



November 25, 2024

Market Regulation Branch  
Ontario Securities Commission  
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Toronto, ON M5H 3S8

BY ELECTRONIC MAIL: [marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

Dear Sirs and Mesdames,

**Re: Cboe Canada MATCHNow – Directed Indication of Interest, November 25, 2024**

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National Bank Financial Inc. (NBF) appreciates the opportunity to comment on Cboe Canada’s proposal to introduce Directed Indications of Interest (“Directed IOIs”) to their BIDS platform and MATCHNow trading book. We support the Ontario Securities Commission’s stated mission to foster fair, efficient, and competitive capital markets. Inherent in that support is a belief that innovations in trading technology can improve the efficiency and fairness of existing trading processes, which themselves have unique benefits not yet comprehensively captured by electronic markets.

NBF is part of the diverse National Bank Financial Group (NBFG) which: (i) manufactures mutual funds, owns proprietary distribution channels and supplies services to third party distributors; (ii) operates a discount brokerage firm; and (iii) is a CIRO-regulated investment dealer across Canada. In service to our institutional clients, our trading desks extensively use both voice and electronic channels for the negotiation of both agency and principal block trades.

NBF supports the changes proposed by Cboe Canada. It is our opinion that the proposal would not violate section 5.1 of NI 21-101 (the “*fair access*” rule).

## **1 General Remarks**

For institutional investors, the Canadian equity marketplace is structured to efficiently facilitate informationally sensitive trades in small- and mid-cap securities. This unique strength arises from a blend of practices, regulation, and technology.

While the U.S. and other global markets depend today much more on internalizing small orders, Canadian markets continue to recognize the benefits that come from sensibly combining electronic and voice trading. A high-touch sell-side trader, working a large agency order in a Canadian security, may know of potential counterparties with which to execute a cross. Tactfully, the trader can use this knowledge, as well as the relationships they have built, to arrange an intentional agency cross that minimizes market impact and transaction costs for both parties, increasing total economic welfare. In today’s markets, some of this activity is now conducted through electronic block-crossing.

The proposed Directed IOI tool would represent electronic of an existing workflow and would serve to improve the efficiency of Canadian markets, especially as it enables natural investors to trade the small- and mid-cap securities efficiently. .

## **2 Are Directed IOIs a marketplace?**

There is no question that Cboe Canada's MATCHNow book is a marketplace. Under Neo Exchange Inc.'s varied recognition order, Cboe Canada is duly registered and regulated as an "exchange" under the Securities Act.

However, in evaluating this proposal, the OSC may wish to consider whether the contemplated activity would even constitute a "marketplace" were it not conducted under the aegis of Cboe Canada's registration. In Ontario, NI 21-101 defers to the definition of marketplace found in the Securities Act which, in addition to an exchange or a QTRS, includes:

a person or company [that] (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities or derivatives, (ii) brings together the orders for securities or derivatives of multiple buyers and sellers, and (iii) uses established non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade.

It is our opinion that Directed IOIs, as proposed, do not make use of "established non-discretionary methods [...] to agree to terms of a trade." In response to each dealer-initiated IOI, the client must deliberately choose to firm-up against that IOI. Likewise, the dealer must also deliberately choose to accept the firm-up. The terms of the trade (price, quantity, and side) are communicated through the system, but each participant uses discretionary methods to agree to the terms of the trade. It is our opinion that, **if this workflow were not proposed by a marketplace, Directed IOIs per se may not constitute a marketplace.**

## **3 Do Directed IOIs unreasonably impede Fair Access?**

What is really at issue in this proposal is whether Directed IOIs impede on the "fair access" requirement set out in NI 21-101 ("Marketplace Operation") Part 5, which forbids marketplaces from "[*permitting*] unreasonable discrimination among [...] marketplace participants or [*imposing*] any burden on competition that is not reasonably necessary and appropriate." In our view, this rule imposes two tests that the OSC should apply in determining if a proposal impedes fair access.

3(a) Would Directed IOIs impose an unreasonable burden on competition?

First, respecting Question 2, on the balance, it is our opinion that **Directed IOIs would reduce the net burden on competition.** The proposed Directed IOI workflow is similar in effect (though not in form) to existing central risk book (CRB) workflows offered by some Canadian dealers. However, building this infrastructure internally is costly and impractical for small dealers, meaning that this informational advantage today goes only to large dealers who have the capacity to build large CRBs.

It has long been our opinion that the competitiveness and efficiency the Canadian markets are improved when marketplaces provide common technologies that dealers could (for a cost) each

build independently (e.g., the Smart Limit order type on Alpha X). Doing so reduces the barriers for small dealers to access this flow and the information associated with it.

As similar bilateral technologies currently exist, Directed IOIs would not impose an unreasonable or inappropriate burden on competition.

3(b) Would Directed IOIs permit unreasonable discrimination?

Second, respecting Question 1, it is our opinion that Directed IOIs do not permit unreasonable discrimination among marketplace participants. Indeed, the Directed IOI workflow permits dealers to select which sponsored users may see their IOI. Likewise, the workflow permits sponsored users to select which dealers they are willing to observe IOIs from and what types of flow they would be willing to see. Definitionally, this constitutes discrimination. The question is whether this discrimination is unreasonable.

It bears repeating that this reasonable discrimination occurs today over legacy channels. A sell-side dealer makes a deliberate decision about which clients to shop flow to by telephone. And a buy-side client makes a deliberate decision about whether to pick up the phone when a broker calls. The sell- and buy-side participants reasonably discriminate between counterparties based on expected toxicity of the order flow, the nature of the order flow, and the level of trust between the parties. This discrimination is reasonable in the context of legacy channels and should remain reasonable when over electronic communications channels.

#### **4 Final Remarks**

In conclusion, it is our opinion that the contemplated Directed IOI functionality does not impose an undue burden on competition (in fact, competition would be enhanced) and does not permit unreasonable discrimination. Therefore, it is our opinion that Directed IOIs, in replicating legacy trading workflows in a fairer manner, do not impede fair access to a marketplace.

As always, we appreciate the opportunity to comment on the subject notice and request for comments.

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