



CIBC World Markets Inc.
Brookfield Place
161 Bay Street, 4th Floor
Toronto, ON
M5J 2S8

September 27, 2013

Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Fax (416) 595-8940
Email: marketregulation@osc.gov.on.ca

RE: NEW EXCHANGE PROPOSAL BY AEQUITAS INNOVATIONS INC.

CIBC World Markets Inc. ("CIBC") thanks you for this opportunity to comment on the proposed marketplace application by Aequitas Innovations Inc. ("Aequitas"). Our specific comments to the questions posed are attached. We also take this opportunity to briefly outline our position.

Relative to the size of its economy, Canada has overachieved on the global scale in terms of market quality. This has been well documented in surveys, studies and academic research focusing on market quality measures such as spread, depth of book and size at the quote. Canada's market quality has outperformed economies of similar size, including Australia, Italy, and France. This outperformance has been valuable - providing an outlet for issuers, ranging from smaller start-up ventures to Canadian domiciled multi-national corporations, to efficiently and effectively raise capital in Canada from Canadian and Global investors.

We attribute this high standard of market quality to the hard work and ingenuity of the people who contributed to the evolution of Canada's market structure. Their awareness of Canada's competitiveness on the global stage in general, and in comparison to the capital markets of the United States in particular, has resulted in a Canadian capital market that is attractive to the world. The need to globally compete for capital over the years has provided appropriate incentives to deliver a high quality capital market driven by the price discovery process, which concentrates liquidity to the benefit of investors.

This ingenuity has led to many firsts in the structure of our market, which can be points of pride for all Canadians. Canada had a price-driven, transparent marketplace before NYSE and NASDAQ. Our order exposure rule, and consequent price improvement mechanism, protects retail investors and provides an appropriate check on the power of market intermediaries. Our ATS rules, which define marketplaces, prevent the off-exchange trading that has eroded confidence in other jurisdictions. And the recent dark pool regulation distinguishes between those orders that contribute to price discovery and deserve protection, from those that do not.

These innovations have kept our market vibrant and highly competitive with U.S. markets, to the extent that we maintain a very healthy market share in Canadian Interlisted names despite a significant disadvantage in relative size. More importantly, we are not faced with the market complexity, opaqueness, and sense of inequality that investors experience in the capital markets of other jurisdictions. Put simply, Canadian markets are fair.

In driving for change in the name of innovation, the model that Aequitas proposes contradicts many of the existing regulatory policy objectives of Canadian equity markets which has differentiated us from the rest of the world. The proposed model clouds the difference between orders that add to price discovery and those which free ride on the price discovery contributed by others, and by discriminating between investors. As absolute values which speak to core Canadian principles, fairness and fair access go beyond simple questions of market structure and must be defended. Opening the door to discriminatory practices may result in a beneficiary on one side, but leaves a victim on the other.

DIRECT ANSWERS TO QUESTIONS

We provide answers to the specific questions posed below. However, we note that the current Aequitas proposal is incomplete, lacking sufficient detail on market making programs and the specific eligibility qualifications related thereto. We also note that mechanical details on trade through protections, including the prevention of locked markets within Aequitas' proposed Hybrid marketplace ("Hybrid"), must be provided before any approvals are considered.

Once these additional details are provided by Aequitas, they must also be put out for public comment.

Q1: Should the Order Protection Rule (OPR) apply to all visible markets and to all orders displayed on those markets, or are there circumstances where the application of OPR should be limited?

The Aequitas model would seek to enjoy the benefits of the Order Protection Rule (OPR), allowing the use of its visible book to subsidize market adoption, as well as the asymmetric benefits of not being obliged to reciprocate to the marketplace by offering fair access to its quotes in the Hybrid and Dark books. This is not equitable.

OPR is not in place to protect a marketplace's business interests, but rather to protect the interests of Canadian investors' displayed, passive orders. To the extent that OPR continues to exist, OPR must apply equally to all visible, resting orders that display firm limit prices and are immediately and electronically accessible. Therefore, it is inappropriate to limit participation because it harms the passive order that has a reduced fill probability, and the active orders of excluded participants who may not be able to access the best prices.

Aequitas should not be able to decline or waive order protection. All Canadian investors, retail, institutional or otherwise should have the confidence that their displayed orders will be protected by OPR regardless of where they choose to post visible orders.

We believe that costs should be borne by the marketplaces who benefit from OPR as a subsidy to ensure the adoption of new ATS's, rather than by the participants who use them. We do not view this proposal as an opportunity to review the validity of OPR as a policy tool.

Q2: Should OPR apply to Hybrid? Should it continue to apply at least with respect to active non-Short-Marking Exempt (SME) orders that are not restricted from accessing the best-priced displayed orders on Hybrid?

As we do not believe Hybrid meets the characteristics of a (visible) market which ought to enjoy order protection, we then examine whether Hybrid should be subject to rules applied to dark markets. Hybrid proposes to allow liquidity providers the ability to trade at the bid/offer of the NBBO without providing any meaningful price improvement to orders traded. Aequitas proposes to avoid adherence to the dark rules of price improvement through an aggregated (visible) display of orders, though these orders can only be accessed by a subset of participants. The Hybrid market as proposed fits in neither existing frameworks and in our opinion does not provide enough benefit to the industry to warrant a completely separate category of marketplace.

In short, because liquidity-taking access to the Hybrid book is deliberately restricted to a subset of participants, the quote cannot be accessed fairly by all and thus cannot be protected from trade through obligations. As such, passive flow within the Hybrid market cannot - and should not - enjoy order protection.

Q3: If Hybrid is implemented as proposed, how should the best-priced displayed order on Hybrid be treated for the purposes of consolidated display requirements, and why?

The trading community should not be obligated to pay for this data. Hybrid does not add to price transparency or price discovery, and proposes to derive its pricing from other visible protected markets. Orders should not be protected and therefore should be excluded from consolidated displays. For example, a Hybrid quote can be within the NBBO (ie. Buy @ \$10.01 while the visible book is \$10.00-\$10.02). Orders marked SME seeking to better the existing quote (ie. Sell @ \$10.01) and/or trade by crossing the spread will cause the Hybrid market to be locked with the visible NBBO (\$10.01-\$10.01). We are of the opinion that the inclusion of quoted prices that are not accessible to all trading participants will simply create confusion at the quote, and will result in locked and crossed markets and trade-throughs that regulators and participants alike will be forced to manage at a high expense. Aequitas needs to explain in detail how they will prevent locked markets.

Q4: What should the appropriate reference price be for determining whether a dark order or any other market has provided minimum price improvement as required under the Dark Rules – the away NBBO (National Best Bid/Offer) or the NBBO that includes a Hybrid best bid and/or Hybrid best offer? Does the answer to this question depend on whether or not OPR applies to Hybrid?

Unprotected orders are by default excluded from the NBBO minimum price improvement rule. As we do not believe Hybrid should enjoy order protection, the appropriate price for determining minimum price improvement under the Dark Rules should be based on the NBBO of protected markets.

Q5: How should fair access requirements be applied with respect to access to visible marketplaces?

Fair Access does not equate to full access, and by that we mean that marketplaces should have the ability to set higher standards and restrict access based on objective measures. Put another way, a marketplace is not obligated to offer direct electronic access ("DEA"). Yet, we do not agree that a regulatory marker (Short-Marking Exempt or "SME") is an objective measure, which is intended to be a tag for the benefit of the regulators to gauge true short sale interest for a security. The regulator has never indicated this to be a tag associated with "predatory" behavior and therefore we question why Aequitas would have the ability to selectively apply restrictions against these participants. Furthermore SME-like activities would be allowed in the Aequitas market making model. Therefore, Aequitas is subjectively qualifying participation at the quote. SME is not a participant type and not an objective measure on which to determine access. If Aequitas proposes to restrict HFT from participating, they ought to restrict all DEA altogether and remove the subjective discrimination.

Equitable access should apply to ALL marketplaces – visible or otherwise. CIBC believes compliance with Access rules to be of the utmost importance for maintaining the integrity of the Canadian marketplace. Ensuring equitable access to any trading venue and to the liquidity that resides in them is a regulatory priority today.

It is our opinion that the Aequitas proposal raises significant policy questions, of which the most important is the abandonment of equitable access. Aequitas is proposing to adopt a counterparty selection model, and requesting priority rules to allow client segmentation and differentiation of access to liquidity in the markets based on selectively and subjectively applied measures. If the problem that Aequitas is attempting to solve is rooted in the economic incentives and resulting behaviours of participants, regulation can address those behaviours directly.

CIBC cautions against setting a precedent of selective, exclusionary trading practices, as this will be detrimental to the continued evolution of our markets. Specifically, we are concerned that Aequitas will

unfairly restrict access to liquidity in both the Aequitas Dark & Hybrid facilities to a select group of participants, permitting a structure whereby flow is exposed to a pre-determined group at Aequitas' discretion. There is no clarity on how this exclusionary policy would change over time.

Furthermore, we are of the opinion these access requirements create a two-tiered structure for our Best Execution obligations. We question how a dealer can provide best execution on a consistent basis when a class of its clients is excluded from access to particular marketplaces. Should Best Execution principles be applied unevenly across selective clients? How would dealers compare their best execution capabilities?

Finally, the abandonment of equitable access opens a Pandora's box - other markets would be in a position to discriminate against other participants of their choosing. Over time this would shatter confidence in the price discovery process.

Q6: Should visible markets be fully accessible or, like dark pools, should access restrictions be permitted? Why? What are the criteria that should be used to determine if the differences in access are reasonable? What impact, if any, could restricting access to the best displayed price have on confidence and market integrity?

The proposed Aequitas Hybrid model creates a risk that market conditions will no longer be reflected in the price. This model also proposes to introduce further segmentation. This will only increase the difficulty of trading and accessing liquidity, counter productively. Furthermore we believe this model will only serve to further introduce opportunity for market structure arbitrage.

All visible markets, as well as any markets that offer any form of visible liquidity, such as Hybrid, should be fully accessible by all market participants.

Q7: Are the access restrictions proposed for Hybrid consistent with the application of the fair access requirements?

Equitable access, as a fundamental principle of the Canadian markets, has served our markets well, allowing for increased liquidity, the inflow of new participants, technological improvements by marketplaces and brokers and increased competition for order flow. The evolution of our markets requires an ongoing review of market structure policies in order to properly manage the innovation being introduced to the marketplace and to continue to maintain the resilience that capital markets in Canada have demonstrated over the last few years.

The Aequitas proposal re-defines the commonly held principle of fair access to market participants through the creation of preferential allocation rules through segmentation. The existing regulatory framework has allowed for the exposure of liquidity to the widest variety of contra-side participants. A consequence of approving the Aequitas model will be the discrimination of a specific type or group of participants. It allows participants entering passive orders to the Dark / Hybrid facilities to select and control their trading partners, providing liquidity to only a subset of market flow. Allowing marketplaces to treat selective groups with preferential allocation rules, and in effect, create multi-tiered access to the liquidity residing within, should be treated with caution. It is a slippery slope towards discriminatory practices and we are not in agreement with the idea that a participant should be subject to inferior fills because of who they are or how they manage risks as defined by a subjective selection process.. This is an inappropriate barrier to participation.

Regulators opened the possibility to a different interpretation of fair access by approving Liquidnet and Alpha Intraspread. Aequitas proposes to delve further into practices of segregation and delineation of participants. There is danger in this approach as it opens the door to further segregation of flows – such as legitimizing the practice of wholesaling retail flow. Counterparty selection or “selective preferencing” as a result of rules imposed by a trading facility will likely lead to increased fees and spreads, reduced

fill quality and reduced transparency, all undesirable outcomes. Should this be legitimized, we expect other participants would be forced in their commercial interests to contemplate similar (discriminatory) models. Instead, we encourage the evolution of Canadian markets towards a community matching model that maximizes the probability of sourcing liquidity for all participants.

Q8: Is the SME marker an appropriate proxy to identify the behaviours Aequitas seeks to restrict?

No. Restricting access or demoting allocation priority based on client profile / regulatory tags is an inappropriate use of an obligatory regulatory marker. We also fundamentally disagree with the imposition of restrictions on access to the best available price at which to trade. The terms "predatory", "HFT" and "SME" are not synonymous. By oversimplifying and characterizing behaviours, Aequitas is imposing its own definitions to evaluate. How does it propose to deal with those who mark SME who are not predatory or HFT?

We are concerned with the proposed allocation methodology which can directly benefit participants with proprietary trading desks who may have substantial inventory in other business units so as to not require the regulatory marker or to firms which are designated as market makers, but not regulated by IROC. The model appears to heavily incent those whom Aequitas would have full discretion to pre-select as having advantages while eliminating many existing participants. This frees up market making for the dealers themselves from proprietary trading desks potentially creating a Canadian wholesaling/internalization model. While Aequitas intends to foster competition in the Canadian market, we believe the end result will be the exact opposite.

To restrict access based on a regulatory tag not only unfairly disadvantages clients using this marker, but also undermines the benefits achieved through the participation of this order flow in the market. We caution against the use of regulatory markers which may not be applied consistently across the industry. The application of SME is subject to the definition of a strategy being non-directional and will be game-able through participants holding larger inventory. There is the potential for the tag to be abused if participants become incentivized to not use it. Furthermore, restricting SMEs serves no apparent purpose other than to exclude competition which would otherwise be available to interact with retail and traditional institutional client flow.

We welcome future innovations that can continue to identify and monitor for forms of "predatory" strategies. Regulators and market participants have devoted significant resources to this topic and have taken major strides to implement safeguards that protect our markets from strategies that could negatively impact market quality. While we continue to support ongoing advancements and improvements in this space, we do not believe that Aequitas' use of SME segregation provides a proper mechanism.

Rather than introducing exclusionary or discriminatory practices, we would argue the more appropriate approach is to incentivize positive behavior or penalize negative ones. For example, if small orders/fills are the issue, then incent participants to post larger size through preferred allocation to size orders. If high order to trade ratios, or fleeting orders are the issue then discourage high messaging through charging for orders or economically incenting orders that rest longer. Support of a model that demotes or restricts groups of participants simply because of who they are is not complimentary or beneficial to the evolution of Canadian market structure.

Q9: What, if any, is the impact on the market quality and market integrity if market makers are provided matching priority (after broker preferencing)?

This simply adds an additional level of priority and increases crowding out at the quote reducing retail and traditional institutional clients the ability to compete in the market. Without full detail on market maker obligations it is difficult to ascertain whether this matching priority is warranted.

Q10: In light of the details of Aequitas' proposed market maker program, is it reasonable to provide the benefit of priority to a market maker in the Dark and Hybrid books when the market maker's corresponding obligation is limited to the Lit book? If not, should there be market making obligations in Aequitas' Dark or Hybrid books?

Market making is a defined term for those who provide a requested value to the visible quote or price discovery process. It has never been recognized as adding liquidity in dark facilities. This raises concerns that what will occur is the provision of contra-wholesaling flows to internalize. This departure from the current structure needs to be considered, and with the limited information currently available, we are not convinced that these obligations are appropriate to dark facilities. We request full detail on Aequitas' market making program and this must be provided for public comment as are changes to the TMX market making system.

Q11: Should market making benefits accrue with respect to obligations for market making in non-Aequitas listed securities? If so, why and if not, why not?

Full detail is required on the market making program to answer this question.

Q12: Should DEA clients that are not subject to the direct regulatory authority of the securities regulatory authorities, IIROC and/or the exchange be permitted to act as market makers? Why or why not? How would the following facts affect your response: (i) the DEA client market maker must be sponsored by an IIROC member and (ii) the DEA client market maker must be a member of a self-regulatory organization such as FINRA or otherwise subject to appropriate regulatory oversight?

We believe bank-owned dealers' affiliates trading on a proprietary basis should not be able to circumvent regulation by being treated as client, but must mark orders as inventory and those inventories should separately be tagged as SME as appropriate. The current practice on marking as client violates client priority, and would serve to mask dealer participation as proprietary in nature.

IIROC members need to have benefits for being members. Market makers need to be regulated in some form if performing a regulated activity.

Q13: Will an un-level playing field be created between DEA client market makers and registered investment dealers that also seek to become market makers on Aequitas' proposed exchange? If so, what are the potential implications in terms of fairness or market integrity?

The Aequitas proposal as written provides preferential allocation to market making firms (of which Aequitas can arbitrarily decide who qualifies). Without further publicly disclosed information on the market making program and the details surrounding the approval of participants as market makers, we find it difficult to comment on the impact of such a model.

The market making proposal itself, when complete should go to public comment as it does when TSX amends its market making rules.

Q14: How might Hybrid impact the quality and integrity of the visible market as a whole?

Price discovery is one of the central functions of financial markets. In a dynamic market, price discovery takes place continuously and is characterized as the adjustment of market prices with the arrival of new information. In short, price discovery helps find the exact price for a share of a company. It is our

opinion, that the introduction of a marketplace with the proposed characteristics of the Hybrid order book to have the characteristics of a less efficient market, causing harm to the price discovery process.

By barring certain participants from the Hybrid market, the Aequitas proposal would introduce a two tiered market, challenging the existing framework which has allowed for all investors to access the best possible price for a stock in Canada. Given that liquidity-taking access to the Hybrid book is restricted to a subset of participants, the quote cannot be accessed by all and thus cannot be protected from trade through obligations.

Transparency in the equity markets is a positive quality we have achieved over many years. This proposal adds complexity where unnecessary, reduces transparency to the true price of a security, and also restricts access to a subset of marketplace participants. Aequitas states it intends to introduce low trading fees in the Hybrid market, which has proven to impact where active order flow (in many cases retail) is traded. A shift in retail flow to the Hybrid market will degrade the price discovery function of existing visible marketplaces, reducing the fill probability of passive orders on visible venues as traded volumes shift to the Hybrid market. In our opinion, this will lead to reduced investor confidence in the quality of the visible market as a whole, including negative impacts to liquidity, and the efficiency of the price formation and price discovery process and its competitiveness to global capital markets.

Q15: Please comment on whether the potential benefits of Hybrid for the marketplace participants in Hybrid outweigh any potential risks to the market as a whole? Please identify the relevant benefits and risks.

We recognize the potential benefit of additional competition for existing trading platforms, and we are supportive of innovation, however, this does not outweigh the potential risks to the market in terms of transparency, participation, matching and allocation practices.

Potential risks associated with the proposed model include the introduction of exclusionary trading practices that could reduce participation and healthy competition on the Aequitas platform. We also believe the model could harm the price discovery mechanism, with impacts on investor confidence. Furthermore, we believe there are dangers in allowing the use of regulatory tags to further a marketplace's business interests rather than for its intended regulatory purposes, and we raise the question as to whether marketplaces should even be privy to this information. We propose that marketplaces only access regulatory markers to assist dealers with meeting regulatory obligations, and business use of regulatory tags by marketplaces ought to be strictly prohibited.

Q16: How should the principles of the current regulatory framework and any potential for changes to the framework impact the OSC's consideration of Hybrid? For example, should Hybrid go forward on a pilot basis and be re-evaluated based upon some criteria or threshold? What type of criteria or threshold might be appropriate to minimize potential negative impact?

We do not support a pilot period or otherwise. The cost to be borne by the industry to experiment with a model which may never be approved is inappropriate and irresponsible.

Should Aequitas launch, and the ability to selectively restrict participation by eliminating access on objective measures (such as restricting all forms of DEA) be approved, we would further comment that these restrictions ought to be lifted once a marketplace were to reach a pre-defined market share where it be appropriate to open access to all participants in the interest of maintaining market integrity. For example, if a marketplace is trading 10% or greater of total Canadian market share, it is unfair and harmful to market integrity to restrict full participation.

Q17: Alternatively, should Hybrid be required to be modified to fit clearly within the established regulatory framework for either visible or dark liquidity? If so, how?

Frameworks ought to be created based on objective measures, and we disagree that the established regulatory framework is broken. The existing ATS rules were put in place by the regulators to promote competition amongst marketplaces. Marketplaces have the ability to compete on a host of features including but not limited to pricing, execution quality, speed, innovation, liquidity, etc. Participants will vote with their shares on whether the marketplace offers value as have seen new venues this year capture market share.

We do not support the notion that a marketplace ought to be allowed to compete on a feature or characteristic that is unfair or may have a negative impact on market integrity or investor confidence, and we would urge regulation to curb that potential immediately.

CONCLUSION

We are in an environment that will continue to evolve at a rapid pace. With increased regulatory and political pressures influencing the market structure, the challenges of tomorrow may be very different. We believe it is critical to ensure that at a venue level, all parties get equal treatment in terms of market data, functionality, access and trading opportunity. We are supportive of innovation and competition within the markets to the extent that our regulatory framework continues to be based on objective measures.

Thank you for the opportunity to provide our comments on the Aequitas proposal. Please feel free to contact us with any questions or requests for clarification.

Sincerely,



Thomas Kalafatis

Managing Director and Head, Execution & Prime Services
CIBC World Markets Inc.