



CVM Request for Comment on Proposed Changes to Articles 44 and 45 of CVM Resolution 135: Limiting Share Ownership of Managed Entities

March 15, 2024

VIA Electronic Mail

Market Development Superintendency
Comissão de Valores Mobiliários
Rua Sete de Setembro 111
Centro - CEP: 20050-901
Rio de Janeiro/RJ – Brazil

Re: SDM Public Consultation Notice No 6/23

To whom it may concern:

The World Federation of Exchanges (WFE) welcomes the opportunity to submit comments to the Comissão de Valores Mobiliários (CVM) on its recent proposals regarding the ownership of managed entities. The WFE applauds the CVM for its ongoing efforts to enhance the efficiency and competitiveness of the Brazilian capital markets. The WFE respectfully offers its thoughts only on the proposed Amendments to Article 45 (and by extension Article 44). This response is intended to complement any representations from our members.

Thank you for your consideration in this matter.

Yours sincerely,

Nandini Sukumar
Chief Executive Officer

Background

Established in 1961, the WFE is the global industry association for exchanges and clearing houses. Headquartered in London, it represents the providers of over 250 pieces of market infrastructure, including standalone CCPs that are not part of exchange groups. Of our members, 36% are in Asia-Pacific, 43% in EMEA and 21% in the Americas. The WFE's 87 member CCPs and clearing services collectively ensure that risk takers post some \$1.3 trillion (equivalent) of resources to back their positions, in the form of initial margin and default fund requirements. The exchanges covered by WFE data are home to over 55,000 listed companies, and the market capitalization of these entities is over \$111tr; around \$124tr in trading annually passes through WFE members (at end-2023).

The WFE is the definitive source for exchange-traded statistics and publishes over 350 market data indicators. Its free statistics database stretches back more than 40 years and provides information and insight into developments on global exchanges. The WFE works with standard-setters, policy makers, regulators, and government organisations around the world to support and promote the development of fair, transparent, stable, and efficient markets. The WFE shares regulatory authorities' goals of ensuring the safety and soundness of the global financial system.

With extensive experience of developing and enforcing high standards of conduct, the WFE and its members support an orderly, secure, fair, and transparent environment for investors; for companies that raise capital; and for all who deal with financial risk. We seek outcomes that maximise the common good, consumer confidence and economic growth. And we engage with policy makers and regulators in an open, collaborative way, reflecting the central, public role that exchanges and CCPs play in a globally integrated financial system.

If you have any further questions, or wish to follow-up on our contribution, the WFE remains at your disposal. Please contact:

Frank Hatheway, Senior Advisor, Market Structure [REDACTED]

Richard Metcalfe, Head of Regulatory Affairs: [REDACTED]

Nandini Sukumar, Chief Executive Officer: [REDACTED]

Response

Introduction

The World Federation of Exchanges (WFE) welcomes the opportunity to respond to the Request for Comment on the proposed changes to CVM Resolution 135 issued by the Comissão de Valores Mobiliários (CVM) in SDM Public Consultation Notice, No 6/23 (the Request for Comment). The WFE and its members appreciate the CVM's work to enhance investor and consumer confidence, particularly regarding addressing consistent and timely reform of the Brazilian Capital Market. All the WFE's comments in this response are focused on the proposed changes to Articles 44 and 45 of Resolution 135. The other proposed changes to Resolution 135 mentioned in the Request for Comment are not addressed by the WFE.

General Comments

As noted in the Request for Comment, many jurisdictions have limits on the control or ownership of managed entities such as exchanges. Such limits are important to ensure fair competition, protect market integrity and prevent conflicts of interest in financial markets. Ownership restrictions have long been a standard practice around the world particularly restrictions related to ownership by market participants such as brokers and/or dealers. Many WFE members are currently subject to ownership restrictions under the vigorous oversight of their competent authorities.

As seen in Table 1 of the Request for Comment,¹ ownership restrictions vary considerably across jurisdictions. These restrictions have a common goal, the goal of preserving the fairness and neutrality of a jurisdiction's managed entities in their many dealings with market participants.

There is a longstanding regulatory view that managed entities should not be controlled or owned by a limited set of market participants because of the inherent conflicts involved in owning and operating a managed entity. If a managed entity were controlled or owned by a limited set of participants, care must be taken to prevent the preferential treatment of any orders or trading activity received from its owners. Where participants are market intermediaries that are also active in (or operators of) alternative venues or over the counter (OTC) markets, the potential problems and conflicts become even more acute. These concerns are far from theoretical. For example, the European Union, the United Kingdom and the United States all are confronting the challenges in investors obtaining the best price.² When it comes to central price-formation and price-discovery venues, there are also public confidence considerations over and above the individual case of best-execution. Therefore, the WFE urges the CVM to carefully consider the implications of its proposals.

¹ <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD225.pdf>

² The WFE respectfully notes that supervisory efforts to achieve best execution may require more interventionist measures rather than less. For specific regulations and proposals please see:

EU: https://www.esma.europa.eu/sites/default/files/library/2015/11/08_735.pdf

UK: <https://www.handbook.fca.org.uk/handbook/COBS/11/2A.html>

US: <https://www.sec.gov/files/rules/proposed/2022/34-96496.pdf>

Specific Comments

The Request for Comment provides three arguments in favour of revoking Article 45 of Resolution 135 which are a) the reduction of barriers to new competitors between managed entities; b) the high degree of maturity of the Brazilian capital market to deal with potential conflicts of interest; and c) the regulatory asymmetry between organised stock exchanges and over-the-counter markets. The WFE focuses its comments on the second two arguments.

The second argument, the high degree of maturity of the Brazilian capital market to deal with potential conflicts of interest, is not compelling. The fact that current participants and managed entities deal with potential conflicts of interest contributes to the success of the Brazilian capital markets. But the current participants and managed entities have substantial reputational capital tied to the Brazilian capital market which give them incentives to manage potential conflicts well. CVM cannot be certain that any new entrants arising from the proposed revocation of Article 45 will have similar incentives or that the removal of the restrictions does not create unintended results.

Any managed entity, public or private, should be required to disclose its market participants that are 5% owners to maintain the faith and trust that investors have in the Brazilian markets.³ Furthermore, putting the beneficial ownership of market participants into the public domain grants an additional layer of oversight as civil society actors, journalists, and individual citizens, alongside the CVM, could examine the trades made by the beneficial owners to ensure that the owners are not undermining the integrity of the market.

The third argument, the regulatory asymmetry between managed entities and the OTC markets, is the least compelling. Legislators, regulators, and managed entities around the world recognise the critical importance of managed entities being a trusted and neutral third party. But, where public confidence in the operation of markets is concerned, it is not only that reality that matters. It is equally important that managed entities such as exchanges also be *seen* to be trusted and neutral third parties.

Managed entities build trust because they are neutral third parties, which do not directly benefit from the monetary value (or change in price) of their traded products, something that is not necessarily true in the OTC markets. Managed entities are acutely aware that the trust they build encourages investors to give up their assets (typically cash) today for the expectation of receiving growth resulting in greater assets tomorrow. Market participants must also trust that the managed entities will serve the needs of their clients and customers. Collectively, this trust and neutrality allows managed entities to fulfil the critical role they have in many nations' financial infrastructures. OTC markets rely on the trusted nature of managed entities for price discovery and other functions but recognise that managed entities and OTC markets are not the same.

Based on the WFE's analysis and experience revocation of Article 45 and by extension Article 44 are not warranted. The current limits of 10% ownership for participants and 15% ownership for non-participants should be retained or relaxed slightly as there is no definitive international norm. Furthermore, given the public-confidence considerations at stake, the caps should be true, 'hard' caps. It is important to obviate uncertainty as to how ownership of crucial pieces of core market infrastructure evolves, as well as managing the current ownership regime.

The proposal to revoke Articles 44 and 45 and replace them with the requirements of Article 152 is predicated on the erroneous belief that managed entities and the OTC market are the same. If the CVM is committed to removing the regulatory asymmetry between managed entities and the OTC market, then it should look to regulate the OTC market at the level of managed entities rather than the opposite.

³ The proposed disclosure requirement would only apply to managed entities and not to the over-the-counter market.

Concluding Thoughts

In closing, the WFE wishes to restate its appreciation for the opportunity to express its views on SDM Public Consultation Notice, No 6/23. The WFE does not support the revocation of Article 45 and encourages CVM to consider alternative approaches. We look forward to engaging on these issues further with CVM and would be happy to address any questions or comments you may have.