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May 9, 2022

VIA EMAIL

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Email: marketregulation@osc.gov.on.ca

Dear Sirs / Mesdames,

Re: Application by Aequitas Innovations, Inc. and Neo Exchange, Inc. for Variation of Recognition as Exchanges to Reflect Proposed Acquisition by Cboe Canada Holdings, ULC – Notice and Request for Comment (the "Request for Comment")

TMX Group Limited ("**TMX Group**" or "**we**") welcomes the opportunity to comment on the Request for Comment published by the Ontario Securities Commission ("**OSC**") regarding the application by Aequitas Innovations, Inc. ("**Aequitas**") and Neo Exchange, Inc. ("**Neo Exchange**") for variation of recognition as exchanges to reflect the proposed acquisition by Cboe Canada Holdings, ULC ("**Cboe Canada**") (the "**Proposed Recognition Order**").

TMX Group's key subsidiaries operate cash and derivative markets for multiple asset classes, including equities and fixed income. Toronto Stock Exchange ("**TSX**"), TSX Venture Exchange ("**TSXV**"), TSX Alpha Exchange ("**Alpha**"), The Canadian Depository for Securities, Montreal Exchange ("**MX**", and together with TSX, TSXV and Alpha, the "**TMX Exchanges**"), Canadian Derivatives Clearing Corporation, Shorcan Brokers Limited and other TMX Group companies provide listings markets, trading markets, clearing facilities, data products and other services to the global financial community and play a central role in Canadian capital and financial markets.

TMX Group supports the OSC's approach to the regulation of Neo Exchange, Aequitas, and Cboe Global Markets, Inc. ("**Cboe Global**"), the publicly listed, ultimate parent of Neo Exchange and Aequitas, where the Proposed Recognition Order is equivalent in the application of regulatory requirements for all Canadian exchanges. We are in favour of healthy competition and welcome new entrants to our capital markets as it can enhance innovation and attract global capital. However, we expect a level regulatory playing field to exist in Canada between domestic and foreign exchange groups with Canadian operations. Anything less impacts the integrity of the Canadian capital markets, and furthermore, is unfair to homegrown Canadian exchanges, who are directly invested in Canada and must compete at home and abroad.

Cboe Global is the parent company of a major international exchange group and has business lines that span across many different aspects of the capital markets. Whether it plans to operate in Canada directly, or solely through its Canadian subsidiaries, it is comparable in size and stature to large exchange groups, such as TMX Group. Cboe Global's acquisition of Neo Exchange encompasses the purchase of a marketplace with active listings, trading and data businesses. All aspects of these businesses play important roles in the Canadian capital markets. More specifically, listings venues are responsible for the development and application of appropriate policies for listing, regulating and enforcing compliance, and ensuring appropriate market conduct. They play a critical gatekeeper role (in conjunction with Canadian securities regulators) in deciding which Canadian companies and investment funds have access to our public markets and are permitted to offer securities to retail investors.

Our comments will highlight ways in which the Proposed Recognition Order holds the proposed U.S. owner to a lesser standard than a Canadian owner, such as TMX Group. Specifically, the failure to recognize Cboe Global itself as a recognized exchange, with equivalent regulatory accountabilities to TMX Group, is unjustified. We submit that it is a fundamental tenet of appropriate regulation that a level playing field exists in comparable circumstances for the regulatory oversight of exchanges operating in Canada. Accordingly, we urge the OSC to apply a regulatory regime that results in Cboe Global being regulated in a manner that is equivalent to how TMX Group is regulated. Finally, we also ask the OSC to eliminate the incongruencies set out in Part II of this letter.

I. Level Playing Field

It is fundamentally important that competition among marketplaces operating in Canada is rooted in a level playing field and that all competitors are subject to the same rules in order to ensure a truly fair, open and competitive environment. The framework for Canadian marketplace rules was created by two governing instruments, National Instrument 21-101 *Marketplace Operations* ("**NI 21-101**") and National Instrument 23-101 *Trading Rules* ("**NI 23-101**"). The core principles of these two instruments include that (i) a common set of rules apply to marketplaces, and (ii) all marketplaces are subject to full commission oversight.[1] However, while NI 21-101 and NI 23-101 have established an overarching framework for Canadian marketplaces, such rules are supplemented by requirements applied to each exchange in its recognition order. Thus, to ensure that exchanges are operating appropriately, in a manner that is consistent with the public interest, and able to compete on a level playing field, the OSC must ensure that the requirements applicable to exchanges that they regulate are equivalent in comparable circumstances.

[1] See Timothy Baikie, Tracey Stern and Maureen Jensen, "A Framework for Responsive Market Regulation" (April 2017), at 6-7.

As noted above, TMX Group is in favour of strong competition in the Canadian marketplace, but we expect that the Canadian regulatory regime will not be unevenly applied such that it creates an imbalance that favours foreign entities over domestic ones. TMX Group supports eliminating differences in recognition orders that hinder competition amongst exchanges. If exchanges and their owners are not able to compete on a level playing field, the positive by-products of healthy competition, such as innovation, growth and confidence in our capital markets, will be stifled.

II. Recognition by the OSC of the Owner of a Recognized Exchange

TMX Group, the Canadian parent holding company of the TMX Exchanges (in addition to other entities), is itself recognized as an exchange, as the owner of these exchanges, by both the OSC and by the Autorité des marchés financiers ("**AMF**"). By contrast, the OSC is not proposing to recognize Cboe Global, the proposed owner of Aequitas and Neo Exchange, as an exchange. Many significant regulatory accountabilities arise as a result of exchange recognition as an owner, which creates a significant difference between the regulatory treatment of a U.S. parent company of a Canadian exchange and a Canadian parent of domestic exchanges.

The Request for Comment states that while Cboe Global will not be recognized as an exchange by the OSC, it will be subject to certain terms and conditions in the Proposed Recognition Order. However, imposing discrete terms and conditions is not the same as exchange recognition and does not permit the regulator to have direct oversight of the parent company that owns Neo Exchange. The Request for Comment notes that Cboe Global does not carry out exchange activities in respect of Aequitas and Neo Exchange that would warrant recognition as an exchange. However, Neo Exchange will still be subject to the direction of Cboe Global on strategic, policy and organizational alignment matters and may receive support from Cboe Global personnel in certain areas.[2] Accordingly, we submit that there is no substantive policy reason supporting the different treatment of a U.S. owner such as Cboe Global.

Since the OSC is not proposing to recognize Cboe Global as an exchange, it will not be subject to the full scope of public interest, governance, and reporting obligations (among others) that TMX Group is required to comply with. Certain of the key regulatory requirements, which create an unequal playing field between the two exchange groups, are described below.

Public Interest

A significant impact of the lack of recognition of Cboe Global, as parent company to Aequitas and Neo Exchange, is that it is not subject to the heightened public interest obligations of a recognized exchange. TMX Group, as parent company to the TMX Exchanges and as a recognized exchange itself, must (i) conduct its business and operations in a manner that is consistent with the public interest, and (ii) expressly include the regulatory and public interest responsibilities of TMX Group in the mandate of the TMX Group Board of Directors.[3] The TMX Group's public interest mandate factors into various

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[2] As noted in the application to the OSC by Aequitas and Neo Exchange for variation of recognition as exchanges to reflect the proposed acquisition by Cboe Canada, dated March 16, 2022.

[3] Schedule 2, section 2 of the OSC recognition order recognizing each of TMX, TSX and Alpha, as exchanges, as amended from time to time ("**TMX Recognition Order**").

other requirements in its recognition order, including maintaining a governance structure that ensures that business and regulatory decisions are consistent with each of its exchanges' public interest mandates, that the public interest informs decisions on the fitness of directors and officers, and balancing profit-making and the public interest responsibilities of TMX Group by the Regulatory Oversight Committee, among others.[4]

Under the Proposed Recognition Order, Cboe Global is only obligated to ensure that Aequitas and Neo Exchange conduct the business and operations of recognized exchanges in a manner that is consistent with the public interest.[5] We submit that a clear and convincing policy basis is necessary to justify imposing a lesser standard on Cboe Global than on TMX Group, given both entities are parent companies of exchanges with the similar business operations, including active listings businesses.

Governance Obligations

There are significant differences between the governance obligations of TMX Group under its recognition order and the Proposed Recognition Order for Cboe Global.

As a recognized exchange, TMX Group has a number of governance requirements,[6] including the (i) obligation to have an independent Board Chair, and (ii) requirement that one member of the TMX Group Board be a representative of a marketplace participant that is not affiliated with a Canadian Schedule 1 bank (the independent dealer requirement).[7] Given Cboe Global is not recognized as an exchange in the Proposed Recognition Order, it has no governance requirements imposed on it. Moreover, the governance obligations imposed on Neo Exchange are less onerous than those on TMX Group.

Neo Exchange is granted the flexibility to have a Board Chair that is either independent or if not independent, a lead director.[8] Furthermore, no parallel independent dealer requirement is imposed on Neo Exchange or any other recognized stock exchange in Canada, which is a significant requirement that TMX Group must comply with. The OSC is not proposing to impose this requirement on Neo Exchange or Cboe Global, which is inconsistent with the principle of level playing field.

NI 21-101 Reporting Obligations

Despite being a holding company and not carrying on exchange operations, TMX Group is required to file a consolidated Form 21-101F1 *Information Statement* ("**Form 21-101F1**") on an annual basis and must provide updates to the information contained in the Form 21-101F1 on a periodic, and at least

[4] See Schedule 2 and 3 of the TMX Recognition Order.
[5] See Schedule 4 of the Proposed Recognition Order.
[6] In addition to the governance requirements included in the TMX Recognition Order (i) the AMF recognition order of TMX Group and MX requires that 25% of TMX Group's board of directors be composed of directors who are residents of the Province of Québec, and (ii) TSXV's recognition orders, as issued by each of the Alberta Securities Commission and the British Columbia Securities Commission, require 25% of the directors of TSXV to have relevant experience in the Canadian venture market.
[7] See Schedule 2, sections 5 and 6 of the TMX Recognition Order.
[8] See Schedule 2, section 6 of the Proposed Recognition Order.

quarterly, basis. This regulatory requirement involves annual filings consisting of hundreds of pages, which have to be reviewed and compiled by TMX employees and certified by TMX Group's Chief Executive Officer. In addition, as TMX Group is also recognized as an exchange by the AMF, we must also provide our Form 21-101F1 filings in French, which involves considerable time and expense. As the OSC is not proposing to recognize Cboe Global as an exchange, Cboe Global is subject to considerably less administrative burden, despite owning an exchange in Canada. The effect of our exchange recognition means that TMX Group must expend significantly more time, resources and attention to its reporting requirements. This places a disproportionately greater burden on TMX Group.

Annual Compliance Certificates

The TMX Recognition Order requires the Chief Executive Officer and General Counsel of TMX Group to annually certify that it is in compliance with the terms and conditions of its recognition order requirements.[9] TMX Group and its subsidiaries have developed an extensive and robust compliance program to enable these two officers to provide such required certifications. Given Cboe Global will not be recognized as an exchange under the Proposed Recognition Order, it does not have a parallel compliance requirement. As a result, the compliance obligations imposed on TMX Group by the OSC are disproportionately greater than those of Cboe Global, without a clear justification for such a difference.[10]

III. Suggested Changes to Proposed Recognition Order (beyond Cboe Global Recognition as an Exchange)

In addition to the unlevel playing field flowing from the proposal that Cboe Global not be recognized as an exchange, TMX Group submits that there is an unlevel playing field in other aspects of the Proposed Recognition Order as it applies to Neo Exchange when compared to the TMX Exchanges, such as those set out below.

A. Conflicts of Interest

The conflicts of interest provisions applicable to Neo Exchange are less onerous than those applied to TSX. Specifically, TSX is required to establish, maintain and require compliance with policies and procedures that identify and manage any conflicts of interest or potential conflicts of interest raised by the listing of shares of any significant TMX shareholder or an affiliate of a significant TMX shareholder on TSX, and any amendments to such policies and procedures must not be implemented without prior approval of the OSC.[11] Neo Exchange has a similar requirement to establish, maintain and require compliance with policies and procedures regarding the listing of shares of any significant shareholder or an affiliate of a significant shareholder on Neo Exchange.[12] However, there is no requirement for Neo

[9] See Schedule 2, section 14 of the TMX Recognition Order.

[10] In addition, unlike TMX Group, TSX and Alpha, Neo Exchange and Aequitas are provided with the flexibility of having their annual compliance certificates signed by the Chief Executive Officer and the General Counsel *or* another executive officer of the applicable entity. Such flexibility grants Neo Exchange and Aequitas the ability to meet its compliance obligations on a more agile basis.

[11] See Schedule 4, section 23(b) of the TMX Recognition Order.

[12] See Schedule 2, section 9(b) of the Proposed Recognition Order.

Exchange to obtain prior approval from the OSC to make any amendment to such policies and procedures. As an exchange, TSX's requirement for prior regulatory approval for any amendments to policies and procedures creates uncertainty and potential delays regarding the implementation of changes. This difference permits Neo Exchange to more easily implement changes to its policies and procedures without any clear rationale for disparate treatment.

Further, TSX is required to establish, maintain and require compliance with policies and procedures that identify and manage any conflicts of interest or potential conflicts of interest arising from the listing of shares of TMX Group or a competitor to TMX Group on TSX.[13] As a result of this requirement, TSX has established a Conflicts Committee, which must review all matters related to a TMX Group entity's listing on the exchange, or the initial or continued listing of a competitor of TMX Group on its exchange. Pursuant to TSX's policies and procedures, in the case of a listing-related matter regarding a competitor, the competitor may request that the matter be referred to the Conflicts Committee for consideration (i.e., whether a conflict exists, in which case TSX must comply with additional requirements) or waive such requirement. In addition, pursuant to such policies and procedures, TSX is required to refer certain competitor listing-related matters to the OSC's Director, Market Regulation. No such equivalent requirement to establish and maintain conflicts policies and procedures relating to competitors of Neo Exchange, Aequitas or Cboe Global is imposed on Neo Exchange in the Proposed Recognition Order.

B. Regulation of Operational Matters

In order for the OSC to foster fair and efficient capital markets in Canada, it is fundamentally important that there is equal extension of operational rules in Canada. We note that the following provisions in the Proposed Recognition Order, if not amended, would grant Neo Exchange, and by extension, Cboe Global, an unfair advantage over TMX Group.[14]

Fees, Fee Models and Incentives

The Proposed Recognition Order does not extend the prohibition on tied selling to the same extent as the restrictions imposed on TMX Group. This unequal treatment would have the effect of granting Neo Exchange, Aequitas and Cboe Global greater flexibility regarding fee, fee models and incentives.[15]

The provision in the Proposed Recognition Order on tied selling is only limited to Neo Exchange (i.e., discounts cannot be conditional on (i) Neo Exchange being set as the default or first marketplace a market participant routes to, or (ii) the router of Neo Exchange being used as a marketplace participant's primary router).[16] The current provision in the Proposed Recognition Order on tied selling

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[13] See Schedule 4, section 23(c) of the TMX Recognition Order. Any amendments to such policies and procedures may not be implemented without prior OSC approval.

[14]As Cboe Global also owns TriAct Canada Marketplace LP, which operates MATCHNow, a Canadian marketplace for Canadian listed securities, TMX is of the view that the OSC should consider MATCHNow to be an affiliate of Cboe Global.

[15] In this section, we describe the current restrictions on Neo Exchange in the Proposed Recognition Order regarding fees, fee models and incentives and we provide suggested amendments. To the extent similar provisions exist for Aequitas, our comments and suggested amendments apply equally to those provisions. For example, see Schedule 3, section 29(a)(ii) of the Proposed Recognition Order.

[16] See Schedule 2, section 12(a)(ii) of the Proposed Recognition Order.

does not take into account Cboe Global's international operations, and therefore, while tied selling related to Neo Exchange is not permitted, Neo Exchange[17] could engage in tied selling connected to Cboe Global's other international markets[18] or even within the Canadian market. By contrast, pursuant to the TMX Recognition Order, the recognized exchanges are prohibited from providing discounts that are conditional on any TMX marketplace (i.e., any marketplace owned or operated by TMX Group or TMX Group's affiliated entities) being the default or first marketplace a marketplace participant routes to, or being a market participant's primary router.[19] As drafted, this distinction will provide Cboe Global with an advantage over TMX Group, and we urge the OSC to revisit the provisions regarding fees, fee models and incentives in the Proposed Recognition Order.

Order Routing

Pursuant to the Proposed Recognition Order, Neo Exchange must not support, encourage or incent, either through fee incentives or otherwise, Neo Exchange marketplace participants, Cboe Global affiliated entities or significant shareholders to coordinate the routing of their orders to Neo Exchange.[20] As drafted in the Proposed Recognition Order, the restrictions on order routing are more limited than the restrictions applicable to TMX Group. For example, Neo Exchange's restrictions are limited to routing orders to Neo Exchange and do not take into account Cboe Global's other marketplaces, whereas TMX Group is prohibited from encouraging the routing of orders to TMX marketplaces and TMX trading facilities.[21] Similar to the remarks above regarding fees and fee incentives, we ask that the OSC revisit this provision in the Proposed Recognition Order.

IV. Conclusion

TMX Group is not opposed to new exchange owners entering the Canadian capital markets and recognizes the role they can play in helping to create a vibrant, innovative and competitive market. However, in order to ensure that the regulatory framework applicable to all recognized exchanges is consistent with the public interest and ensures a truly level playing field amongst exchanges that fosters fair competition among Canadian marketplaces, we urge the OSC to ensure integrity and fairness through holding Cboe Global, a U.S. owner, and Neo Exchange to at least the same standard required of comparable Canadian companies. Failure to do so gives foreign entrants a substantial advantage over domestic incumbents, which will have a negative effect on competition and innovation in the Canadian capital markets and could have negative consequences for our economy. Given the size, scope and maturity of Cboe Global and the breadth of its activities, we struggle to understand why the Proposed Recognition Order holds Cboe Global to a lesser standard. If appropriate steps are taken at this juncture to ensure consistent and intelligent regulation, the benefits of global players entering

[17] See our earlier footnote, acknowledging that where Aequitas has similar restrictions on tied selling, they should have the same corresponding amendments to ensure the intended effect is captured.
[18] According to Cboe Global's website, Cboe operates U.S. and European equities markets, and European derivatives markets, among other markets.
[19] See Schedule 2, section 8(a)(ii) of the TMX Recognition Order.
[20] See Schedule 2, section 13 of the Proposed Recognition Order. See also Schedule 3, section 30 of the Proposed Recognition Order for similar provisions applicable to Aequitas.
[21] See Schedule 2, section 9 of the TMX Recognition Order.

our markets can be preserved, while maintaining the public interest and not compromising market integrity and fair competition in Canada.

TMX Group appreciates the opportunity to comment. We would be pleased to discuss any aspect of this letter at your convenience.

Best regards,

John McKenzie
Chief Executive Officer