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August 26, 2014

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West
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Toronto, Ontario
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Dear Sirs/Mesdames:

Re: Notice and Request for Comment regarding Application for Recognition of Aequitas Innovations Inc. and Aequitas Neo Exchange Inc. as an Exchange

Introduction

Thank you for the opportunity to provide comment on the issues raised in the June 27, 2014 OSC Notice and Request for Comment (the "**Notice**") concerning the new equities exchange proposed by Aequitas Innovations Inc. ("**Aequitas**").

Wildeboer Dellelce LLP is a law firm formed in 1993 which provides business law services with a particular emphasis on public companies -- as counsel to those companies, as counsel to investment dealers who finance those companies as well as counsel to institutional and other investors who wish to invest in them. We have also enjoyed working with teams of professionals active in designing and operating trading platforms and exchanges in Canada. In particular, we provided advice to Alpha Trading Systems until its acquisition by the Maple Group and more recently have provided certain services to Aequitas as it takes steps to be recognized as a new equities exchange in Canada.

This comment letter will address governance matters, and the OSC's request for comment regarding the application of the Order Protection Rule (OPR).

Governance

As a fundamental pillar of the capital markets system, the integrity of a stock exchange is of paramount importance to investors, and more generally, to the well-being of the economy as a whole. Historically, stock exchanges have been dealer-controlled. This gave rise to inherent conflicts of interest between the interests of the dealer-owners and the broader public interest objectives that an exchange is expected and required to serve. The importance of addressing and

managing these conflicts of interest can be seen in the OSC's criteria for recognition and draft recognition order, which devotes a substantial amount of its length to board composition requirements and management of conflicts of interest, including a general requirement for "fair, meaningful and diverse representation on the board of directors and any committees of the board".

A foundational principle of the Aequitas proposal is a commitment to ensuring that its ownership and board membership is distributed across the different capital markets stakeholder groups. We note that the proposal contemplates majority ownership to reside within "buy-side" market participants; "sell-side" market participants are also represented, but form a minority. This approach to ownership and governance can be regarded as an attempt to reproduce a representative sample of "the public", or the "investing public", which will by its nature help to align the interests of the exchange with the public interest. The alignment of the Aequitas ownership and governance structure with the public interest lends credence to the market structure, listings and competition objectives that Aequitas seeks to achieve, and we believe that substantial weight should be attributed to this fact as the OSC continues to consider the Aequitas application for recognition.

With respect to the proposed definition of "significant shareholder", and the obligations proposed to be placed upon them in the draft recognition order, it is our view that these criteria may be overly broad. The concept of "significant shareholder" was expanded during the recognition of Maple, largely in response to concerns arising from the concentration of ownership in the hands of dealers, and the concentration of market share and vertical integration of marketplace constituents which resulted from the Maple transaction. Despite the absence of such concerns in the Aequitas context, the concept of "significant shareholder" in the draft recognition order appears to have been further expanded in at least two ways. First, the definition of "significant shareholder" potentially casts a wider net than the equivalent provisions of the Maple recognition order, since it would in many cases capture minority Aequitas shareholders. Second, in Schedule 4 of the proposed recognition order, direct obligations are placed on all "significant shareholders", whereas the equivalent schedule of the Maple recognition order (Schedule 9) places direct obligations only on "original significant Maple shareholders" – i.e. the Maple founders. Furthermore, many of the requirements imposed on "significant shareholders" in both the proposed Aequitas and the Maple recognition orders address competition matters; the utility of these requirements in the Aequitas context is questionable given that the Aequitas proposal does not raise the same competition concerns as Maple.

It is our view that requirements in the Aequitas recognition order applicable to Aequitas shareholders should be tailored to address matters which impact the public interest in the context of the Aequitas application. By imposing obligations on Aequitas minority shareholders which are disproportionate to the conflicts they are trying to address, the OSC will create a chill on the expansion of the Aequitas shareholder base contemplated in the "Launch Financing" (as described in the Aequitas application), which would run contrary to the OSC's and Aequitas' shared objective of ensuring meaningful and diverse representation.

Application of OPR to the Neo Book

Aequitas states that the Neo Book combines several novel features with the goal of "level[ing] the playing field between those market participants that have a speed advantage and those who do not". Such features include the "size-time" priority, a take-take fee model, and disincentives applied to active LST orders. As described in the Aequitas application, LST orders are orders originating from sophisticated and technologically advantaged traders.

The OSC has requested comments on whether OPR should apply to the Neo Book due to the treatment of LST orders. We do not see the public interest objective that would be served by allowing orders to trade through better-priced orders residing on the Neo Book on the basis that the Neo Book is attempting to disincentivize active order flow from the most sophisticated and technologically advantaged traders. Such treatment would run contrary to the purpose of OPR, which is to increase investor confidence, in particular for retail investors, by ensuring that better priced limit orders will trade ahead of inferior priced orders. Since the OSC has determined that the Neo Book does not violate principles of fair access, the Neo Book should be a protected book.

Application of OPR to New Marketplaces

The OSC has requested comments on whether to interpret and apply OPR such that it does not apply to any new marketplace that launches in the time period between the publication for comment and implementation of proposed amendments to National Instrument 23-101, and comments on specific benefits to the market or costs and complexities that this approach would introduce.

The proposed amendments to National Instrument 23-101 have far reaching consequences, and no doubt will generate its own set of diverse comments from various stakeholders. During the OSC request for comments regarding Aequitas on August 13, 2013, commenters stated their views on some of the complexities that would result from a visible market that is not protected, including issues with the consolidated display and the reference price for the dark rules. We expect this type of discussion will be significantly extended during the National Instrument 23-101 comment process. We believe it would be pre-mature to not apply the current provisions of National Instrument 23-101, including OPR, to Aequitas because the substance and timing of any amendment to the Instrument is unknown and speculative at this point.

From a competitive standpoint, Aequitas would be placed at a significant competitive disadvantage to existing marketplaces if OPR did not apply to orders displayed on its trading books. This would run contrary to the OSC's stated position of encouraging competition in the Canadian financial markets. In contrast to other recent ATS marketplaces, Aequitas has advanced a comprehensive business plan for its proposed exchange, which addresses market structure, market making, listing and competition. In our view it is appropriate for the OSC to distinguish between a new marketplace that on its face will have a competitive impact, such as Aequitas, and a new marketplace that offers little in the way of innovation and competition. Finally, it would be prejudicial for the OSC to interpret OPR as not applying to Aequitas pending

amendments to National Instrument 23-101 since Aequitas had publicly announced its intention to enter the Canadian market and had been working with the OSC towards this goal well in advance of the publication of the proposed amendments.

If at any time you wish to discuss any of the above please do not hesitate to contact Nicholas Dobbek (ndobbek@wildlaw.ca or 416-361-6068) or Ronald Schwass (rschwass@wildlaw.ca or 416-361-4789).

Yours truly,

"Wildeboer Dellelce LLP"