

September 5, 2014

Market Regulation Branch  
Ontario Securities Commission  
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Dear Sirs/Mesdames:

**Re: Application for Recognition of Aequitas Innovations Inc. and Aequitas Neo Exchange Inc. as an Exchange (Aequitas Application)**

The Canadian Advocacy Council<sup>1</sup> for Canadian CFA Institute<sup>2</sup> Societies (the CAC) appreciates the opportunity to comment on the Aequitas Application. Capitalized terms used in this letter and not defined herein will have the same meaning as in the Notice and Request for Comment published by the Ontario Securities Commission (OSC) regarding the Aequitas Application (the Request for Comments).

Although the Request for Comments set out a deadline of August 26, 2014 for submitting comments, pursuant to a conversation between Mr. Paul Roman of the OSC and Ms. Cecilia Wong, Chair of the CAC, the CAC obtained permission to submit comments by no later than September 5, 2014.

In addition to the specific topics that are set out in Part III of the Request for Comments, the CAC wishes to comment regarding the disclosure provided in the Aequitas Application regarding the selection, assignment and review of market makers. The Aequitas Application provides very little detail on the criteria to be used to select and assign market makers, as well as the process for reviewing the activities of market makers (including the quantitative and qualitative criteria against which market makers

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<sup>1</sup>The CAC represents the 13,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfasociety.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

<sup>2</sup> CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 119,000 members in 147 countries and territories, including 112,000 CFA charterholders, and 143 member societies. For more information, visit [www.cfainstitute.org](http://www.cfainstitute.org).

will be evaluated). More details should be included regarding the precise obligations market makers will have and the sanctions which may be applied to market makers who fail to fulfill their obligations or abuse their benefits. The CAC understands that Aequitas has not provided some of this information for competitive reasons, however if the OSC were to make this type of disclosure mandatory for all future applications, it would avoid any competitive issues while providing market participants and regulators with all the information necessary to evaluate an application completely.

The remainder of the CAC's comments will respond to the specific questions set out in the Request for Comments. The numbering below corresponds to the numbering of Part III of the Request for Comments.

*i. Is it appropriate for market makers to have obligations with respect to the Dark Book and dark pools generally and whether it is appropriate to have benefits in the Dark Book but no obligations?*

There should not be any market making obligations in the Dark Book, as there is no contribution to price formation and stability in the Dark Book as it uses reference pricing from visible marketplaces.

It is not reasonable to provide benefits (including priority) to market makers in the Dark Book unless the market makers have market making obligations in those books that contribute to price stability, price formation, and overall market quality in a positive, meaningful manner. We believe that the benefit should arise only where the obligation arises, in the lit markets.

*ii. Does the MMC feature provide too great an incentive to the market maker at the expense of the existing orders in the book?*

The CAC believes that as long as the use of the MMC feature is limited to volumes not greater than the MMVA then we believe that the MMC feature can incent market makers to provide important price stabilization benefits for the market.

*iii. What should be the specific listing requirements for Investment Products?*

While the OSC should try to prevent arbitrage by not permitting Investment Products to be listed on Aequitas where it would not otherwise be permitted to be listed on the TSX, it is important not to impede product access into the market in an efficient manner. As a result, the requirements for listing Investment Products should be the same as those required by the TSX. We agree with the requirement that Staff be notified of any listing or cross-listing of an Investment Product so that they can enforce the requirement to file a prospectus where a distribution is taking place.

*iv. What elements should be included in Aequitas' requirements or procedures for EM Issuers?*

On February 26, 2013, the CAC responded to a request for comments from the Toronto Stock Exchange and the TSX Venture Exchange on the requirements and procedures that we believe should be adopted by these exchanges for EM Issuers.

In that consultation, the CAC stated that there should be stringent listing criteria for EM Issuers as an investor protection measure. Additionally, EM Issuers should be required to meet the same accounting and audit criteria as non-EM Issuers on an on-going basis. In addition, EM Issuers need to be able to provide local records and books to Canadian auditors on an ongoing basis.

The CAC also believes that there should be corporate governance requirements for EM Issuers. The boards of EM Issuers need to include directors with expertise in both Canadian legal standards and local (to the EM Issuer) requirements. The same is true of officers, particularly the Chief Financial Officer.

The CAC believes that Aequitas should adopt standards at least as strict as those of the TSX and TSXV regarding EM Issuers, and that until such time as those standards are settled, Aequitas should not be permitted to list EM Issuers.

*v.*

*(a) Is it appropriate for a market to be protected where it systematically treats one class of participant differently than another; that is, whether OPR should apply to the Neo Book in these circumstances*

The CAC is broadly in agreement with the OSC view that the restrictions proposed do not unreasonably restrict access, though we would highlight the significance and potential implications of the regulatory change in allowing participant segmentation and any access restrictions in lit and/or protected markets. The CAC further highlights the significance of allowing an exchange or marketplace to unilaterally assess and segment participants based on their profile or behaviors, and we would caution that there may be unintended future consequences of such an allowance.

*(b) Should Staff 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 the Proposed Amendments?*

The CAC is of the view that in almost every circumstance it is not appropriate to ask an applicant to comply with a rule that is not yet finalized at the time of such applicant's application. While it would certainly be our preference that such a situation not exist, we do not believe it would be reasonable to not apply OPR to the Aequitas Lit and Neo Books if they are launched prior to the implementation

of the final revised OPR regime. We are of the view that the application would most likely vary substantially from what is currently proposed if the post-OPR review regime is applied, and it is therefore not fair to evaluate the application in such manner. The CAC is of the view that the marketplace contribution review mechanism in the finalized OPR regime will adequately assess all marketplaces (including Aequitas) on a trailing basis and that granting protected status at launch until such time that a review would occur is not unreasonable given the circumstances surrounding the application and the ongoing OPR review process.

### **Concluding Remarks**

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at [chair@cfaadvocacy.ca](mailto:chair@cfaadvocacy.ca) on this or any other issue in future.

(Signed) Cecilia Wong

**Cecilia Wong, CFA**  
**Chair, Canadian Advocacy Council**