



Buy-Side Investment Management Association Inc.

c/o Zzeem, Inc., P.O. Box 38179, Toronto, ON M5N 1B6

October 2, 2013

Via email: marketregulation@osc.gov.on.ca

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

**Re: OSC Staff Notice and Request for Comments
Aequitas Innovations Inc.**

The Buy Side Investment Management Association (“BIMA”) is pleased to make this submission on OSC Staff Notice and Request for Comments – Aequitas Innovations Inc. (“Aequitas”).

About BIMA

BIMA was founded by, and represents, investors from Canadian financial firms. Our members include bankers, corporate investors, fund managers, government investors and pension managers. Our mission is to provide our members with a community where Canadian buy-side traders and investors can connect with their peers, exchange ideas and information and learn ways to enhance performance.

We thank you for seeking consultation and input from industry professionals as you engage in policy formation. We applaud the Ontario Securities Commission’s efforts to bring transparency to important market structure issues and welcome this opportunity to provide our comments.

In the interests of full disclosure, we advise that our members include institutions who are stakeholders in Aequitas and other Canadian market places. The views expressed in the letter have been compiled by certain board members of BIMA, and do not necessarily represent the views of the entire board of directors, the full membership, nor their employers or firms.

BIMA members are in favour of efforts to bring innovation to Canadian marketplaces as outlined in the Aequitas proposal. We believe that this proposal comes with benefits to the marketplace. Providing investors with the ability to trade in a ‘protected environment’ by suppressing predatory intermediary trading practices may prove to be a significant and beneficial development for the Canadian equity markets. BIMA encourages regulators to

be flexible enough to allow innovation and to permit markets to develop, expand and advance.

We acknowledge that there are issues that regulators need to address to protect the integrity of the capital markets, as outlined in the Staff Notice. Such concerns should not, in our view, slow innovation and suppress change. The status quo is not the solution. In this regard, we note that the OPR itself is a relatively recent development. Furthermore, there are some misconceptions among many capital markets participants regarding the proper use of the SME marker. We discuss these matters in further detail below.

Specific Responses to Questions Posed by Staff of the OSC

The following is submitted in response to the specific questions contained in the Staff Notice. For convenience, we have reproduced the questions.

Question 1: Should 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 primary benefit of OPR was to enable aggregation of liquidity across marketplaces. In practice, OPR has resulted in some unintended consequences, such as protecting small and inefficient marketplaces which add little or nothing to overall market liquidity, while imposing costs on all. It has increased costs for the sell side due to the cost of connectivity and market data, which are significant. Indirectly this affects the buy side as well, since the costs are passed through.

The OPR was to be reviewed by the OSC at some point and this review should be undertaken in an urgent fashion. Regulators should be open to new ideas which are consistent with the general goals of OPR, but which allow for some exemptions from the strict and rigid application of the rule in all instances. Traders should have the option to choose circumstances when they do not want or need this protection and should be permitted to execute orders to provide best execution to their clients as they in their professional judgment see fit.

Question 2: Should OPR apply to Hybrid? Should it continue to apply at least with respect to active non-SME orders that are not restricted from accessing the best-priced displayed orders on Hybrid?

Our understanding is that the overall intent of OPR will not be compromised in Hybrid. No order executed on Hybrid can be traded through as NBBO is used to set a price, so Hybrid book trades will not occur at an inferior price than available in the protected marketplaces. If Hybrid is implemented, traders should be allowed to choose to access the best-priced displayed orders on Hybrid.

Question 3: If Hybrid is implemented as proposed, how should the best-priced displayed orders on Hybrid be treated for the purposes of consolidated display requirements, and why?

Our understanding is that Aequitas will request exemption from OPR (consolidated display requirements) for its Hybrid book. We do not object to this proposal as long as the Aequitas marketplace provides additional liquidity and improved price discovery to the Canadian market. We see this as an appropriate trade-off.

Question 4: What should the appropriate reference price be for determining whether a dark order on any other market has provided minimum price improvement as required under the Dark Rules – the Away NBBO 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?

Our understanding is that Aequitas will ask for exemption from OPR for its Hybrid book. Therefore, NBBO will not include Hybrid best bid and/or Hybrid best offer and NBBO will continue to be used as a reference price for this marketplace as is the case with any dark pools. As the Hybrid Market will not be subject to OPR, the default NBBO will apply for minimum price improvement.

Question 5: How should fair access requirements be applied with respect to access to visible marketplaces?

We fully support the fair access principle. We consider fair access to allow investors and natural order flow to freely interact with each other without unnecessary intermediation. Some market practices such as fee structures, over-intermediation, and the technology and speed advantages of High Frequency Trading firms are a concern to long term investors, both institutional and retail. For investors, fair access should be the cornerstone of every market. Without fair access and the perception of fairness, investor confidence is undermined. Perhaps it is time for regulators to define 'Investor' to ensure that they will be treated fairly.

Question 6: 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?

If restricting access to certain market participants results in a benefit to long term investors and encourages natural trade flow to interact with each other, that would be a positive change in the view of our members. Today, the way marketplaces operate leads to increased data costs for dealers and indirectly for retail and institutional money managers. Market makers on most markets have no obligation to provide liquidity and orderly markets in times of stress. There is a lack of true competition between market places. We are concerned with overall reduction in market liquidity and welcome an innovation that

could address of these deficiencies.

Question 7: Are the access restrictions proposed for Hybrid consistent with the application of the fair access requirements?

Based on the information presented to us, we believe that it is. We would expect additional information to be provided prior to any implementation.

Question 8: Is the SME marker an appropriate proxy to identify the behaviours Aequitas seeks to restrict?

We believe that there is an urgent need for regulators to provide clarity and enhance consistency and compliance in the use of the SME marker. The observation of our members is that there are differing practices among traders in the use of the SME marker. In the absence of any other order marker to restrict access of market participants who do not enhance the functioning of the markets, regulators should use the SME marker and also provide clear rules for users.

Question 9: What, if any, is the impact on market quality and market integrity if market makers are provided matching priority (after broker preferencing)?

The market maker role, overseen by proper regulatory supervision, is essential to our markets and should be welcomed by all participants. A qualified market maker who has defined, controlled and monitored responsibilities has obligations to provide liquidity balanced by the privilege of priority to protect the integrity and orderly functioning of our markets. Giving market makers matching priority will provide an appropriate incentive for them to stay and continue to supply liquidity at all times and not only at times of their choosing. Such privilege should however come with a clearly defined obligation and expectation to provide continuing liquidity. Through regular surveillance, oversight and measurement of the market makers' activities, marketplaces should make sure market makers carry out their obligations. Those who do not should be excluded from the marketplace. Establishing a strong market maker program will improve price discovery and efficiency.

Question 10: 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?

Yes, the proposal is reasonable. See our answer to question 9 above for more details on our suggestions for better tracking market makers' adherence to their obligations, which market makers must be expected to perform in order to obtain the benefits of priority.

Question 11: 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?

Yes, they should accrue across all listed securities in order to provide continuous incentives to market makers to provide liquidity to the marketplace.

Question 12: 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?

Our preference would be that DEA client market makers be a member of FINRA and subject to appropriate regulatory oversight. However, if Aequitas can demonstrate to the regulators that they have sufficient and robust controls in place to monitor DEA clients, a sponsorship by an IIROC member (and not full IIROC membership) may be sufficient. We feel that at present there is insufficient information to take a definitive view on this issue and we may be convinced otherwise if presented with the appropriate data.

Question 13: 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?

Fairness and market integrity should not be compromised and if there is competition for market maker positions. We believe competition is a good thing and will help to keep the market fair. As long as both types of market makers are subject to the same monitoring, standards and controls, fairness and market integrity will not be compromised.

Question 14: How might Hybrid impact the quality and integrity of the visible market as a whole?

We see a potential for the market innovation proposed by Aequitas to improve the liquidity of exchange traded stocks; resulting in significant benefits to the marketplace. If that proves to be the case, we believe that market quality and integrity will be maintained. The quality and integrity of markets would be enhanced by Hybrid providing an opportunity for investors to meet and trade at a price of their choice, free from excessive and harmful intermediation. Canadian markets would be more competitive as a result.

Question 15: 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 don't see any significant risk with the Aequitas proposal. We believe that the success of the business model will depend on market forces. If market participants see a benefit, the Aequitas marketplace will thrive, and if not, Aequitas will not be successful. There is virtually no risk to enabling market participants to try out and evaluate the new marketplace. In addition, non-Canadian investors may be attracted to a venue which offers less intermediation.

It is likely that any innovation in the marketplace will come with some benefits and may have some drawbacks. As capital markets participants, we need to be able to compare the pros and cons of the new model vs the status quo and be in favour of proposals whose potential benefits outweigh any possible unintended consequences. Unless the Aequitas proposal is allowed to proceed, we are all deprived of the opportunity to find out if there is a better alternative.

Question 16: How should the principles of the current regulatory framework and any potential for changes to that framework impact the OSC's consideration of Hybrid? For example, should Hybrid go forward on a pilot basis and be reevaluated based upon some criteria or threshold? What type of criteria or threshold might be appropriate to minimize potential negative impact?

The proposal submitted by Aequitas is different from other models that exist, not just in Canada but globally and should be given an opportunity to prove itself. We have seen a lot of marketplaces come to Canada recently that in our view did not bring any meaningful innovation. There are too many marketplaces that base their business model on charging maker/taker fees, attracting numerous intermediaries and not bringing any meaningful benefit to the buy side and overall market liquidity.

We welcome a new model which may bring a solution to some market inefficiencies. Unless we get an opportunity to test the proposed model it will be hard to evaluate its final impact on the marketplace. Perhaps regulators should create criteria and thresholds (such as market share, average trade size, the depth of the book, reliability of spreads, or similar) to evaluate efficacy of not only newly proposed but also existing marketplaces.

The OSC should look at the principles of modernization and originality in considering the appropriate regulatory framework for Hybrid. We believe that the benefits to investors are significant and very positive. The ability to trade without unwanted intermediation would be a significant improvement over what is currently available on the Canadian markets.

If a pilot option is chosen, the term and operating rules should be clearly laid out for the participants. This includes clear rules on the use of the SME order marker. The pilot must have a reasonable period of time to function. Perhaps an independent evaluator with the required expertise could be employed to ensure an unbiased assessment of the outcome.

Question 17: 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?

We should allow investors to decide if having a market free of intermediation will be functional and whether such a market is of long term benefit. Investors should be given the opportunity to make their own decisions about price protection within Hybrid.

Concluding Remarks

Regulators have a mandate to foster fair and efficient capital markets and public confidence in the capital markets. We believe that allowing the Aequitas proposal to go forward will advance this mandate. The innovation represented by the Aequitas proposal should be encouraged. The availability of a trading venue which provides investors with a means to avoid unwanted intermediation strategies will, we believe, result in greater confidence in the capital markets by improving the perception and the reality of fairness in the markets.

We would be pleased to expand on the above at your request. If you have any questions regarding our submission, please do not hesitate to contact Mr Milos Vukovic at milos.vukovic@rbc.com or Ms Carol-Ann Banahan at cbanahan@phn.com.

Yours truly;

BUY SIDE INVESTMENT MANAGEMENT ASSOCIATION