for other marketplaces that have restricted the interaction of orders.¹

The majority of commenters were of the view that the Directed IOI proposal violates fair access principles and that the level of discrimination is unreasonable because the proposed functionality would lead to an increase in market segmentation and silos of liquidity among a small number of large dealers where order flow is already highly concentrated. A minority of commenters put forth that discrimination is reasonable in the context of legacy channels and should remain reasonable when over electronic communications channels provided by a marketplace. We appreciate the submissions put forward that the Directed IOI functionality may bring efficiencies to workflows. However, the legacy channels that were referred to, also known as the upstairs market, is conducted by dealers, who are not subject to fair access requirements. Cboe Canada, is a marketplace and is subject to fair access requirements.

We recognize that other marketplace models may share some similarities to the Directed IOI proposal. However, in Staff's view, they do not explicitly exclude others from participating, including in the context of creating specific conditions that are at the discretion of marketplace participants. In our view, the Directed IOI proposal expands on the differentiation of marketplace access that is currently permitted, by allowing the users to specifically choose the nature of their counterparty.

In light of the issues raised, Staff have communicated to Cboe Canada that we do not recommend approval of the proposed changes in their current form. In accordance with s.10(e) of the *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto* (the **Protocol**), the proposed changes are deemed to be withdrawn based on the time that has elapsed. To the extent that Cboe Canada decides to pursue the proposal again, it will have to be resubmitted for review and approval in accordance with the requirements of the Protocol.

¹ See for example, “Notice of Completion of Staff Review of Proposed Changes – Original IntraSpread Facility – Alpha ATS LP” (December 14, 2010), which stated the following in regards to the proposed IntraSpread facility: “It is our view that a marketplace that offers order types that allow for an order to be systematically restricted from interacting with the orders of other participants is operating in a manner that is inconsistent with the fair access requirements set out in NI 21-101”.

Questions may be addressed to:

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