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Market Regulation Branch
Ontario Securities Commission
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September 26, 2013

Dear Sir or Madam:

Re: OSC Staff Notice And Request For Comment Regarding Proposed Structure Of Trading Facilities For A New Exchange Proposed To Be Established By Aequitas Innovations Inc.

I am writing in response to the Market Regulation Branch's Request for Comment regarding Aequitas. I appreciate the opportunity to comment and I appreciate the enormous amount of work that has gone into preparing both the Aequitas proposal and the OSC Notice and Request for Comment. The issues debated are complex and the outcome of this process will have a significant impact on the development of equity trading in Canada.

It is clear that equity markets are not as they should be. In particular, market structure has developed to the detriment of mutual fund and pension fund investors. For that reason, I support the innovative solutions that Aequitas is proposing.

It is also important to recognize that when one party benefits, there is a chain of other parties that will benefit as well as a set of other parties who will not benefit. Fairness is always relative to a position and thus may not be achievable for all parties.

Segmentation of Accounts, Order Protection Rule, and Fair Access
The Aequitas Hybrid book will lead to a technical violation of the OPR. While I understand the intent behind the proposal, I am concerned about allowing a violation to the OPR: we need a market structure framework that applies to all participants. To the extent that innovation requires exemptions we must re-evaluate the framework.

In this case, however, the issue comes down to segmentation of orders by account type. Should this be allowed? This is a very complex question. On the one hand, Liquidnet does this successfully in their dark market. And I support the intention behind the segmentation of orders. On the other hand, I have two concerns.

The first is around Fair Access. Fair Access requirements are challenged by the Hybrid proposal. Because it is an NBBO market, I support the segmentation of order flow but would want to see this issue commented on specifically by regulators (i.e. a reckoning between the Hybrid and Fair Access) and monitored closely. By monitoring I am referring primarily to my second concern which is more material: Can segmentation be accomplished at an adequate standard so as to meet the intention of the proposal? In a subsequent section I discuss problems with the SME Marker. Investors exist on a continuum and determining who is a long-term investor and who is not is not a black and white decision and is open to the possibility of manipulation.

Market Making
I wonder if priority after broker preferencing will offer enough value in exchange for the significant responsibilities required of a market maker to support this trading system. I would support giving market makers priority *ahead of* broker preferencing (on hybrid at least) to better compensate them for this task. I would support giving them priority ahead of broker preferencing on the lit book as well but understand the competitive pressures that will likely prevent this.

SME marker:
Question 8 in the Request for Comment asks: "Is the SME marker an appropriate proxy to identify the behaviours Aequitas seeks to restrict?"

My concern is that it does not. There are three reasons for my concern:

1. The SME marker identifies a class of trader that is eligible for the marker due to its characteristics – arbitrage, short term trader, etc. If a trader does not qualify for that market it is not a correct conclusion that this trader is a long term investor. The various traders in the market place exist on a continuum of trading-horizons. At each horizon there are a wide variety of strategies, end of day position sizes, etc. The SME marker carves out a subset of traders as eligible for the exemption but there are many other traders who may not qualify for this exemption but for whom the term "long term investor" might not apply.

2. The SME marker standard is somewhat subjective and can be interpreted in various ways. In addition, account characteristics can be determined to meet these criteria. Finally, accounts can be aggregated into a larger P&L, obfuscating the intent of the SME marker rule.

3. For those accounts "on the edge" of the SME marker rule there may be an incentive to trade off the benefit of a SME marker with the benefit of choosing to not use the marker but be able to act as

a long-term investor on Aequitas. This is a form of regulatory arbitrage which would be avoided by keeping the determinations distinct.

The preferable (although more onerous and expensive) method of determining long-term investors is to work with both their registrations and investment policies to ensure the accounts are actually investing with a long time horizon and to the benefit of investors (recognizing the breadth of possible definitions of the word 'investor'). Another possibility is to work directly with the buy-side in managing this distinction. If the concept of segmentation of orders by account type is approved, the segmentation must be done to the highest possible standard to ensure the intention of the marketplace is realized. If this cannot be done, it would be appropriate to disallow segmentation altogether. The proposal rests on this issue.

Finally, from a business perspective I am interested to see how Aequitas will fare if approved as proposed. The trading community's response (in terms of orders sent and shares traded) to this set of products will be as telling as the outcome of the regulatory process. I would like to see them have the chance to try out their innovative proposal.

Best,

Ali Crosthwait