

B.3.7 Cboe Canada Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from subsection 7.1(1) of National Instrument 21-101 Marketplace Operation to permit Cboe Canada Inc. to implement the Cboe Canada Opt-In Feature – relief on the same terms and conditions as the exemptive relief granted to TriAct Canada Marketplace LP on October 13, 2022 – decision granted.

Applicable Legislative Provisions

National Instrument 21-101 Marketplace Operation, ss. 7.1 and 15.1.

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions, ss. 3.4 and 3.6.

December 12, 2023

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA,
BRITISH COLUMBIA,
MANITOBA,
NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR,
NORTHWEST TERRITORIES,
NOVA SCOTIA,
NUNAVUT,
ONTARIO,
PRINCE EDWARD ISLAND,
QUÉBEC,
SASKATCHEWAN,
YUKON
(collectively the Jurisdictions)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
CBOE CANADA INC.
(Cboe Canada or the Exchange)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from Neo Exchange Inc. (**Neo Exchange**), on its own behalf and on behalf of Aequitas Innovations Inc (**Aequitas**) (jointly, the **Filer**) for a decision under the securities legislation of the respective Jurisdictions (the **Legislation**) for an exemption pursuant to section 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) from the pre-trade transparency requirements of subsection 7.1(1) of NI 21-101, consistent with, and on the same terms and conditions, as the exemptive relief granted to TriAct Canada Marketplace LP (operating as **MATCHNow**) by virtue of an order issued on October 13, 2022 (the **2022 Decision**) (the **Exemptive Relief Sought**).

The primary purpose of the Exemptive Relief Sought is to permit the continued operation, as of January 1, 2024, of the MATCHNow feature described below, by maintaining the necessary exemptive relief for that feature, in connection with the amalgamation of MATCHNow into a new legal entity, as described in further detail below.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review):

- (a) the Ontario Securities Commission (the **OSC**) is the principal regulator for the 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*, National Policy 11-203 *Process for Exemptive Relief in Multiple Jurisdictions* (**NP 11-203**), NI 21-101, or the *Securities Act* (Ontario) have the same meaning if used in this decision, unless otherwise defined. Additional capitalized terms are to be interpreted as defined in this decision.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is a marketplace that is an exchange recognized by the OSC and exempt from recognition in the other 12 Jurisdictions, and it facilitates the trading of exchange-traded securities.
2. The Filer's principal place of business and head office are located in Toronto, Ontario.
3. The Filer is not in default of securities legislation in any jurisdiction of Canada.
4. As of the effective date of the proposed amalgamation (the **Proposed Amalgamation**) of Aequitas, Neo Exchange, and TriAct Canada Marketplace LP (operating as **MATCHNow**), the entity that will be the surviving regulated marketplace will be a recognized exchange known as Cboe Canada, and MATCHNow, which will cease to exist as a standalone marketplace and legal entity, will instead be integrated into Cboe Canada as an order book of Cboe Canada.
5. It is intended for Cboe Canada to continue offering its members and their eligible DEA clients (or **Sponsored Users**) the ability to send conditional orders to MATCHNow (**Conditionals**), and to allow those Conditionals to interact with both firm passive dark orders (known as **Liquidity Providing orders**) and firm active dark orders (known as **IOC orders**) (referred to collectively herein as **Firm Orders**) in what will become the MATCHNow order book, to the extent that the Firm Orders have been opted-in for such interaction through the activation of an optional feature (the **Cboe Canada Opt-In Feature**), which will be identical in every practical respect to what is currently known as the Varied Opt-In Feature (as described in the 2022 Decision).
6. A member of the Exchange will need to affirmatively activate the Cboe Canada Opt-In Feature for it to apply to a Firm Order; otherwise, the system will default the Firm Order to being opted out for the feature, in which case the Firm Order will not interact with Conditionals.
7. When Conditionals were originally launched by MATCHNow, a MATCHNow subscriber would receive a firm-up invitation when the system detected a potential match between or among two or more Conditionals; however, pursuant to an exemption order, dated June 7, 2021, issued by the OSC in respect of MATCHNow (the **2021 Decision**), the Conditionals functionality was expanded to allow a MATCHNow subscriber to opt in to have an eligible Liquidity Providing order automatically generate a firm-up invitation for a Conditional where the system detected a potential match between that opted-in Liquidity Providing order and the Conditional.
8. Pursuant to the 2022 Decision, the opt-in feature that existed at the time was further expanded to allow a MATCHNow subscriber to opt in to have an eligible IOC order (in addition to an eligible Liquidity Providing order) automatically generate a firm-up invitation for a Conditional where the system detected a potential match between the IOC order (or the Liquidity Providing order) and the Conditional.
9. In those circumstances, the firm-up invitation generated by any opted-in Firm Order could be interpreted as a display of that Firm Order, and the same will hold true for Firm Orders that are opted-in for interaction with Conditionals through the Cboe Canada Opt-In Feature, as of the effective date of the Proposed Amalgamation.
10. Subsection 7.1(1) of NI 21-101 provides that, when a marketplace displays orders of exchange-traded securities to a person or company, the marketplace must provide accurate and timely information regarding the displayed orders to an information processor or to an information vendor if an information processor is not available.
11. The Filer has requested an exemption from subsection 7.1(1) of NI 21-101 to be able to offer the Cboe Canada Opt-In Feature to its members across Canada as of the effective date of the Proposed Amalgamation (January 1, 2024).
12. The Cboe Canada Opt-In Feature will be subject to the following conditions (which are effectively identical to the conditions that support the exemptive relief granted in the 2022 Decision):
 - 1) The Cboe Canada Opt-In Feature will facilitate large-sized trades, as only Firm Orders that are at least 51 standard trading units and \$30,000 in notional value or at least \$100,000 in notional value will be able to opt in to interact with Conditionals.
 - 2) The Cboe Canada Opt-In Feature, to be activated, will require an Exchange member to take the affirmative action of electing to have its Firm Orders interact with Conditionals (on an order-by-basis, or as a "default" for all Firm Order flow associated with a particular Trader ID).

- 3) When an opted-in Firm Order offers contra-side liquidity for a Conditional, the invitation to firm up sent to the Exchange member or Sponsored User that placed the Conditional will only provide symbol and side (i.e., buy or sell), while size and price will only be inferable without precision (i.e., the Exchange member or Sponsored User will be able to infer that the contra side is at least 51 standard trading units and \$30,000 in notional value or at least \$100,000 in notional value, and that the contra side's price is at or better than the mid-point of between the best bid and best offer for at least one standard trading unit displayed on all protected marketplaces in Canada, as contemplated in Universal Market Integrity Rule 1.2(8)(a) of the Canadian Investment Regulatory Organization)).
 - 4) When an opted-in Firm Order offers contra-side liquidity for a Conditional, the invitation to firm up sent to the Exchange member or Sponsored User will not allow the Exchange member or Sponsored User to determine whether the contra-side liquidity is immediately actionable (i.e., the Exchange member or Sponsored User will be blind as to whether the contra-side order is a Firm Order or another Conditional).
 - 5) The final step required to achieve an execution—namely, the firm-up by the Exchange member or Sponsored User that placed the Conditional—is not guaranteed and, therefore, execution is not a mere formality.
13. The Exchange's compliance mechanism applicable to Conditionals, which will be identical to the compliance mechanism that currently applies to MATCHNow subscribers and their Sponsored Users, will suspend Conditionals trading, on a per-security basis, for the remainder of the trading day for an Exchange member or Sponsored User whose firm-up rate falls below 70% for the day, provided at least 10 firm-up invitations have been received by the Exchange member or Sponsored User. The Exchange's compliance mechanism will treat all firm-up invitations uniformly, including those automatically generated by Firm Orders for which the Cboe Canada Opt-In Feature is activated. This provides an additional measure of protection in favour of the policy objective underlying subsection 7.1(1) of NI 21-101—namely, fair access to pre-trade information—by allowing the Exchange to monitor and combat abusive order-cancellation behaviour, which could indicate an Exchange member's or Sponsored User's attempt to gain an unfair informational advantage. Changes to the compliance mechanism will be subject to notice to, and approval by, the OSC through filing an amendment to the relevant information provided in the Exchange's Form 21-101F1.
14. While the transparency requirements are fundamental to the marketplace framework in NI 21-101, there is a benefit for Canadian capital markets from the facilitation of large block-size trades.
15. The Cboe Canada Opt-In Feature is expected to maintain or increase the adoption of Conditionals by the Exchange's members and their Sponsored Users and thereby provide a stable or greater amount of price-improved matching opportunities for large-sized orders, without any significant erosion of price discovery. Nevertheless, the Filer acknowledges that the impact of the Cboe Canada Opt-In Feature on the Canadian capital markets will be monitored over time, and any unanticipated negative impact will be addressed.

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:

1. The Cboe Canada Opt-In Feature will only apply to Firm Orders for which an Exchange member has affirmatively consented to using the feature.
2. A Firm Order will only be eligible for the Cboe Canada Opt-In Feature where it meets the applicable minimum size threshold (51 standard trading units and \$30,000 or \$100,000).
3. An invitation to firm up resulting from the Cboe Canada Opt-In Feature will convey only symbol and side as known order elements; information about price or quantity will not be conveyed and will only be inferable without precision.
4. An invitation to firm up resulting from the Cboe Canada Opt-In Feature will not enable the recipient to determine whether the contra-side liquidity is immediately actionable.
5. The Exchange will analyze the impact of the Cboe Canada Opt-In Feature and will share the results with the OSC and any other Exempting Regulator that requests those results. The manner and format of the analysis will be agreed to with OSC staff from time to time, as appropriate.

DATED December 12, 2023, to take effect January 1, 2024.

"Michelle Alexander"
Manager, Market Regulation
Ontario Securities Commission