

# B.6

## Request for Comments

### B.6.1 CSA Notice and Request for Comment – Proposed Amendments and Changes to Certain National Instruments and Policies Related to the Senior Tier of the Canadian Securities Exchange, the Cboe Canada Inc. and AQSE Growth Market Name Changes, and Majority Voting Form of Proxy Requirements



#### CSA NOTICE AND REQUEST FOR COMMENT

#### PROPOSED AMENDMENTS AND CHANGES TO CERTAIN NATIONAL INSTRUMENTS AND POLICIES RELATED TO THE SENIOR TIER OF THE CANADIAN SECURITIES EXCHANGE, THE CBOE CANADA INC. AND AQSE GROWTH MARKET NAME CHANGES, AND MAJORITY VOTING FORM OF PROXY REQUIREMENTS

August 1, 2024

#### Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period proposed amendments to:

- National Instrument 41-101 *General Prospectus Requirements*
- National Instrument 44-101 *Short Form Prospectus Distributions (NI 44-101)*
- National Instrument 45-106 *Prospectus Exemptions (NI 45-106)*
- National Instrument 51-102 *Continuous Disclosure Obligations (NI 51-102)*
- Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*
- National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*
- National Instrument 52-110 *Audit Committees*
- National Instrument 58-101 *Disclosure of Corporate Governance Practices*
- Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions (MI 61-101)*
- National Instrument 62-104 *Take-Over Bids and Issuer Bids (NI 62-104)*
- National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*
- National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

(collectively, the **Proposed Amendments**).

We are also proposing changes (the **Proposed Changes**) to the following:

- Companion Policy 44-101CP to National Instrument 44-101 *Short Form Prospectus Distributions*
- National Policy 46-201 *Escrow for Initial Public Offerings (NP 46-201)*

(collectively, the **Proposed Changes**).

The public comment period will end on October 30, 2024.

## B.6: Request for Comments

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The text of the Proposed Amendments and Proposed Changes is contained in Annexes A through N of this notice and will also be available on websites of CSA jurisdictions, including:

- [www.lautorite.qc.ca](http://www.lautorite.qc.ca)
- [www.asc.ca](http://www.asc.ca)
- [www.bcsc.bc.ca](http://www.bcsc.bc.ca)
- [nssc.novascotia.ca](http://nssc.novascotia.ca)
- [www.fcnb.ca](http://www.fcnb.ca)
- [www.osc.ca](http://www.osc.ca)
- [www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)
- [mbsecurities.ca](http://mbsecurities.ca)

### Substance and Purpose

The Proposed Amendments and Proposed Changes are intended to address the following:

- the Canadian Securities Exchange (the **CSE**) creating, by amendments to its listing policies, a senior tier (the **CSE Senior Tier**), which is intended to be a non-venture tier but is currently categorized as a venture marketplace in securities legislation
- the name change of the PLUS markets to AQSE Growth Market as a result of PLUS Markets Group plc selling those markets
- the name change of Aequitas Neo Exchange Inc. (**NEO**) to Cboe Canada Inc. as a result of Cboe Global's acquisition of NEO
- amendments to the *Canada Business Corporations Act (CBCA)* dealing with "majority voting", which amendments may have created uncertainty about the voting options required to be provided to securityholders in uncontested director elections of CBCA-incorporated reporting issuers and those required under securities legislation

The Proposed Amendments and Proposed Changes are also intended to ensure that CSE Senior Tier issuers are treated the same way under securities legislation as issuers listed on other non-venture exchanges.

### Background

On April 3, 2023, amendments to the CSE's listing policies came into effect, creating the CSE Senior Tier. The CSE Senior Tier is intended to be a non-venture tier with initial and continued listing requirements in line with a non-venture exchange. However, under the current definition of "venture issuer" in securities legislation, the CSE is a venture exchange.

On January 15, 2019, the legal name of Aequitas NEO Exchange Inc. was changed to NEO Exchange Inc. On June 1, 2022, Cboe Canada Holdings, ULC purchased the direct shareholder of NEO Exchange Inc. Effective January 1, 2024, NEO Exchange Inc. was amalgamated with other related entities into a single legal entity named Cboe Canada Inc.

The PLUS markets no longer exist under that name and have had a name change to AQSE Growth Market operated by Aquis Stock Exchange Limited.

On August 31, 2022, amendments to the CBCA and the *Canada Business Corporations Regulations, 2001* (the **Majority Voting Amendments**) came into effect that generally require "majority voting" for each candidate nominated for director in uncontested director elections of CBCA-incorporated reporting issuers. Where the Majority Voting Amendments apply, the form of proxy must provide securityholders with the option to specify whether their vote is to be cast "for" or "against" each candidate nominated for director, rather than "voted" or "withheld" from voting as is required by subsection 9.4(6) of NI 51-102.

To address any uncertainty about the voting options required to be provided to securityholders of CBCA-incorporated reporting issuers by the Majority Voting Amendments and those required by subsection 9.4(6) of NI 51-102, on January 31, 2023, the CSA jurisdictions issued substantively harmonized local blanket orders that exempt CBCA-incorporated reporting issuers from the

director election form of proxy requirement in subsection 9.4(6) of NI 51-102 in respect of the uncontested election of directors (**Blanket Orders**).<sup>1</sup>

In certain CSA jurisdictions, the local blanket order will expire only when related amendments to NI 51-102 come into force. However, the Ontario local blanket order will expire on January 31, 2026. Once the Ontario blanket order expires, if related amendments to NI 51-102 are not in effect, there will again be uncertainty about the voting options required to be provided to securityholders of CBCA-incorporated reporting issuers by the Majority Voting Amendments and those required by Ontario securities law. The Proposed Amendments would address this uncertainty.

### **Summary of the Proposed Amendments and Proposed Changes**

The Proposed Amendments and Proposed Changes are primarily housekeeping amendments and changes to reflect the name change of NEO and PLUS markets and to add Cboe Canada Inc. to the definition of “designated exchange” in NI 62-104 to codify the designation of NEO which is currently evidenced through local designation orders.

The Proposed Amendments and Proposed Changes also include the following non-housekeeping amendments and changes:

#### ***Venture Issuer Definition***

The CSE Senior Tier is intended to be a non-venture tier with initial and continued listing requirements in line with a non-venture exchange. However, CSE Senior Tier issuers are “venture issuers”, as is currently defined under securities legislation, and are required under securities legislation to comply only with the requirements applicable to venture issuers. The Proposed Amendments and Proposed Changes will revise the definition of “venture issuer” and “IPO venture issuer” in various national instruments to exclude CSE Senior Tier issuers. As a result of the Proposed Amendments and Proposed Changes, such issuers will have to comply with securities law requirements applicable to non-venture issuers.

#### ***Majority Voting Amendments***

The Proposed Amendments are intended to codify the Blanket Orders. The Proposed Amendments introduce a provision to NI 51-102 that would specify that subsection 9.4(6) of NI 51-102 does not apply to a form of proxy sent to securityholders of a reporting issuer in respect of the election of directors if the issuer is incorporated, organized or continued under the CBCA and complies with subsection 54.1(2) of the *Canada Business Corporations Regulations, 2001* or if the issuer is incorporated, organized or continued under the laws of another jurisdiction that contain a requirement substantially similar to that subsection and it complies with that requirement.

#### ***Modernization of Escrow Agreement***

NP 46-201 and the policies of certain exchanges require a Form 46-201F1 to be entered into by an issuer and its principals in connection with most initial public offerings. The Proposed Changes modernize the Form 46-201F1 by removing the requirement for the agreement to be signed, sealed and delivered by securityholders in the presence of a witness. This is a requirement that is outdated, not compatible with electronic signing, and can be overly burdensome when there are numerous principals required to sign the escrow agreement.

#### ***Other CSE Related Changes***

The Proposed Amendments and Proposed Changes also include the following amendments and changes, which will allow CSE Senior Tier issuers to be treated the same way under securities legislation as issuers listed on other non-venture exchanges and reflect recent amendments to CSE listing policies applicable to all CSE-listed issuers:

- *Employee, Executive Officer, Director or Consultant Exemption*

A proposed amendment to section 2.22 of NI 45-106 to add CSE to the definition of “listed issuer”. Section 2.24 provides an exemption from the prospectus requirements for distribution of securities to employees, executive officers, directors or consultants. However, in the case of issuers that do not meet the definition of “listed issuer”, section 2.25 removes the availability of the exemption in section 2.24 for distributions of securities in certain circumstances, unless the issuer has provided certain required disclosure and obtained security holder approval. The current definition of “listed issuer” includes issuers with securities listed on the Toronto Stock Exchange (**TSX**), TSX Venture Exchange (**TSXV**) and NEO, but does not include issuers with securities listed on the CSE.

- *Short Form Prospectus Eligibility Requirement*

A proposed amendment to section 2.7 of NI 44-101 to include a provision that would allow issuers listed on the CSE to qualify to file a short form prospectus by relying on a CSE Listing Statement filed in connection with a fundamental change, instead of an Annual Information Form (**AIF**). Unlike non-venture issuers, venture issuers

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<sup>1</sup> CSA Coordinated Blanket Order 51-930 Exemption From the Director Election Form of Proxy Requirement

are not required under securities legislation to file an AIF. However, a venture issuer may voluntarily file an AIF to meet the short form prospectus qualification requirements. This proposed amendment will align the qualification requirements for venture issuers on the CSE with those of venture issuers on the TSXV. Section 2.7 has a provision that allows issuers listed on the TSXV to rely on a filing statement in certain circumstances, rather than an AIF.

- *Exemption from Escrow Requirements*

A proposed change to NP 46-201 to revise the meaning of “exempt issuer” to include certain CSE Senior Tier issuers, and to revise the meaning of “established issuer” to include CSE Senior Tier issuers that are not “exempt issuers”. These proposed changes will align the escrow requirements and escrow release schedule for CSE Senior Tier issuers to those of issuers listed on the TSX and NEO.

- *Inclusion of CSE Senior Tier issuers as a category of issuers for which certain exemptions in MI 61-101 are not available*

A proposed amendment to MI 61-101 such that CSE Senior Tier issuers, as non-venture issuers, will not be able to rely on certain exemptions from the formal valuation and minority approval requirements available to issuers not listed on certain specified non-venture exchanges. This would be achieved by adding CSE Senior Tier issuers to the list of categories of issuers for which the exemptions in paragraphs 4.4(1)(a) and 5.5(b), and subparagraph 5.7(1)(b)(i) of MI 61-101 are not available.

### **Local Matters**

Annex O is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

### **Request for Comments**

We welcome your comments on the Proposed Amendments and Proposed Changes.

Please submit your comments in writing on or before October 30, 2024.

Address your submission to all of the CSA as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission, New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Service NL  
Northwest Territories Office of the Superintendent of Securities  
Office of the Yukon Superintendent of Securities  
Nunavut Securities Office

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA jurisdictions.

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
22nd Floor, Box 55  
Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
[comment@osc.gov.on.ca](mailto:comment@osc.gov.on.ca)

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at [www.asc.ca](http://www.asc.ca), the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca) and the Ontario Securities Commission at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

### Contents of Annexes

<b>Annex A:</b>	Proposed amendments to National Instrument 41-101 <i>General Prospectus Requirements</i>
<b>Annex B:</b>	Proposed amendments to National Instrument 44-101 <i>Short Form Prospectus Distributions</i>
<b>Annex C:</b>	Proposed amendments to National Instrument 45-106 <i>Prospectus Exemptions</i>
<b>Annex D:</b>	Proposed amendments to National Instrument 51-102 <i>Continuous Disclosure Obligations</i>
<b>Annex E:</b>	Proposed amendments to Multilateral Instrument 51-105 <i>Issuers Quoted in the U.S. Over-The-Counter Markets</i>
<b>Annex F:</b>	Proposed amendments to National Instrument 52-109 <i>Certification of Disclosure in Issuers' Annual and Interim Filings</i>
<b>Annex G:</b>	Proposed amendments to National Instrument 52-110 <i>Audit Committees</i>
<b>Annex H:</b>	Proposed amendments to National Instrument 58-101 <i>Disclosure of Corporate Governance Practices</i>
<b>Annex I:</b>	Proposed amendments to Multilateral Instrument 61-101 <i>Protection of Minority Security Holders in Special Transactions</i>
<b>Annex J:</b>	Proposed amendments to National Instrument 62-104 <i>Take-Over Bids and Issuer Bids</i>
<b>Annex K:</b>	Proposed amendments to National Instrument 71-102 <i>Continuous Disclosure and Other Exemptions Relating to Foreign Issuers</i>
<b>Annex L:</b>	Proposed amendments to National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i>
<b>Annex M:</b>	Proposed changes to Companion Policy 44-101CP to National Instrument 44-101 <i>Short Form Prospectus Distributions</i>
<b>Annex N:</b>	Proposed changes to National Policy 46-201 <i>Escrow for Initial Public Offerings</i>
<b>Annex O:</b>	Local Matters

### Questions

Please refer your questions to any of the following:

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ANNEX A

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

1. ***National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.***
2. ***Section 1.1 is amended***
  - (a) ***by repealing the definition of “Aequitas personal information form”,***
  - (b) ***by adding the following definition:***

“Cboe personal information form” means a Cboe Canada Inc. Form 3, as amended from time to time;,
  - (c) ***by adding the following definition:***

“CSE senior tier” has the same meaning as “senior tier” as defined in the Interpretation section of the listing rules of the Canadian Securities Exchange, as amended from time to time;,
  - (d) ***by repealing the definition of “IPO venture issuer” and replacing it with the following:***

“IPO venture issuer” means an issuer that

    - (a) files a long form prospectus,
    - (b) is not a reporting issuer in any jurisdiction immediately before the date of the final long form prospectus, and
    - (c) at the date of the long form prospectus,
      - (i) does not have any securities listed or quoted, has not applied to list or quote any of its securities, and does not intend to apply to list or quote any of its securities, on
        - (A) the Toronto Stock Exchange,
        - (B) Cboe Canada Inc.
        - (C) a U.S. marketplace, or
        - (D) a marketplace outside of Canada and the United States of America, other than the Alternative Investment Market of the London Stock Exchange or the AQSE Growth Market operated by Aquis Stock Exchange Limited, and
      - (ii) is not, has not applied to become, and does not intend to apply to become, a CSE senior tier issuer; **and**
  - (e) ***in the definition of “personal information form” by replacing paragraph (c) with the following:***
    - (c) a completed Cboe personal information form submitted by an individual to Cboe Canada Inc., to which is attached a completed certificate and consent in the form set out in Schedule 1 – Part B of Appendix A;.
3. ***Subsection 1.9(4) of Form 41-101F1 Information Required in a Prospectus is repealed and replaced with the following:***
  - (4) If the issuer has complied with the requirements of the Instrument as an IPO venture issuer, include a statement, in substantially the following form, with bracketed information completed:

“As at the date of this prospectus, [name of issuer] is not, has not applied to become, and does not intend to apply to become, a CSE senior tier issuer and does not have any of its securities listed or quoted, has not applied to list or quote any of its securities, and does not intend to apply to list or quote any of its securities, on the Toronto Stock Exchange, Cboe Canada Inc., a U.S. marketplace, or a marketplace outside Canada and the United States of America (other than the Alternative Investment Market of the London Stock Exchange or the AQSE Growth Market operated by Aquis Stock Exchange Limited).”.

4. **Section 20.11 of Form 41-101F1 Information Required in a Prospectus is repealed and replaced with the following:**

20.11 If the issuer has complied with the requirements of the Instrument as an IPO venture issuer include a statement, in substantially the following form, with bracketed information completed:

“As at the date of the prospectus, [name of issuer] is not, has not applied to become, and does not intend to apply to become, a CSE senior tier issuer and does not have any of its securities listed or quoted, has not applied to list or quote any of its securities, and does not intend to apply to list or quote any of its securities, on the Toronto Stock Exchange, Cboe Canada Inc., a U.S. marketplace, or a marketplace outside of Canada and the United States of America (other than the Alternative Investment Market of the London Stock Exchange or the AQSE Growth Market operated by Aquis Stock Exchange Limited).”.

5. (1) This Instrument comes into force on [•].
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [•] this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.



ANNEX B

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 44-101 *SHORT FORM PROSPECTUS DISTRIBUTIONS*

1. ***National Instrument 44-101 Short Form Prospectus Distributions is amended by this Instrument.***
2. ***Section 1.1 is amended in the definition of “short form eligible exchange” by replacing “Aequitas NEO Exchange Inc.” with “Cboe Canada Inc.”.***
3. ***Section 2.7 is amended by adding the following subsection:***
  - (4) Paragraphs 2.2(d), 2.3(1)(d) and 2.6(1)(b) do not apply to an issuer if
    - (a) the issuer is not exempt from the requirement in the applicable CD rule to file annual financial statements within a prescribed period after its financial year end, but the issuer has not yet, since the completion of a fundamental change, as defined in the Interpretation section of the listing rules of the Canadian Securities Exchange, as amended from time to time, been required under the applicable CD rule to file annual financial statements, and
    - (b) a listing statement of the Canadian Securities Exchange
      - (i) was filed in connection with the fundamental change, and
      - (ii) complied with the listing rules of the Canadian Securities Exchange, as amended from time to time, in respect of the fundamental change..
4.
  - (1) This Instrument comes into force on [•].
  - (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [•] this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX C

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 45-106 *PROSPECTUS EXEMPTIONS*

1. ***National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.***
2. ***Section 2.22 is amended in paragraph (a) of the definition of “listed issuer”***
  - (a) ***by replacing “Aequitas NEO Exchange Inc.” with “Cboe Canada Inc.”, and***
  - (b) ***by adding the following subparagraph:***
    - (ii.2) the Canadian Securities Exchange,.
3. (1) This Instrument comes into force on [•].
  - (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [•] this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX D

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. ***National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.***
2. ***Section 1.1 is amended***
  - (a) ***by adding the following definition:***

“CSE senior tier” has the same meaning as “senior tier” as defined in the Interpretation section of the listing rules of the Canadian Securities Exchange , as amended from time to time; ***and***
  - (b) ***in the definition of “venture issuer”***
    - (i) ***by adding*** “was not a CSE senior tier issuer and” ***after*** “as at the applicable time,”
    - (ii) ***by replacing*** “Aequitas NEO Exchange Inc.” ***with*** “Cboe Canada Inc.”,
    - (iii) ***by replacing*** “the PLUS markets operated by PLUS Markets Group plc” ***with*** “ the AQSE Growth Market operated by Aquis Stock Exchange Limited”.
3. ***Section 9.4 is amended by adding the following subsection:***
  - (6.1) Subsection (6) does not apply to a form of proxy sent to securityholders of a reporting issuer in respect of the election of directors if any of the following applies:
    - (a) the reporting issuer is incorporated, organized or continued under the *Canada Business Corporations Act* (Canada) and complies with subsection 54.1(2) of the *Canada Business Corporations Regulations, 2001* (SOR/2001-512) under the *Canada Business Corporations Act* (Canada);
    - (b) the reporting issuer
      - (i) is incorporated, organized or continued under the laws of a jurisdiction of Canada or a foreign jurisdiction that contain a requirement substantially similar to subsection 54.1(2) of the *Canada Business Corporations Regulations, 2001*, and
      - (ii) complies with the requirement referred to in subparagraph (i)..
4. ***Paragraph 9.4(7)(b) is amended by replacing “subsection (4) or (6)” with “subsection (4), (6) or (6.1)”.***
5.
  - (1) This Instrument comes into force on [•].
  - (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [•] this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX E

PROPOSED AMENDMENTS TO  
MULTILATERAL INSTRUMENT 51-105 ISSUERS QUOTED IN THE U.S. OVER-THE-COUNTER MARKETS

1. ***Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets is amended by this Instrument.***
2. ***Section 1 is amended in the definition of “OTC issuer”:***
  - (a) ***in subparagraph (b)(iii) by replacing “Canadian National Stock Exchange” with “Canadian Securities Exchange”, and***
  - (b) ***in subparagraph (b)(viii) by replacing “Aequitas NEO Exchange Inc.” with “Cboe Canada Inc.”.***
3. (1) This Instrument comes into force on [•].  
(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [•] this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX F

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 52-109 CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM FILINGS

1. ***National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings is amended by this Instrument.***
2. ***Section 1.1 is amended***
  - (a) ***by adding the following definition:***

"CSE senior tier" has the same meaning as "senior tier" as defined in the Interpretation section of the listing rules of the Canadian Securities Exchange, as amended from time to time; **and**
  - (b) ***by repealing the definition of "venture issuer" and replacing it with the following:***

"venture issuer" means a reporting issuer that, as at the end of the period covered by the annual or interim filings, as the case may be,

    - (a) did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, Cboe Canada Inc., a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the AQSE Growth Market operated by Aquis Stock Exchange Limited, and
    - (b) was not a CSE senior tier issuer..
3.
  - (1) This Instrument comes into force on [•].
  - (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [•] this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX G

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 52-110 *AUDIT COMMITTEES*

1. ***National Instrument 52-110 Audit Committees is amended by this Instrument.***
2. ***Section 1.1 is amended***
  - (a) ***by adding the following definition:***

“CSE senior tier” has the same meaning as “senior tier” as defined in the Interpretation section of the listing rules of the Canadian Securities Exchange, as amended from time to time; ***and***
  - (b) ***by repealing the definition of “venture issuer” and replacing it with the following:***

“venture issuer” means an issuer that, at the end of its most recently completed financial year,

    - (a) did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, Cboe Canada Inc., a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the AQSE Growth Market operated by Aquis Stock Exchange Limited, and
    - (b) was not a CSE senior tier issuer..
3.
  - (1) This Instrument comes into force on [•].
  - (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [•] this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX H

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 58-101 *DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES*

1. ***National Instrument 58-101 Disclosure of Corporate Governance Practices is amended by this Instrument.***
2. ***Section 1.1 is amended***
  - (a) ***by adding the following definition:***

“CSE senior tier” has the same meaning as “senior tier” as defined in the Interpretation section of the listing rules of the Canadian Securities Exchange, as amended from time to time; ***and***
  - (b) ***by repealing the definition of “venture issuer” and replacing it with the following:***

“venture issuer” means a reporting issuer that, at the end of its most recently completed financial year,

    - (a) did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, Cboe Canada Inc., a U.S. marketplace, or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the AQSE Growth Market operated by Aquis Stock Exchange Limited, and
    - (b) was not a CSE senior tier issuer..
3.
  - (1) This Instrument comes into force on [•].
  - (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [•] this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX I

PROPOSED AMENDMENTS TO  
MULTILATERAL INSTRUMENT 61-101 *PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS*

1. ***Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions is amended by this Instrument.***
2. ***Section 1.1 is amended by adding the following definition:***

“CSE senior tier” has the same meaning as “senior tier” as defined in the Interpretation section of the listing rules of the Canadian Securities Exchange, as amended from time to time;.
3. ***Paragraph 4.4(1)(a) is repealed and replaced with the following:***
  - (a) Issuer Not Listed on Specified Markets – the issuer is not a CSE senior tier issuer and no securities of the issuer are listed or quoted on the Toronto Stock Exchange, Cboe Canada Inc., the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States other than the Alternative Investment Market of the London Stock Exchange or the AQSE Growth Market operated by Aquis Stock Exchange Limited,.
4. ***Paragraph 5.5(b) is repealed and replaced with the following:***
  - (b) Issuer Not Listed on Specified Markets – the issuer is not a CSE senior tier issuer and no securities of the issuer are listed or quoted on the Toronto Stock Exchange, Cboe Canada Inc., the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States other than the Alternative Investment Market of the London Stock Exchange or the AQSE Growth Market operated by Aquis Stock Exchange Limited,.
5. ***Subparagraph 5.7(1)(b)(i) is repealed and replaced with the following:***
  - (i) the issuer is not a CSE senior tier issuer and no securities of the issuer are listed or quoted on the Toronto Stock Exchange, Cboe Canada Inc., the New York Stock Exchange, the American Stock Exchange, the NASDAQ Stock Market, or a stock exchange outside of Canada and the United States other than the Alternative Investment Market of the London Stock Exchange or the AQSE Growth Market operated by Aquis Stock Exchange Limited,.
6.
  - (1) This Instrument comes into force on [•].
  - (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [•] this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.



ANNEX J

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 62-104 TAKE-OVER BIDS AND ISSUER BIDS

1. ***National Instrument 62-104 Take-Over Bids and Issuer Bids is amended by this Instrument.***
2. ***Subsection 4.8(1) is amended by adding “, Cboe Canada Inc.” after “the TSX Venture Exchange”.***
3. (1) This Instrument comes into force on [•].  
(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [•] this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX K

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 71-102 *CONTINUOUS DISCLOSURE AND  
OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS*

1. ***National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers is amended by this Instrument.***
2. ***Paragraph 4.7(2)(a) is amended by replacing “Aequitas NEO Exchange Inc.” with “Cboe Canada Inc.”.***
3. ***Paragraph 5.8(2)(a) is amended by replacing “Aequitas NEO Exchange Inc.” with “Cboe Canada Inc.”.***
4.
  - (1) This Instrument comes into force on [•].
  - (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [•] this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX L

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*

1. ***National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by this Instrument.***
2. ***Section 1.1 is amended***
  - (a) ***by repealing the definition of “Aequitas personal information form”,***
  - (b) ***by adding the following definition:***

“Cboe personal information form” means a Cboe Canada Inc. Form 3, as amended from time to time;, ***and***
  - (c) ***in the definition of “personal information form” by replacing paragraph (c) with the following:***
    - (c) a completed Cboe personal information form submitted by an individual to Cboe Canada Inc., to which is attached a completed certificate and consent in the form set out in Schedule 1 – Part B of Appendix A to National Instrument 41-101 *General Prospectus Requirements*;
3. (1) This Instrument comes into force on [•].  
(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [•] this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX M

PROPOSED CHANGES TO  
COMPANION POLICY 44-101CP TO NATIONAL INSTRUMENT 44-101 *SHORT FORM PROSPECTUS DISTRIBUTIONS*

1. ***Companion Policy 44-101CP to National Instrument 44-101 Short Form Prospectus Distributions is changed by this Document.***
2. ***Subsection 1.7(5) is changed by replacing the third sentence with the following:***  
  
In both instances, prospectus level disclosure or comparable disclosure prescribed by the TSX Venture Exchange or the Canadian Securities Exchange, as the case may be, for such issuer must be provided in an information circular or similar disclosure document pursuant to subsections 2.7(2), (3) and (4) of NI 44-101..
3. This change becomes effective on [•].

ANNEX N

PROPOSED CHANGES TO  
NATIONAL POLICY 46-201 ESCROW FOR INITIAL PUBLIC OFFERINGS

1. **National Policy 46-201 Escrow for Initial Public Offerings is changed by this Document.**
2. **Section 3.2 is changed**
  - (a) **by deleting “or” at the end of paragraph (a.i) and by adding the following paragraph:**
    - (a.ii) is a Canadian Securities Exchange senior tier issuer (the **CSE senior tier**) and is a Closed End Fund, Exchange Traded Fund or Structured Product (as defined in the Interpretation section of the listing rules of the Canadian Securities Exchange, as amended from time to time); or, **and**
  - (b) **by replacing “Aequitas NEO Exchange Inc.” with “Cboe Canada Inc.” wherever it occurs.**
3. **Subsection 3.3(2) is changed**
  - (a) **by adding the following paragraph:**
    - (a.i) is a CSE senior tier issuer and is not an exempt issuer; **and**
  - (b) **by replacing “Aequitas NEO Exchange Inc.” with “Cboe Canada Inc.”.**
4. **Subsection 4.4(1) is changed**
  - (a) **in paragraph (a) by replacing “Aequitas NEO Exchange Inc.” with “Cboe Canada Inc.”, and**
  - (b) **in paragraph (b) by adding “or a CSE senior tier issuer” after “Tier 1 issuer”.**
5. **Section 3.1 of Form 46-201F1 Escrow Agreement is changed**
  - (a) **in paragraph (a) by replacing “Aequitas NEO Exchange Inc.” with “Cboe Canada Inc.”, and**
  - (b) **in paragraph (b) by adding “or a CSE senior tier issuer” after “Tier 1 issuer”.**
6. **Form 46-201F1 Escrow Agreement is changed by replacing the signature blocks with the following:**

[Escrow Agent]

\_\_\_\_\_  
Authorized signatory

\_\_\_\_\_  
Authorized signatory

[Issuer]

\_\_\_\_\_  
Authorized signatory

\_\_\_\_\_  
Authorized signatory

**If the Securityholder is an individual:**

\_\_\_\_\_  
Signature of Securityholder

If the Securityholder is not an individual:

[Securityholder]

\_\_\_\_\_  
Authorized signatory

\_\_\_\_\_  
Authorized signatory

7. ***Schedule "B" to Form 46-201F1 Escrow Agreement is changed by replacing the signature blocks with the following:***

Where the transferee is an individual:

\_\_\_\_\_  
Signature of Transferee

Where the transferee is not an individual:

[Transferee]

\_\_\_\_\_  
Authorized signatory

\_\_\_\_\_  
Authorized signatory

8. These changes become effective on [•].

## ANNEX O

### LOCAL MATTERS

#### ONTARIO SECURITIES COMMISSION

##### 1. Introduction

This Annex to the accompanying CSA Notice and Request for Comments (the **CSA Notice**) sets out matters required to be addressed by the *Securities Act* (Ontario) (the **Act**). The Ontario Securities Commission (the **Commission**) is publishing this Annex to supplement the CSA Notice.

Unless otherwise defined in this Annex, defined terms or expressions used in this Annex share the meaning provided in the CSA Notice.

The CSA are publishing for comment proposed amendments to certain rules (the **CSA Proposed Amendments**) to address a few unrelated matters, most of which are housekeeping in nature. Please refer to the main body of the CSA Notice for details regarding the CSA Proposed Amendments.

##### 2. Local Amendments

In connection with the CSA Proposed Amendments, the Commission is also publishing for comment the following proposed amendments to Ontario Securities Commission Rules (**Local Proposed Amendments**, and together with the CSA Proposed Amendments, the **Proposed Amendments**):

- Proposed amendments to Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* (attached as Schedule 1 to this Annex). This proposed housekeeping rule amendment is to reflect the name change of Aequitas Neo Exchange Inc. (**NEO**) to Cboe Canada Inc. (**Cboe**).
- Proposed repeal of Ontario Securities Commission Rule 55-502 *Facsimile Filing or Delivery of Section 109 Reports* (attached as Schedule 2 to this Annex). This rule applies to reports required to be filed under section 109 of the Act, however, section 109 of the Act was repealed in 2019.
- Proposed amendments to Ontario Securities Commission Rule 56-501 *Restricted Shares* (attached as Schedule 3 to this Annex). This proposed housekeeping rule amendment is to reflect the name change of NEO to Cboe.

##### 3. CSA Proposed Amendments

The CSA Proposed Amendments include the following:

- Amendments related to the Canadian Securities Exchange (**CSE**) creating a senior tier (**Senior Tier** or **CSE Senior Tier**).
- Amendments related to the short form prospectus eligibility requirement.
- Amendments related to the prospectus exemption in connection with issuing securities to employees, executive officers, director or consultants.
- Amendments related to the name change of NEO and the PLUS markets.
- Amendments related to the Majority Voting requirements of the *Canadian Business Corporations Act* (**CBCA**).

Below is additional information regarding the CSA Proposed Amendments.

##### A. CSE Senior Tier Related Amendments

###### **Background**

On April 3, 2023 amendments to the listing policies of the CSE came into effect, creating the Senior Tier that is intended to be a non-venture tier with initial and continued listing requirements in line with a non-venture exchange. However, CSE Senior Tier issuers are currently classified under securities legislation as “venture issuers” (unless they are also cross listed on a non-venture exchange) and as such are only required under securities legislation to comply with the requirements applicable to venture issuers. In addition, the national instruments have several provisions with requirements that specifically refer to the various non-venture exchanges, but do not currently refer to the CSE Senior Tier.

We propose to amend the relevant national instruments to reflect the existence of the CSE Senior Tier and to exclude CSE Senior Tier issuers from the definition of “venture issuer”, such that the Senior Tier issuers will have to comply with the securities law requirements applicable to non-venture issuers. The proposed amendments will ensure that CSE Senior Tier issuers will be treated the same under securities legislation as issuers listed on other non-venture exchanges.

### **Impact on OSC Mandate**

The OSC considers the impact of proposed rulemaking on the OSC’s mandate to:

- provide protection to investors from unfair, improper or fraudulent practices,
- foster fair, efficient and competitive capital markets and confidence in the capital markets,
- foster capital formation, and
- contribute to the stability of the financial system and the reduction of systemic risk.

The proposed amendments will impact the competition, investor protection and capital formation components of the OSC’s mandate.

- **Competition** – by facilitating the creation of a level playing field between the CSE and other senior exchanges. Competition broadens investor options, fosters innovation, and can result in lower transaction costs.<sup>1</sup>
- **Investor protection** – by ensuring that CSE Senior Tier issuers are subject to the same requirements as issuers of comparable size on other senior Canadian exchanges. Senior Tier issuers will be subject to enhanced disclosure and governance standards similar to those governing senior tier issuers globally.<sup>2</sup>
- **Capital formation** – by supporting robust listing requirements to provide an important signal about the quality of issuers and contribute to reduced capital raising costs.

### **Affected Stakeholders**

- CSE

On December 9, 2021, CSE published a notice of proposed amendments to its listing policies with provisions to:

- (i) Introduce additional listing requirements which are consistent with that of other Canadian exchanges;
- (ii) Create a senior tier with initial and continued listing requirements in line with that of a non-venture exchange, and
- (iii) Introduce a Special Purpose Acquisition Corporations and Exchange Traded Fund programme for the senior tier.

The proposed CSE policy amendments were approved by the Ontario Securities Commission and the British Columbia Securities Commission as the co-lead regulator of CSE and became effective on April 3, 2023. An issuer would have to meet CSE’s listing requirements for the Senior Tier in order to apply to become a Senior Tier issuer.

The proposed rule amendments will facilitate the creation of a level playing field between the CSE and other senior exchanges.

- CSE Senior Tier Issuers

Current CSE Senior Tier issuers and issuers that choose to become CSE Senior Tier issuers will have to comply with the securities law requirements applicable to non-venture issuers. On July 10, 2023 Urbana Corporation became the first issuer to be designated by CSE as a Senior Tier issuer.

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<sup>1</sup> See Phil Mackintosh and Michael Normyle “How Exchanges Compete: An Economic Analysis of Platform Competition” (March 2024). Available at: <https://www.nasdaq.com/How-Exchanges-Compete-An-Economic-Analysis-of-Platform-Competition>

<sup>2</sup> See Canadian Securities Exchange “Updated Policies for Canadian Securities Exchange Usher in New Era for Exchange and its Stakeholders” (March 30, 2023) Available at: <https://thecse.com/news/updated-policies-for-canadian-securities-exchange-usher-in-new-era-for/>



- Investors

Given that the Senior Tier issuers will be considered non-venture issuers under securities legislation, investors will receive enhanced disclosure from the Senior Tier issuers. The CSE also noted that “the securities of CSE Senior Tier issuers may be accessible to a broader range of institutional investors that could not previously trade CSE “Venture” securities’.<sup>3</sup>

***Anticipated Costs and Benefits***

*Anticipated Benefits*

- CSE

We expect that the proposed rule amendments will allow CSE to compete with other senior exchanges by enhancing CSE’s ability to attract larger and more advanced issuers.

- CSE Senior Tier Issuers

We expect the Senior Tier related amendments to contribute to the maintenance of a harmonized regulatory regime by treating CSE Senior Tier issuers in the same manner as issuers listed on other recognized senior exchanges.

Issuers that wish to list on an exchange where they will be designated as non-venture issuers will have more options to choose from.

- Investors

We expect that investors will benefit from the enhanced disclosure that CSE Senior Tier issuers will be required to provide as non-venture issuers.

*Anticipated Costs*

- CSE

We do not anticipate that the CSE will incur implementation costs as a result of the proposed amendments. While the CSE introduced a new review process to determine whether listed issuers meet the standards for inclusion in the senior tier, the bulk of the associated costs were incurred when the CSE sought approval from the OSC and BCSC to materially revise its listing policies. We anticipate that there will be ongoing costs associated with the issuer review process, however, these costs are dependent on the number of issuers who apply for inclusion in the Senior Tier. As such, we are not able to quantify these costs at this time.

- CSE Senior Tier Issuers

We do not expect any costs to be associated with the Senior Tier related amendments given that all current CSE Senior Tier issuers are already required to comply with the securities law requirements applicable to non-venture issuers as a result of also being cross-listed on another senior exchange.

- Investors

We do not expect investors to incur additional cost as a result of the CSE Senior Tier related amendments.

***Alternatives Considered***

There are no alternatives identified that would achieve the same outcome as the proposed CSE Senior Tier related amendments.

**B. Short Form Prospectus Eligibility Related Amendments**

***Background***

National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) sets out the basic qualification requirement for an issuer to be eligible to file a short form prospectus. One of the basic qualification requirements is that the issuer has current annual financial statements and a current annual information form (AIF). Although venture issuers are not required under securities legislation to file an AIF, a venture issuer may nevertheless voluntarily file an AIF to meet the short form prospectus qualification requirements.

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<sup>3</sup> ibid

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However, section 2.7 of NI 44-101 also provides a specific exemption, in certain circumstances, to issuers listed on the TSX Venture (**TSXV**) from the current annual financial statements and AIF requirements. To qualify for this exemption, the TSXV issuer is required to, among other things, have filed a filing statement with TSXV in connection with a qualifying transaction or reverse takeover transaction (as such terms are defined in the listing rules of the TSXV).

Both the TSXV filing statement and the CSE Listing Statement are intended to provide full, true and plain disclosure about an issuer. However, there is currently no equivalent exemption for CSE issuers from the requirement to have current annual financial statements and a current AIF in order to qualify to file a short form prospectus.

We propose to amend NI 44-101 to provide a similar exemption in certain circumstances to issuers listed on the CSE. To qualify for the exemption, the CSE issuer will be required to, among other things, have filed a Listing Statement with the CSE in connection with a Fundamental Change (as such term is defined in the listing rules of the CSE). Such issuers can rely on a Listing Statement to qualify provided the issuer has not yet been required under the applicable CD rule to file any annual financial statements.

The proposed amendments will align the short form prospectus qualification requirements for CSE issuers to those of issuers listed on the TSXV.

***Impact on OSC Mandate***

The proposed amendments will enhance competition in Canadian equity markets by facilitating the creation of a level playing field between the CSE and TSXV. The proposed amendments also facilitate capital formation by supporting robust listing requirements to provide an important signal about the quality of issuers and contribute to reduced capital raising costs.

***Affected Stakeholders***

- CSE Issuers

This proposed amendment will impact CSE issuers that have filed a Listing Statement in connection with a fundamental change and intend to qualify to file a short form prospectus before they are required under the applicable CD rule to file any annual financial statements.

***Anticipated Costs and Benefits***

We do not anticipate additional costs to CSE issuers as a result of this amendment given that the issuers will have the option of relying on a previously filed Listing Statement to qualify to file a short form prospectus.

This proposed amendment will save certain CSE issuers the cost of having to separately prepare and file an AIF in order to qualify to file a short form prospectus. We note that in 2023, 10 CSE issuers filed Listing Statements in connection with a Fundamental Change. Only one out of the 10 issuers subsequently filed an AIF to qualify to file a short form prospectus.

***Alternatives Considered***

An alternative considered was to maintain the status quo, however this would mean that CSE issuers would not be treated the same under securities law as TSXV issuers.

**C. Prospectus Exemption Related Amendments*****Background***

Pursuant to section 2.24 of National Instrument 45-106 *Prospectus Exemptions (NI 45-106)* issuers can rely on an exemption from the prospectus requirements for distribution of securities to employees, executive officers, directors or consultants of the issuer (**Section 2.24 Exemption**). However, section 2.25 of NI 45-106 places certain restrictions on the use of the Section 2.24 Exemption for issuers that do not meet the definition of “listed issuer”, unless the issuer has provided certain required disclosure to securityholders regarding the issuer’s security-based compensation arrangements and obtained securityholder approval for the issuance of securities as compensation under a plan or arrangement. In the absence of the required disclosure and securityholder approval, such issuers will have to limit the number of securities reserved for issuance under options granted to related persons and limit the number of securities distributed under the Section 2.24 Exemption in any given year.

Issuer’s listed on the Toronto Stock Exchange, TSXV or NEO are included in the definition of “listed issuer”, but CSE issuers are not.

Given that CSE’s amended policies which became effective on April 3, 2023 have certain disclosure requirements regarding security-based compensation arrangements, as well as a requirement for securityholder approval upon adopting or amending a security-based compensation arrangement, we propose to amend NI 45-106 to add issuers listed on CSE to the definition of “listed issuer”. This will ensure that CSE issuers are treated the same as issuers listed on the other Canadian exchanges when relying on the Section 2.24 Exemption.

***Impact on OSC Mandate***

This proposed amendment will enhance competition in Canadian equity markets by facilitating the creation of a level playing field between the CSE and other exchanges.

***Affected Stakeholders***

- CSE issuers

This proposed amendment will impact CSE Issuers relying on the Section 2.24 Exemption.

***Anticipated Costs and Benefits***

We do not anticipate that CSE issuers will incur additional costs as a result of this proposed amendment.

The benefit to CSE issuers is that in connection with a specific distribution under the Section 2.24 Exemption they will not have to choose between providing the prescribed disclosure and obtaining securityholder approval in connection with security-based compensation arrangements, or limiting the number of securities reserved for issuance under options granted to related persons and limiting the number of securities distributed under the Section 2.24 Exemption in any given year. However, we expect the benefits will be minimal given that under the revised listing rules of the exchange, CSE issuers are already required to provide similar disclosure and obtain securityholder approval upon adopting or amending a security-based compensation arrangement. It is also possible that there may be an increased use of the Section 2.24 Exemption by CSE issuers as a result of the proposed amendments, giving such issuers greater flexibility in compensating employees, executive officers and consultants with securities.

***Alternatives Considered***

An alternative considered was to maintain the status quo, however, this would mean that CSE issuers would not be treated the same under securities law as issuers listed on other recognised exchanges in Canada.

**D. Exchange Name Change Related Amendments**

***Background***

Several of the national instruments refer specifically to “Aequitas Neo Exchange Inc.” and “the PLUS markets”. However, Aequitas NEO Exchange Inc. had a name change to NEO Exchange Inc. and was subsequently amalgamated with other related entities into a single legal entity named Cboe Canada Inc. In addition, the PLUS markets no longer exist under that name and is now known as AQSE Growth Market.

We propose to update the relevant national instruments to reflect the name change of Aequitas Neo Exchange Inc. and the PLUS markets.

***Impact on OSC Mandate***

- These housekeeping amendments are not expected to significantly impact the OSC’s mandate.

***Affected Stakeholders***

- Issuers listed on the AQSE Growth Market or Cboe.
- Investors and other market participants

***Anticipated Costs and Benefits***

We do not anticipate additional costs to stakeholders as a result of this proposed housekeeping amendment. The proposed amendments will remove uncertainty as to whether certain provisions of securities law apply to the exchanges.

***Alternatives Considered***

Given the amendments are required to reflect the name change of the PLUS markets and NEO, no alternatives have been identified.

## **E. CBCA Related Amendments**

### ***Background***

On August 31, 2022, amendments to the CBCA and the *Canada Business Corporations Regulations*, 2001 (the **Majority Voting Amendments**) came into effect that generally require “majority voting” for each candidate nominated for director in uncontested director elections of CBCA-incorporated reporting issuers. Where the Majority Voting Amendments apply, the form of proxy must provide shareholders with the option to specify whether their vote is to be cast “for” or “against” each candidate nominated for director. However, under subsection 9.4(6) of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) the form of proxy sent to shareholders in connection with director elections must provide shareholders with the option to specify whether their vote is to be “voted” or “withheld” from voting for each candidate nominated for director.

The introduction of the Majority Voting Amendments may have created uncertainty about the voting options required to be provided under corporate law to shareholders of CBCA-incorporated reporting issuers and those required under securities legislation. To address this uncertainty, on January 31, 2023, the CSA members issued substantively harmonized local blanket orders that exempt CBCA-incorporated reporting issuers from the director election form of proxy requirement in subsection 9.4(6) of NI 51-102 in respect of the uncontested election of directors.

We propose to amend NI 51-102 to provide an exemption from section 9.4(6) of NI 51-102 for CBCA-incorporated reporting issuers and other reporting issuers that are incorporated or organized under another law that contain a substantially similar provision as the Majority Voting Amendments. This will remove any uncertainty about the voting options required to be provided to shareholders of CBCA-incorporated reporting issuers and certain other reporting issuers.

This proposed amendment will in effect codify the exemption provided by the blanket orders.

### ***Impact on OSC Mandate***

The proposed amendments facilitate capital formation by requiring timely, continuous disclosures of accurate, comparable, and complete material information by issuers and facilitating the opportunities for investors to assess risks and make informed investment decisions.

### ***Affected Stakeholders***

- Reporting issuers

CBCA-incorporated reporting issuers and other reporting issuers with similar “majority voting” requirements will be impacted.

- Shareholders

Shareholders of CBCA-incorporated reporting issuers and other reporting issuers with similar “majority voting” requirements may be impacted given that the form of proxy they receive will now provide an option to indicate “voted for” or “voted against”.

### ***Anticipated Costs and Benefits***

We expect this proposed amendment to have minimal costs implications given that the only change is to clarify the options required to be indicated on the form of proxy to be provided to securityholders. The proposed amendments will benefit stakeholders by removing the uncertainty regarding the form of proxy to be provided to shareholders of CBCA-incorporated reporting issuers. This will reduce the potential for confusion or lack of clarity amongst such issuers.

### ***Alternatives Considered***

Given the need to permanently address the uncertainties created by the Majority Voting Amendments, which uncertainties will continue to exist upon the expiry of the Ontario blanket order, no alternatives have been identified.

## **4. Reliance on Unpublished Studies**

In developing the Proposed Changes, we have not relied on any significant unpublished study, report or other written material.

## **5. Rule-making authority**

In Ontario, the following provisions of the Act provide the Commission with authority to make the Proposed Changes and consequential amendments:

- Paragraph 143(1)13 of the Act, which authorizes the OSC to make rules regulating trading or advising in securities to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

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- Paragraph 143(1)15 of the Act, which authorizes the OSC to make rules prescribing categories or subcategories of issuers for purposes of the prospectus requirements under the Act, the regulations and the rules and classifying issuers into categories or subcategories.
- Paragraph 143(1)16 of the Act, which authorizes the OSC to make rules regulating in respect of, or varying the Act to facilitate, expedite or regulate in respect of, the distribution of securities, or the issuing of receipts.
- Paragraph 143(1)22 of the Act, which authorizes the OSC to make rules prescribing requirements in respect of the preparation and dissemination and other use, by reporting issuers, of documents providing for continuous disclosure that are in addition to the requirements under the Act.
- Paragraph 143(1)24 of the Act, which authorizes the OSC to make rules requiring issuers or others to comply, in whole or in part, with Part XVIII (Continuous Disclosure), or rules made under paragraph 22.
- Paragraph 143(1)28 of the Act, which authorizes the Commission to make rules to regulate issuer bids, insider bids, going private transactions and related party transactions, including, in clause v, prescribing requirements for disclosure, valuations, review by independent committees of boards of directors and approval by minority security holders.
- Paragraph 143(1)31 of the Act, which authorizes the OSC to make rules regulating investment funds and the distribution and trading of the securities of investment funds.

SCHEDULE 1

PROPOSED AMENDMENTS TO  
ONTARIO SECURITIES COMMISSION RULE 45-501 *ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS*

1. *Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions is amended by this Instrument.*
2. *Subsection 2.9(1) is amended by replacing "Aequitas NEO Exchange" with "Cboe Canada Inc. ".*
3. This Instrument comes into force on [•].

SCHEDULE 2

PROPOSED REPEAL OF  
ONTARIO SECURITIES COMMISSION RULE 55-502 *FACSIMILE FILING OR DELIVERY OF SECTION 109 REPORTS*

1. *Ontario Securities Commission Rule 55-502 Facsimile Filing or Delivery of Section 109 Reports is repealed by this Instrument.*
2. This Instrument comes into force on [\*].

SCHEDULE 3

PROPOSED AMENDMENTS TO  
ONTARIO SECURITIES COMMISSION RULE 56-501 *RESTRICTED SHARES*

1. *Ontario Securities Commission Rule 56-501 Restricted Shares is amended by this Instrument.*
2. *Subsection 2.2(1) is amended by replacing “Aequitas NEO Exchange Inc.” with “Cboe Canada Inc.”.*
3. This Instrument comes into force on [•].