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VIA EMAIL

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

Dear Sirs/Mesdames:

Re: Notice and Request for Comments on Application for Recognition of Aequitas Innovations Inc. and Aequitas Neo Exchange Inc. as an Exchange

TMX Group Limited (“**TMX Group**” or “**we**”) welcomes the opportunity to comment on behalf of its subsidiaries Toronto Stock Exchange (“**TSX**”) and TSX Venture Exchange (“**TSX Venture**”) (each, an “**Exchange**” and collectively, the “**Exchanges**”) on the Notice and Request for Comments published by the Ontario Securities Commission (“**OSC**”) entitled “Notice and Request for Comments on Application for Recognition of Aequitas Innovations Inc. and Aequitas Neo Exchange Inc. as an Exchange” (“**Request for Comments**”). Capitalized terms used in this letter and not specifically defined have the meaning given to them in the Request for Comments.

We are providing responses to the specific areas for which comment was requested by OSC staff, as well as comments on a number of other matters and issues of particular concern that have been identified in connection with the proposed trading structure and listing model, and the proposed Recognition Order.

Proposed Trading Model

1. Costs vs. Benefits

Our understanding from Aequitas’ application is that its proposed trading structure is intended to “rebalance the market in favour of long-term investors while helping to eliminate the most prevalent speed-based trading strategies that negatively impact market quality, fairness and investor and issuer confidence.”¹ We also understand that its proposed market maker program

¹ Aequitas application, pg. 13.

is designed to “revive the role of the traditional market maker in the Canadian equity markets”² and “promote reliable liquidity, quality price discovery and support the needs of investors and issuers”.³

To achieve these goals, Aequitas is proposing a very complex trading model with four order books, multiple new order types, complicated priority allocation mechanisms, a new way of displaying data, and segmented access and fees based on a proprietary classification of TraderIDs.

We commend Aequitas for attempting to develop an innovative and commercial solution to the issues it has identified. However, we question the effectiveness of the proposed model to address these issues, and whether the realized benefits will justify the costs and risks imposed on the industry.

We are concerned that the proposed trading structure has the potential to add a significant degree of complexity and fragmentation to the markets, and could result in increased risks and costs for dealers in an environment where costs and inefficiencies associated with the current market structure are under review by regulators.⁴ At the same time, we question whether the proposed model will deliver on the purported benefits to long-term investors, considering that various incentives, complicated order types and proposed segmentation mechanisms may be more attractive and beneficial for designated market makers (DMMs) and other latency sensitive traders, at the expense of long-term investors.

2. Implications of segmentation mechanisms

The Aequitas proposal includes segmentation mechanisms that are based on type of account or participant, and are generally intended to segment between ‘Neo Traders’ and ‘latency sensitive traders’ (also referred to as ‘LSTs’). This segmentation will be achieved through conditions on access, priority allocation mechanisms, and through fee incentives or disincentives.

As discussed in various areas of our more detailed comments, these segmentation mechanisms will increase costs and complexities for dealers, vendors and marketplaces (and particularly for order handling and routing). At the same time, there are questions as to the effectiveness of these mechanisms and the potential for abuse given: (1) the reliance on self-identification by participants as to the type of order flow to be sent through each reported TraderID; and (2) the difficulties and degree of subjectivity to be involved with the monitoring and enforcing of the proper categorization of order flow as LST, Neo Trader or Retail Customer. Ineffective segmentation will diminish the value of proposed benefits, while providing natural investors with a false sense of comfort as to the purported ‘safety’ of interaction within the Aequitas Trading Books.

We also note that allowing access conditions in a visible market based on a class of accounts or participants (as defined by a single marketplace) will set a precedent and lead to a proliferation of different forms of segmentation on visible markets. This may significantly alter the market structure landscape in Canada, increase complexity, and lead to more marketplace

² Ibid, pg. 28.

³ Ibid, pg. 13.

⁴ As noted in the Canadian Securities Administrators notice regarding its proposed amendments to the Order Protection Rule.

fragmentation as well as increased restrictions on the interaction of order flow that will negatively impact the efficiency and effectiveness of the price discovery process. There may be other ways to achieve similar outcomes without resorting to an access condition based on type of account or participant. At minimum, definitions of the class and type of accounts or participants used for effecting segmentation should be based on clear, objective and industry-accepted definitions and / or terms.

See section 6(b) of Appendix A and section 2 of Appendix B for more details.

3. DMM benefits

As noted above, we understand that the proposed DMM program is designed to “revive the role of the traditional market maker in the Canadian equity markets”. In its attempts to achieve that objective, it appears to us that Aequitas has designed a program with features and benefits that only the more technologically capable and latency sensitive participants might be able to fully and effectively utilize – i.e., it does not appear that the Aequitas DMM program was designed with the ‘traditional market maker’ in mind. Further, there may be a limited pool of registered dealer candidates that have both the market making experience and technological capabilities needed to effectively participate as an Aequitas DMM. This raises questions as to the accessibility of the program, and could lead to a scenario where all of the market making assignments are given to only a few firms – most notably, to certain firms that are owners of Aequitas. In light of this, we suggest that conflicts of interest policies and procedures should be required to deal with the conflicts that arise in connection with DMM assignments to shareholders of Aequitas. (See section 6 of Appendix B for other potential conflicts of interest issues.)

We also note that availability of sophisticated order features like the Market Maker Quote and batch order entry, together with priority mechanisms such as the Market Maker Volume Allocation (MMVA) and Market Maker Commitment (MMC), will provide advantages to DMMs over natural investors that may negatively impact the quality of execution and transaction costs for those natural investors. (See sections 2 and 6(a) of Appendix A and sections 3 and 4 of Appendix B for more specific comments regarding the DMM program.)

4. Application of OPR to Aequitas given CSA proposed amendments to OPR

We reiterate our previously expressed support for the implementation of a threshold for OPR protection, and commend OSC staff for considering how participants might be spared the costs associated with accessing and integrating the very complex trading environment proposed by Aequitas.

At the same time, we are also of the view that fundamental market structure rule changes should not be imposed before having completed the normal rule-making processes. The rule-making process is important to ensure that all relevant issues are identified and resolved while minimizing negative impact for all stakeholders.

We therefore do not think that it is appropriate to apply the proposed OPR amendments to a new marketplace (including Aequitas) prior to the finalization and implementation of the resulting rule amendments.

We also note that either option of imposing the existing OPR on Aequitas upon its launch, or providing some form of exemption, will impose risks of complications, costs and burdens on industry that could be minimized if there was certainty as to the final form of the OPR amendments. We submit that it would be therefore more appropriate to require Aequitas to defer its launch until after the OPR amendments have been finalized and implemented. (See section 5 of Appendix A for more details.)

At a very minimum, and taking into consideration the other complexities to be introduced by the Aequitas trading structure regardless of whether OPR will apply to Aequitas upon launch, we think that industry may need more time to integrate the Aequitas trading structure into their various trading workflows than what is typically afforded by a three-month wait period between marketplace approval and launch.⁵

5. Inconsistencies with current regulatory requirements

We have identified certain areas where it appears that the Aequitas proposal is not fully consistent with current regulatory requirements and guidance, or which perhaps indicate a change in regulatory views that has not been communicated more broadly.

We submit that regulatory consistency and clarity are essential for ensuring that all parties are afforded the same benefits and subject to the same obligations. If revisions to existing regulatory requirements or guidance are required to accommodate the Aequitas proposal, these should be made public through appropriate formal channels prior to its launch. Alternatively, Aequitas should be made to comply with the existing requirements and guidance until such time as any necessary changes are made.

Areas of potential inconsistencies with current regulatory requirements include: (1) the application of existing guidance on dark price improvement in the context of multiple trading facilities operated by a single marketplace; (2) whether the mere receipt of a Size-Up notification provides enough implied information about orders resting in the Dark Book to constitute an 'order' or 'indication of interest'; and (3) whether the functionality of Derived Orders is sufficiently similar to a sharing of information that would otherwise violate information transparency requirements or raise fairness concerns. (See section 1 of Appendix B for more detail.)

6. Lack of transparency on certain key features and functionalities

The complexity of the proposed Aequitas trading structure and model, and the features and functionalities of the four proposed Trading Books, have made it difficult to properly assess whether there are regulatory issues or broader public interest concerns, and to provide complete responses with clear positions on the questions posed by the OSC.

Adding to these difficulties was the lack of transparency provided by Aequitas regarding certain key features and functionalities. Most notably, the lack of information and clarity provided in the published notice regarding the MMVA and MMC made it difficult to assess whether there are any unfair advantages being provided to the DMM or if regulatory compliance issues might

⁵ As reflected currently in OSC Staff Notice 21-706 *Marketplaces' Initial Operations and Material System Changes*, and suggested by recently proposed amendments to section 12.3(3)(b) of NI 21-101.

arise. Other areas where there was a lack of transparency provided in the published notice are noted throughout our more detailed responses.

We submit that greater transparency should have been provided to permit the public to properly review and comment on these particular aspects of the proposal. To the extent that material details about a key feature or functionality that should have otherwise been included in the Aequitas application are later made public, we expect these will be made subject to the publication and comment process before implemented.

As part of our review, and as a result of the lack of transparency provided in the published notice, we submitted a list of questions to Aequitas to obtain the needed information, clarity or confirmation of our understanding of its proposal. This list of questions is attached at Appendix E. A meeting was later held with Aequitas through which answers to almost all of the questions were obtained – we thank Aequitas for being forthright and transparent in providing us with those additional details. We have not provided in the context of our response all additional information obtained, although our comments reflect the additional knowledge gained where relevant. We expect that Aequitas will provide any additional transparency that is needed.

Issuer Regulation

The issuer regulation model proposed by Aequitas raises significant public interest and investor protection concerns. We note that Aequitas does not propose to approve most transactions prior to their completion, but rather reserves the right to do so in certain circumstances or when exercising discretion. By recognizing this approach as an appropriate one for a senior Canadian stock exchange, Aequitas would be introducing significant new risks into our capital markets. Exchanges play an important role in ensuring protection of the public interest and the integrity of the capital markets and, at the more senior level, exchange oversight is one of the hallmarks of the Canadian capital markets.

1. The Role of Exchanges in the Regulatory Landscape

Aequitas states that it “*supports strong corporate governance and shareholder approval requirements as a suitable substitute for the exchange’s discretionary merit review of transactions*”. However, it is our experience as exchange operators that exchange review of a broader range of transactions assists in preventing certain issuers, including sophisticated issuers and their advisors, from avoiding application of the exchange’s rules through technical interpretation and complex arrangements. TSX and TSX Venture have codified processes to approve transactions and this both obligates and permits the exchanges to play a crucial screening and investor protection role in vetting transactions. The proactive review and approval of transactions undertaken by TSX and TSX Venture fosters investor confidence in the market and, through our interactions with institutional investors in Canada and globally, we have confirmed that these investors view our engagement as a valuable tool for detecting and preventing violations of securities law and exchange requirements that might not otherwise be subject to scrutiny.

We submit that there may therefore be risk to the integrity of the market and security holders without Aequitas’ involvement in the approval of certain transactions. After transactions are completed, there is often no adequate remedy for the harm that may have occurred to the market and security holders.

Aequitas indicates that it will review materials required to be submitted for security holder approval with a view to market integrity issues prior to the distribution of those materials. However, we believe that transactions where security holder approval is not required (and, where the issuer does not also have secondary market liability for its disclosure as a result,) represent a large number of transactions and arrangements that take place.

Closing a transaction with neither prior exchange approval nor prior market notification may foreclose on any meaningful opportunity for security holders and other affected parties to appeal a decision by Aequitas. It is unclear from a practical standpoint whether the appeal rights provided to affected parties under Section 21.7 of the *Securities Act* (Ontario) are rendered meaningless, either because the transaction has closed and/or there is no decision or approval by the exchange to appeal. This may negatively impact Canada's capital markets and investor confidence as a whole since there is a potential lack of meaningful remedies for investors and other capital markets participants in scenarios where issues are identified post-closing. We note similar risks in the lack of clarity concerning the process for review of listed issuers for continued listing.

Since Aequitas has indicated that its approval of transactions is "required only in limited circumstances", we believe that the OSC should carefully consider the risk to investors and to the reputation of the market of permitting Aequitas to adopt a model of oversight where it does not propose to review and pre-approve all transactions. The important investor protection role played by TSX and TSX Venture in approving transactions that would not otherwise be visible to members of the Canadian Securities Administrators (the "CSA") may be jeopardized if Aequitas is permitted to adopt this less involved exchange oversight strategy. This introduces significant new risks to the Canadian capital market.

2. Avoiding Regulatory Arbitrage

We believe that issuers of the same size and quality should be subject to an equivalent core level of listed issuer regulation and transaction approval by domestic exchanges. We do not suggest that equivalent means identical. However, in support of market integrity and the public interest, we would expect that issuers of the same size and quality be subject to similar exchange oversight when undertaking certain transactions. Regulatory arbitrage with respect to such fundamental matters could otherwise result and negatively impact the integrity of the Canadian market.

3. Regulatory Competition Among Exchanges

In addition to general concerns of market integrity and investor protection raised by the Aequitas proposal there is an additional issue if regulatory competition among exchanges. This presents a significant risk and the possibility of a fundamental shift in the Canadian market landscape. The OSC can play a key role in guarding against a regulatory "race to the bottom" whereby other Canadian exchanges will be compelled to adopt a similar, more limited oversight regime in order to maintain a competitive advantage.

Proposed Recognition Order

Finally we note that there are areas in the proposed Recognition Order for Aequitas which impose a lighter regulatory burden than that which applies to TMX Group and its equity

exchanges. While Aequitas is currently a private company, it does have shareholders of a similar nature to the TMX Group “original Maple shareholders”⁶, including banks, dealers and pension funds, and should therefore be held to the same governance standards. The lower number of independent directors required and the lower quorum requirement provide Aequitas with flexibility that we do not have. Similarly, Aequitas’ governance and regulatory oversight committees are not required to be made up of independent directors. In addition, Aequitas does not have the following requirements: fee review, governance review, annual regulatory and public interest report, prior approval of amendments to board and committee mandates, and certain fee prohibitions.⁷ If the OSC has determined that such requirements are not necessary for the effective functioning of an exchange in Ontario, then we should also not be subject to such requirements.

The remainder of our comments are organized as follows:

Appendix A: Responses to the Request for Comments

Appendix B: Other Issues Arising from Review of Proposed Trading Structure

Appendix C: Comments on the Proposed Aequitas Trading Policies

Appendix D: Comments on the Proposed Aequitas Listing Manual

Appendix E: Questions Sent to Aequitas During Comment Period

Thank you for the opportunity to comment. We would be pleased to discuss any aspect of these matters at your convenience.

Yours truly,



Kevan Cowan
President, TSX Markets and Group Head of Equities, TMX Group

⁶ As defined in the OSC Maple Recognition Order dated July 4, 2012, as amended (the “Maple Order”).

⁷ The Maple Order prohibits providing any discount, etc., that is conditional upon the purchase of any other service or product provided by an exchange or affiliate. The Aequitas Recognition Order permits such arrangements with prior approval of the OSC.

APPENDIX A

RESPONSES TO THE REQUEST FOR COMMENTS

OSC questions from the Request for Comments are repeated here in italics for ease of reference.

1. Benefits and Obligations of Market Makers

Request: The Aequitas Exchange proposes that the market maker benefits apply to the Lit, Dark and Neo books; however, market makers' obligations would only apply to the Lit and Neo books (please see sections 1(d)(ii), 1(d)(iii) and 1(d)(iv) of the Application for a description of the market makers' benefits and obligations in the Lit, Dark and Neo books, respectively). Staff request specific comment on whether it is appropriate to have obligations with respect to the Dark Book and dark pools generally and whether it is appropriate to have benefits in the Dark Book but no obligations.

(a) Appropriateness of DMM obligations in the Dark Book and dark pools, generally

We are not generally supportive of requiring Aequitas to impose DMM obligations in the Dark Book, or of market maker obligations in dark pools in general. The key objectives of a market making program include: enhancing the efficiency and effectiveness of price discovery; augmenting liquidity when needed; and mitigating price volatility and helping to stabilize the market. Imposing market making obligations in a dark pool will not generally achieve these objectives. The value of a market maker's dark quotes to price formation, liquidity augmentation and market stabilization will be diminished by the fact that their quoted price and volume will not be visible to others, and that the execution of their dark orders will always be constrained by an NBBO established by prices displayed elsewhere.

We also submit that careful consideration must be given to the potential implications of imposing market maker obligations in the Dark Book. This could promote increased execution of smaller-sized orders in the dark, which may have implications for the effectiveness of the price formation and discovery process in the visible markets. This may produce a result that is inconsistent with the intended outcomes of the regulatory framework for dark liquidity.

(b) Appropriateness of DMM benefits in the Dark Book without obligations

The response to this question would depend on whether the market maker benefits and obligations are based on the DMM program being a whole-market or facility-by-facility offering. We note that there is currently no guidance from the regulators on how a market maker program should be viewed in this context.

It generally appears that the DMM program is intended to be whole-market offering in that it appears likely that the same DMM will be assigned for a given symbol on each of the Lit, Neo and Dark Books. Also, the quoting and spread commitments outlined in Attachment "A" to the published DMM Agreement suggest that these commitments will be the same for each applicable Trading Book.

To the extent that our assessment of the DMM program as a whole-market offering is correct, then we agree that it is reasonable for there to be no specific quoting obligations in the Dark Book provided that the DMM is assigned responsibility for the same security across all books, and so long as the total of the benefits across the Trading Books is reasonable relative to the total of the obligations.

We further note that if the OSC concludes that the DMM benefits in the Dark Book are not justified by the obligations, then we submit that it would produce a better market structure outcome to require that Aequitas remove the DMM benefits in the Dark Book as opposed to requiring that specific quoting obligations be imposed (for the reasons outlined under paragraph 1(a) above).

2. Market Makers' Commitment (MMC)

Request: The Aequitas Exchange proposes to allow designated market makers to commit additional dark liquidity at multiple price levels and in varying quantities within the Lit and Neo Books for securities listed on the Aequitas Exchange only (please see sections 1(d)(ii) and 1(d)(iv) of the Application for additional detail). Staff request specific feedback on whether the MMC feature provides too great an incentive to the market maker at the expense of the existing orders in the book.

The lack of details provided in the published notice about the MMC functionality made it difficult to suitably assess the MMC and provide meaningful feedback. Specific examples demonstrating the functionality would have been beneficial to facilitate understanding and feedback. We note that when NYSE published amendments to its comparable feature for comment, examples were provided.⁸ While the NYSE program was referred to by Aequitas as a comparable in the published notice, this does not mean that the two programs will operate in the same way. As a result, we could not rely on the functioning of the referenced NYSE program to inform our view of Aequitas' proposed MMC. We did, however, obtain additional information through our meeting with Aequitas to discuss the questions contained in Appendix E which we have taken into consideration when forming our comments.

In response to the question, and based on our understanding of the MMC feature, it should be viewed as a benefit. This is premised on our understanding that there is no actual obligation for the DMM to use the MMC feature to support liquidity and manage major price swings as suggested is the intended purpose of the feature in the Request for Comments. If the MMC is intended to be used as a tool to facilitate these outcomes, then we submit that there should be a related obligation for the DMM to use it for these purposes, and Aequitas should be required to monitor the usage of the MMC to ensure these outcomes. Otherwise, there is the potential for the MMC to be used to provide additional benefit to the DMM at the expense of resting orders at lower price levels that would have received fills had the execution against the MMC not been triggered, which raises questions of fairness for those unfilled resting orders.

The value of the benefit to DMMs provided by the MMC increases if the books on which it will apply (Lit Book and Neo Book) are protected for OPR purposes, and on the basis of our understanding that there will be no minimum size that the DMM must commit at any particular price level of the commitment schedule. This would facilitate additional participation for the DMM at smaller order sizes than would likely be needed to provide the liquidity support and stabilization effects suggested by Aequitas. In addition, if there is no minimum requirement on

⁸ See <http://www.sec.gov/rules/sro/nyse/2009/34-60429.pdf>

the size to be committed by the DMM under the MMC, there is the potential that the DMM could use the MMC for the purpose of obtaining information about orders with directional impact. We further submit that imposing some form of minimum requirement on the size to be committed by the DMM under the MMC would be appropriate.

3. Listings and Cross-Listings of Investment Products

Request: The Aequitas Exchange has indicated that a particular focus of the Aequitas Exchange's operations will be the listing of investment funds and other exchange traded products (collectively, Investment Products). One of the ways an issuer can become a reporting issuer in Ontario is to have its securities listed and posted for trading on an exchange. This raises the concern that an Investment Product may become available to the public in Ontario through an exchange listing or cross-listing. In OSC Staff Notice 81-715 Cross-Listings by Foreign Exchange-Traded Funds Staff articulated our view that a cross-listing of a foreign exchange traded fund or other Investment Product securities that are in continuous distribution would generally be considered a distribution in Ontario, requiring a prospectus to be filed. To minimize opportunities for regulatory arbitrage, it is our view that there should be a specific process or protocol put in place to inform Staff of listing or cross-listing applications. The purpose of this protocol would be to allow Staff to assess whether we have in the past recommended or would recommend a receipt for a similar investment fund product offered by prospectus in Ontario. Staff request specific feedback on the listing requirements for Investment Products.

In light of OSC Staff Notice 81-715 Cross-Listings by Foreign Exchange Traded Funds, it would appear that an issuer of a foreign exchange traded fund ("**Foreign ETF**") would be unable to list on a stock exchange in Ontario without filing and clearing a prospectus in Ontario. Accordingly, in our view, appropriate internal processes or protocols ought to exist for an exchange to identify and discuss such matters with OSC staff. Furthermore, we believe that a recognized stock exchange should be required to have appropriate staff with professional expertise in areas such as investment funds, ETFs, securities laws and other sectoral areas in which the stock exchange intends to focus.

In terms of other foreign investment products which may be listed on a stock exchange in Ontario which may not be in continuous distribution, TSX understands that OSC staff may have concerns about novel foreign investment products which the OSC may not have an opportunity to review. We similarly believe that, as part of the gatekeeper function of a recognized stock exchange, where the OSC raises concerns, appropriate internal processes or protocols ought to exist for the exchange to identify and discuss such matters with OSC staff.

4. Emerging Market Issuers – Gatekeeper Concerns

Request: In OSC Staff Notice 51-719 Emerging Markets Issuer Review (the EM Issuer Review), Staff highlighted the important gatekeeper function to our Canadian markets played by Canadian exchanges. The EM Issuer Review recommended that Canadian exchanges assess whether additional listing requirements are needed to address the risks associated with emerging market issuers (EM Issuers) or whether additional exchange review procedures are required to evaluate whether significant risks are present and how they can be addressed. In response, TSX and TSXV are each currently developing an approach to the listing of EM Issuers. It is our view that

Aequitas Exchange should develop its own targeted response to the listing of EM Issuers. The purpose of this exercise is for Aequitas Exchange to develop transparent procedures to identify and address the risks to Canadian markets associated with the listing of these issuers. Aequitas Exchange has agreed not to accept applications to list securities of EM Issuers until it has adopted listing requirements or procedures applicable to EM Issuers. Staff request specific feedback on the elements that should be included in Aequitas Exchange's requirements or procedures for EM Issuers.

Exchanges play an important gatekeeper role for the Canadian capital markets. TSX and TSX Venture, in reliance upon their own review of the matter, past experience with EM Issuers and extensive public consultation, recognize that, from a listing suitability perspective, EM Issuers have a different risk profile as compared to non-EM Issuers. As a result, both TSX and TSX Venture have developed practices and procedures aimed at mitigating these risks to help address associated market integrity concerns.

We agree that it is important for Aequitas to develop and publish for comment its own targeted response to the listing of EM Issuers. The public should have visibility into, and the opportunity to comment on, Aequitas' proposed procedures for this category of higher risk applicants for listing, especially in light of Aequitas' proposed approach not to review and accept proposed transactions prior to their completion.

5. Application of the Order Protection Rule

(a) Application of OPR to the Neo Book

Request: The Aequitas Neo Book, as proposed, would be considered a transparent market and therefore OPR would apply to the Neo Book at launch. This would mean that all market participants, including LSTs, would be required to direct their orders to the Neo Book if it displayed the best bid or offer. As proposed, the Neo Book will impose a speed bump and higher trading fees on LSTs. It is staff's view that the different treatment of the LST orders in the Neo Book does not unreasonably prohibit, condition or limit access to the Neo Book and Staff request comment on this matter.

However, concerns have been raised whether it is appropriate to require LSTs to route orders to a marketplace that does not treat these orders in the same manner as all others. Consequently, Staff request comments on whether it is appropriate for a market to be protected where it systematically treats one class of participant differently than another; that is, whether OPR should apply to the Neo Book in these circumstances.

In our view, there are two questions embedded in this specific request for comment, outlined below. These questions are relevant only if the OSC decides that OPR should be applied to the Aequitas Trading Books generally, despite the pending OPR amendments. We are therefore responding on the basis that the Lit and Neo Books would otherwise be protected for OPR purposes.

i. Should OPR apply to Neo Book for active orders of Neo Traders, but not LSTs?

We believe that OPR should apply to Neo Book in the same way for all parties, or shouldn't apply to the Neo Book at all. We are not supportive of an approach where LSTs are exempt from the requirement to access displayed best prices on Neo Book, while other participants are not afforded the same option.

OPR should be applied in a consistent way as a matter of fairness to: (i) the orders resting in the protected Neo Book; and (ii) the active orders of Neo Traders that will continue to be required to access best priced displayed orders on Neo Book without being given the same option as is being provided to LSTs – i.e., without the option to choose to execute at an inferior price on another market, particularly attractive in circumstances where the execution of the Neo Trader order away from the Neo Book could result in a better execution.

Imposing OPR on the active orders of Neo Traders but not those of LSTs will also pose a number of additional complexities, issues and uncertainties for dealers and vendors as it will effectively result in the creation of two separate official NBBOs that will apply for regulatory compliance purposes, based on the type of party. *We note the significance of this given that any associated costs and complexities will arise because of Aequitas' choice for its market design, and not because of a choice made by a participant.* These costs and complexities would effectively be forced upon the industry to ensure OPR compliance. Some of these costs and complexities include:

- Increased costs and complexities associated with creating different data views for Neo Traders and LSTs (or for managing their order flow) to reflect that there will be two different regulatory NBBOs.
- Increased costs and complexities for routing (whether by dealers, vendors or marketplace routers) to the extent that development will need to be undertaken to facilitate routing based on TraderID.
- Internal compliance costs and complexities for dealers with LST and Neo Trader accounts that will have to monitor for compliance with OPR and other rules on different terms for different trader IDs.
- Additional complexities and costs for IIROC monitoring of trade-throughs and other rules based on separate regulatory NBBOs being applied to different TraderIDs.
- Increased potential for confusion because investors resting orders on Neo Book may have the expectation of protection but be confused by seeing increased trade-throughs of the better-priced orders displayed on Neo Book by LST active orders routed to other markets.

ii. Should OPR apply to Neo Book at all because of the difference in treatment?

As indicated above, we are of the view that OPR should apply to Neo Book in the same way for all parties, or it shouldn't apply to Neo Book at all. Our views on whether OPR should apply to the Neo Book at all are generally the same as our views on whether OPR should be applied to new marketplaces (including Aequitas) in light of the current proposed amendments to OPR. See the following section (b) for these comments.

(b) Application of OPR to new marketplaces

Request: Staff note that, on May 15, 2014, the Canadian Securities Administrators (CSA) published for comment Proposed Amendments to National Instrument 23-101 Trading Rules (Proposed Amendments), including proposed amendments to OPR. In particular, the CSA is proposing to introduce a market share threshold at or above which the displayed orders on a marketplace will be protected. What this means is that the OPR obligations will only protect orders on a marketplace, or its market or facility, that has a market share at or above the threshold. In this context, and with consideration to timing, Staff are considering whether the current OPR (without regard to market share) should apply to protect orders on the Aequitas Lit Book and Neo Book (if applicable) at launch, as the launch is anticipated to occur prior to the implementation of the Proposed Amendments. More generally, Staff would like to solicit feedback on whether to interpret and apply OPR such that it does not apply to any new marketplace that launches in the time period between the publication for comment and implementation of the Proposed Amendments. Further, staff request comments on specific benefits to the market or costs and complexities that this approach would introduce.

TMX Group has previously indicated its support for the implementation of a threshold for OPR protection, and intends to similarly express that view in its formal response to the CSA request for comments on the proposed amendments to OPR. We commend the OSC for considering means by which participants might be spared the costs associated with accessing and integrating the very complex trading environment proposed by Aequitas, and leaving it to participants to determine whether incurring these costs is warranted to achieve best execution for its clients based on the Aequitas offering and the type of liquidity that it will attract.

At the same time, TMX Group is also of the view that fundamental market structure rules such as OPR should be applied consistently to all parties and should only be subject to significant alterations through the normal rule-making processes. The rule-making process is important to ensure that all relevant issues are identified and considered. Therefore, we do not support application of the OPR amendments to a new marketplace prior to their implementation. TMX Group has consistently been of the view that a 'policy by default' approach that may arise through approvals that significantly alter the prevailing market structure, or that are inconsistent with the principles and objectives of the current regulatory framework, is not appropriate. The OPR rule review should be conducted and completed independent of the Aequitas Request for Comments. Any resulting rule changes must be clear as to the revised underlying principles and objectives, be applicable to the market as a whole, and be applied to all marketplaces and participants who wish to develop new models or change existing ones. Ample time must also be allowed for the industry and market to assess and adapt prior to the implementation of any revised framework.

i. Costs and complexities associated with the options being contemplated

TMX Group understands the cost implications to market participants if they are required to access trading on Aequitas upon launch in order to comply with the current OPR, and how this might be particularly wasteful if the proposed OPR amendments are then implemented and Aequitas' visible Trading Books lose protected status.

However, there are also risks with proceeding as if the proposed OPR amendments had already been finalized and implemented. For example, participants and vendors will be burdened with new complexities to implement the new OPR rules for Aequitas before they apply to other marketplaces, including changes to dealer and vendor displays, and for algo and routing functionality based on multiple NBBOs (including one regulatory NBBO). Further, there will be increased systems and systemic risk if those changes must be implemented on a compressed timeframe to accommodate Aequitas' launch, relative to the implementation timeframe that might apply to the implementation of any finalized OPR amendments.

Further, if the proposed amendments to OPR are made applicable to Aequitas in advance of the finalization of those amendments, then there is also the risk that costs incurred to make changes to accommodate the visible unprotected Aequitas Trading Books will be wasted if the OPR amendments are not implemented, or are implemented in a different way that requires further significant changes.

In addition, we are not clear as to how an OPR exemption for Aequitas would be implemented. We are assuming that any OPR exemption would be implemented in a way that would result in a similar outcome as would occur under the proposed OPR amendments, including that relief would be provided from UMIR requirements that are dependent on the definitions of "best ask price" and "best bid price" or "better price" that would allow for exclusion of any best-priced displayed orders on the Neo Book or Lit Book. Any such relief would need to be sufficiently clear to ensure that market participants have certainty as to the application of the rule set. If not implemented in this way, a number of additional complications and uncertainties with respect to the application of the rule set could arise – for example, if Aequitas' displayed orders are exempted from OPR but required relief is not provided from the relevant UMIR provisions. This would result in participants needing to access trading on Aequitas to comply with UMIR requirements, therefore defeating the purpose of providing an OPR exemption for Aequitas.

TMX Group therefore submits that the Aequitas launch should be deferred until the OPR amendments are implemented (assuming the amendments to OPR are approved as proposed). We submit that this outcome is better for the markets and participants rather than to apply the current OPR requirements to Aequitas, or to providing some form of exemption that would have the effect of side-stepping the formal rule-making process already underway.

Given our expectations for the CSA timeframe for approving and implementing the proposed OPR amendments, we believe that our suggested approach should provide an appropriate balance between relevant Aequitas, industry and participant considerations.

6. Other Areas Specifically Identified by OSC Staff as Being Under Consideration or for which Specific Comment Requested

(a) Additional disclosure regarding types of marketplace participants providing liquidity in the Neo Book

Under "Application" in Section II of the Request for Comments, OSC staff indicated that they are currently considering the need for additional disclosure regarding the types of marketplace participants that provide liquidity in the Neo Book.

We do not generally support requirements for this type of disclosure, and do not believe it will be particularly useful at providing the information that the OSC is seeking. We believe that any disclosure provided will be generalized and qualified with subjective commentary that may

highlight the benefits of the types of marketplace participants and trading strategies that Aequitas believes will be associated with liquidity provision in the Neo Book.

We appreciate that the OSC's objective may be to highlight that the types of participants that might be the most prevalent providers of liquidity in the Neo Book are the same as those that Aequitas asserts natural investors need protection from. We also expect that this type of disclosure might be interesting to dealer participants and investors, particular if a high percentage of executions are against DMM and LST orders. However, requiring this type of disclosure may only serve to further marginalize certain types of participants based on current perceptions, and without a clear position on the utility or harm of their participation having yet been formulated by academics and regulators.

TMX Group submits that greater transparency by Aequitas regarding the functioning and effect of the priority benefits being provided to DMMs through the MMVA and MMC, and the extent to which DMMs are participating in the Neo Book, may be more useful for natural investors. This may be useful considering the likelihood of DMM liquidity provision on liquid securities that are most likely to be traded in Neo Book, and considering that the DMMs on those liquid symbols would otherwise fall into the 'Latency Sensitive Trader' category if not for the fact that they will already meet that definition as a market maker. Aequitas should also be required to disclose the identity of all DMMs, and highlight which of these are owners or affiliated with owners of Aequitas.

(b) Treatment of LST Orders in the Neo Book in the context of fair access requirements

Under "Application of OPR to the Neo Book" in section III(v)(a) of the Request for Comments, OSC staff expressed their view that "the different treatment of the LST orders in the Neo Book does not unreasonably prohibit, condition or limit access to the Neo Book" and specifically requested comment on this matter.

In our view, the shift from an outright access restriction as originally contemplated in the Aequitas Pre-Filing to the imposition of a speedbump is a move in the right direction. However, the application of a speedbump to a particular type of account or participant continues to raise fair access concerns when considering the narrow class of accounts or parties to which the speedbump will apply. As was indicated in the OSC notice attached to the Aequitas Pre-Filing, it was recognized by OSC staff "that 'fairness' is a matter of both perception and perspective, as well as a matter of judgment."⁹ Any access condition like the one being proposed for the Neo Book will likely be viewed as fair by those who will benefit from it, and unfair by those who will be disadvantaged. It may be difficult to make a reasonable assessment of fairness when it means making that assessment based on the impact, and the appropriateness of that impact, for a pre-defined set of 'winners' and 'losers' (as determined by Aequitas). We believe that there may be other ways to achieve similar outcomes without having to impose a condition on access based on an account or type of participant. At minimum, definitions of the class and type of accounts or participants used for effecting segmentation should be based on clear, objective and industry-accepted definitions and / or terms.

We also note the appearance of a shift in Aequitas' reasoning for the access restriction from "protecting against predatory trading strategies" to the need to "create a level playing field for

⁹ The OSC notice to the Aequitas Pre-Filing referenced Eric Kirzner, "Ideal Attributes of a Marketplace", June 22, 2006, Task Force to Modernize Securities Legislation in Canada, "Canada Steps Up", Volume 4 – "Maintaining a Competitive Capital Market in Canada", pg. 116, when making this statement.

those who do, and those who do not, have technology advantages who therefore are susceptible and less able to defend against predatory trading strategies". Aequitas' current reasoning still suggests that those with speed advantages are more likely to undertake predatory trading strategies when executing active flow. We refer to our response letter to the Aequitas Pre-Filing¹⁰ that outlined how some of the 'predatory' HFT strategies Aequitas may have been concerned about, including 'disappearing quotes', 'passive front running' and 'quote pennyng', are based on posting and cancelling posted liquidity at precise moments in time, and will therefore not be excluded from the Neo Book.

In addition, the definition of LST simply takes IIROC's SME definition (which formed the basis of the initial proposed means of restricting access in the Aequitas Pre-Filing) and removes one of the four account types/characteristics that would qualify as SME. This approach continues to result in the imposition of an access condition on a class of traders and trading strategies that do not engage in or reflect the type of activity Aequitas purports to protect against. For example, it will impose an access condition on accounts conducting beneficial arbitrage activities and the accounts of formal market makers.

We also note that allowing access conditions in a visible market based on a narrow class of accounts or participants will set a precedent. We expect that competitors to Aequitas will respond with variants, producing a range of segmentation approaches that cater to specific and narrowly defined niches. This may significantly alter the market structure landscape in Canada, adding more complexity, more marketplace fragmentation, and increased restrictions on the interaction of order flow that will negatively impact the efficiency and effectiveness of the price discovery process.

As a related matter, we think that reliance on self-identification by participants and monitoring by Aequitas as the means by which Aequitas will ensure the proper categorization of 'LSTs' and 'Neo Traders' for the purposes of applying access restrictions will introduce significant subjectivity in relation to the categorization and decisions around enforcement by Aequitas of the proper categorization. This may result in the inequitable application of the access conditions and present additional fair access concerns. Opportunities for abuse are also present as a result of self-identification considering the incentives to find a way to avoid the speedbump. Significant attention and oversight by the regulators will be required in connection with Aequitas' governance and conflicts of interest mechanisms relating to its activities for monitoring and enforcing proper categorization.

¹⁰ TMX Group's response to the Aequitas Pre-Filing is available at http://www.osc.gov.on.ca/documents/en/Marketplaces/com_20131004_aequitas_tsx-markets.pdf.

APPENDIX B
OTHER ISSUES ARISING FROM REVIEW OF
AEQUITAS PROPOSED TRADING STRUCTURE

1. *Potential inconsistencies between Aequitas' proposal and regulatory requirements*

As noted in our cover letter, we have identified certain areas where it appears that the Aequitas proposal is not fully consistent with current regulatory requirements and guidance, or which perhaps indicate a change in regulatory views that has not been communicated more broadly.

We submit that regulatory consistency and clarity are essential for ensuring that all parties are afforded the same benefits and subject to the same obligations. If revisions to existing requirements or guidance are required to accommodate the Aequitas proposal, these should be made public through appropriate formal channels prior to its launch. Otherwise, Aequitas should be made to comply with existing requirements and guidance until such time as any necessary changes are made.

(a) Application of regulatory requirements when a 'marketplace' operates multiple trading facilities or order books

If approved as currently proposed, Aequitas will operate four different Trading Books under a single exchange license. It appears that Aequitas intends that each Trading Book will be a separate 'marketplace' for certain regulatory purposes. While this is an appropriate approach in circumstances where a marketplace operates separate and distinct order books or trading facilities, we have questions regarding the degree of clarity and regulatory certainty with respect to the interpretation and application of the term 'marketplace' for various regulatory definitions and requirements, whether in CSA rules or UMIR.

For example, we understand that Aequitas intends that the UMIR 'lit before dark on a marketplace' requirement¹¹ will apply separately to each Trading Book as if each were a 'marketplace'. This means that a dark order will execute on the Neo Book or Dark Book at the NBB or NBO, despite a visible order being displayed at the same price on the Lit Book (assuming that size requirements for dark execution at the quote have been met).¹²

However, permitting such an outcome would appear to contradict previous guidance provided by IIROC that the UMIR 'lit before dark' requirement would apply to prevent a dark order in one order book from executing before a visible order displayed at the same price in another order book operated by the same 'marketplace'.¹³

This IIROC position appears to be based on its interpretation of its defined term 'marketplace'¹⁴ as "[including] all order books and facilities of a particular exchange, QTRS or ATS".¹⁵ At the same time, it appears that the CSA is taking a different interpretation of its similar 'marketplace'

¹¹ See UMIR paragraph 6.6(b)(ii) and (c)(ii) for the requirements for visible orders to execute before dark orders at the same price.

¹² See UMIR paragraph 6.6(b)(i) and (c)(i) for the size requirements affecting execution of dark orders at the NBBO.

¹³ See IIROC response to TD question regarding the application of UMIR 6.6 in the context of a single marketplace offering two separate order books on page 29 of Notice 12-0130 *Provisions Respecting Dark Liquidity*.

¹⁴ See definition of 'marketplace' in UMIR 1.1.

¹⁵ IIROC Notice 12-0130, pg. 29, response to TD question.

definition¹⁶ for the purposes of the proposed OPR threshold. The proposed guidance on the OPR threshold applicable for each 'marketplace' suggests that the CSA will calculate the threshold at the "market or facility level where the marketplace is comprised of more than one visible continuous auction order book, and will not be calculated in aggregate across those different markets or facilities."¹⁷

The inconsistencies in applying existing IIROC rules on dark price improvement and regarding the interpretation and application of the definition of 'marketplace' where a marketplace offers trading on one or more separate or distinct order books or trading facilities need to be resolved.

On the matter of the application of existing IIROC rules on dark price improvement, TMX Group has been mindful of the IIROC guidance in connection with the IntraSpread facility operated by Alpha Exchange. Abiding by this guidance has had implications for past and current decision-making with respect to IntraSpread. If IIROC's position on the application of dark price improvement requirements, or the way it interprets 'marketplace' for the purposes of its rules has changed, then clarification must be provided by IIROC to ensure fairness and facilitate compliance. It is also possible that rule changes or exemptions might be needed depending on whether any interpretive issues stem from the definition of 'marketplace' itself. We submit that any needed clarification be provided or any necessary changes to or exemptions from rules be made prior to Aequitas being permitted to launch. Otherwise, Aequitas should also be required to conform with existing guidance and/or requirements.

There may also be other implications for the application of the CSA and IIROC rules depending on how the term 'marketplace' is interpreted and applied in circumstances where a single marketplace is operating separate and distinct order books or trading facilities. The term 'marketplace' is relied on in a multitude of CSA and IIROC rules, and is used in a variety of defined terms that are relevant to those rules. IIROC and the CSA should review whether there are other areas where greater clarity (or even a rule or definition change) is needed with respect to the interpretation and application of the meaning of 'marketplace' – this would help to ensure consistency and certainty regarding the application of requirements among participants and marketplaces. Any additional required clarity should be provided, and any additional necessary rule changes should be made, prior to the launch of Aequitas and be made available and applicable to all participants at the same time.

i. Indications that the Aequitas Trading Books should be viewed as one marketplace

There may be reasons to view multiple trading facilities and/or order books as comprising one 'marketplace' for certain rules – for example, where there is deliberate integration and interaction of orders between trading books based on the operating rules of the marketplace. For Aequitas, indications of such integration and interaction of orders are seen with the Derived Order and the DMM program, which is substantively a whole-market offering with benefits and obligations spanning multiple Trading Books (see earlier discussion on this under section 1(b) of Appendix A). If these Trading Books are viewed as being sufficiently integrated to justify being considered one 'marketplace' for certain rules, then those rules should be applied as if this were the case – for example, the application of UMIR price improvement requirements for dark orders on an inter-book, rather than intra-book, basis. However, there may be other rules where such

¹⁶ See the definition of 'marketplace' in subsection 1(1) of the *Securities Act* (Ontario).

¹⁷ See the CSA's proposed amendments to subsection 1.1.3(2) to Companion Policy 23-101CP published in the OSC Bulletin at (2014), 37 OSCB 4939.

application would not make sense – for example, in relation to transparency requirements and marketplace identifiers where it will be necessary for order routing purposes to ensure that information about orders and trades can be associated with each particular Trading Book.

We also suggest that, regardless of whether or not the whole of Aequitas is considered to be one ‘marketplace’, consideration will need to be given to the extent to which services might be bundled together and charged, and the implications on this for fair access. There is insufficient information provided in relation to such things as membership fees, connectivity, data dissemination and fees, to provide any additional comment in this context.

(b) Derived Orders in the context of fairness, fair and orderly markets, and transparency requirements

We acknowledge that there may be beneficial uses of the Derived Order to the extent it is used to facilitate market making and other beneficial liquidity providing activities, or if used to facilitate larger sized executions with lower risk. However, there is also the potential for the Derived Order to be used in ways that might provide an unfair advantage, and there are questions as to the consistency of the order type with current regulatory requirements.

Regardless of the how the Derived Order will be implemented, the fact that it will be adjusted or cancelled based on a partial or complete fill of the duplicate order resting in another Trading Book effectively results in a sharing of order and trade information between Aequitas Trading Books. This raises questions regarding general fairness and compliance with regulatory requirements.

In our view, to cancel or adjust an order in one book based on a trade in another book is similar in effect to: (1) sharing trade information with another Trading Book on a more timely basis than it provides the related trade report to the information processor; and (2) sharing information about the existence of orders resting on different Trading Books. In reference to the first example, we think this would be similar in terms of outcome to a scenario where one marketplace shared information about a trade with a related marketplace to facilitate order management or the execution of duplicate orders on both marketplaces before providing the trade report to the information processor – we expect this would not be permitted. In reference to the second example, given that at least one of a Derived Order will be a dark order, we think a similar sharing of information about a dark order between a marketplace and another party would constitute a display of dark orders that would trigger the pre-trade transparency requirements of Part 7 of NI 21-101. We see little difference between our examples and the effective result of the Derived Order in terms of outcomes, and think that the rules should therefore be applied in the same way.

There are also questions regarding general fairness and compliance with fair and orderly markets requirements¹⁸. The Derived Order facilitates the ability for a participant to gain an advantage over others, by effectively putting the participant in the same position as if Aequitas provided it with advance knowledge of a fill, and then allowed it to then cancel its duplicate order before providing notification to the broader participant community about the resulting trade. Others are thereby denied a similar opportunity to react.

¹⁸ Section 5.7 of NI 21-101.

As an additional comment, if Aequitas is considering the implementation of Derived Orders in a way that involves the provision of order and trade information from the Aequitas Trading Books to its SOR, we would expect that this will be provided to other SORs on an equitable basis as is required by the existing guidance referred to above. Our assumption is that Aequitas is cognizant of existing guidance about the provision to an SOR of order information and indications of interest, and will not be providing any such information to its SOR that contravenes the guidance or the spirit of existing requirements.

(c) Potential for Size-Up notification to constitute an 'order' or 'indication of interest'

While we acknowledge that the "Size-Up Call" feature in the Dark Book could be beneficial if it will facilitate executions of blocks, we question whether the proposed functionality is consistent with current regulatory requirements and guidance.

We understand from discussions with Aequitas that any order-specific information to be included in a Size-Up notification will be limited to symbol and 'reference price'. Despite this, we expect that there will be information that will be implied by the mere receipt of a Size-Up notification that will likely allow participants receiving the Size-Up notification to know that there are dark resting Liquidity Providing Orders within the Dark Book for a particular symbol, at a minimum size,¹⁹ on both sides,²⁰ and with an implied price that is reasonably determinable by knowing the features of the Dark Book.²¹ Consequently, based on the implied order information conveyed via the Size-Up Notification about firm resting Liquidity Providing Orders, it appears as though these notifications could constitute either a display of 'orders' or 'indications of interest' under the guidance provided in Section 5.1 of Companion Policy 21-101CP. If it constitutes the display of an 'order', then Part 7 transparency requirements would also apply and broader dissemination is required. If the notification constitutes an 'indication of interest', then its display should be subject to the same treatment as an indication of interest sent to a smart order router²² i.e., it should also be disseminated more broadly to conform to fair access requirements.

(d) Compliance with OPR

i. Potential for trade-throughs facilitated by the Neo speedbump

We understand from the Trading Policies that an OPR check will be applied to LST Take Orders entered to the Neo Book, subsequent to the application of the speedbump delay, regardless of whether it is marked DAO or not.²³ This implies to us that the order will be rejected where the check indicates a trade-through of better prices on another market would occur if executed in the Neo Book. Our understanding of the outcome of the OPR check, therefore, is that where the NBBO price has been bettered on another market between entry of the LST Take Order and the end of the delay period, and assuming that the Neo Book has been able to receive and integrate the NBBO update, the order will be rejected to avoid a trade through of the better price on another market.

¹⁹ Subsection 7.06(1) of the Trading Policies suggests that a Size-Up call will be triggered and Size-Up notifications will be sent so long as there is "a Liquidity Providing Order [that] is designated for participation in Size-Up Calls and meets the minimum dollar value and volume threshold as determined by the Exchange and specified by Notice".

²⁰ Subsection 7.06(2) indicates that the notification will only be sent "if eligible orders exist on both the bid and ask side".

²¹ Based on subsection 7.06(5) of the Trading Policies, the 'execution price' for the Size-Up Call is either the 'reference price' (being the NBBO mid-point execution price of the triggering mid-point call), or a price that is closest to the published 'reference price' and within current NBBO where the NBBO has moved between the execution of the mid-point call and the execution of the Size-Up Call.

²² See the guidance in 7.1(4) of Companion Policy 21-101CP.

²³ See commentary to section 11.01 of the Trading Policies.

However, upon further examination it appears to us that the application of an OPR check in these circumstances could facilitate trade-throughs of orders on the Neo Book where the LST Take Order is part of larger bypass order that will displace multiple price levels across marketplaces. For example, an LST Take Order that is part of a larger bypass order will be held in the Neo Book speedbump while the larger bypass order components execute against multiple price levels on other marketplaces. If the Neo Book has not received and updated the NBBO to reflect the executions on the other marketplaces by the time the LST Take Order is released, it will be rejected. As a result, the imposition of the OPR check in this scenario will facilitate the trading through of the orders displayed on Neo Book by the multiple price level execution of the larger bypass order effected on the other marketplaces, while also denying those displayed orders on Neo Book of a fill.

We suggest that the application of an OPR check should be reconsidered, particularly if the delay is within normal network latencies – in which case, there would be little difference between this and normal ‘race conditions’ for which exceptions under OPR currently exist. Otherwise, to apply the OPR check as proposed would prevent trade-throughs under certain race conditions while simultaneously creating the possibility for other trade-throughs under those same conditions.

ii. Potential for trade-throughs to be facilitated by Non-Aequitas Crosses

We understand that OPR-checks will be conducted before a cross will execute in the Crossing Book. When considering that the Non-Aequitas Cross (NAC) has been differentiated from the broadly applicable National Cross, it appears to us that the NAC is intended to facilitate the entry of crosses priced at the closing price established in the TSX and TSXV’s closing auctions in reliance on the ‘closing-price’ exception under OPR.²⁴ We suggest that if the OPR check on a NAC is to be conducted on the basis of the ‘closing-price’ exception for trade-throughs applicable to ‘closing-price orders’, then it could facilitate trade-throughs in non-conformance with the application of that exception.

By its nature, the NAC is only available for entry and execution between the closing on the listing market and 5:00pm.²⁵ During that time, when other visible markets are conducting continuous auction trading, OPR applies unless an exception exists. It is our view that a NAC entered at the TSX/V closing price cannot rely on the closing-price exception because it is not a ‘closing-price order’. Specifically, a ‘closing-price order’ means an order for the purchase or sale of an exchange-traded security, other than an option, that is:

- (a) entered on a marketplace on a trading day; and
- (b) subject to the conditions that
 - (i) the order be executed at the closing sale price of that security on the marketplace for that trading day; and
 - (ii) the order be executed subsequent to the establishment of the closing price.

²⁴ The referred to ‘closing-price’ exception resides in paragraphs 6.2(e)(iii) and 6.4(1)(a)(iv)(C) of NI 23-101.

²⁵ The Aequitas Trading Policies indicate that the Crossing Book hours of operation end at 5:00pm.

The 'closing-price order' exception for trade-throughs therefore only applies when the 'closing price order' is executed on the marketplace on which the closing price for the security was established. The 'closing-price' exception would therefore not appear to apply for trade-throughs that occur when executing the NAC on Aequitas at the closing price established on another marketplace such as the TSX or TSXV. A NAC must therefore respect better-priced orders displayed on other marketplaces between close and 5:00pm.

If the above interpretation is not correct, or if closing price crosses are to also be accepted by Aequitas for Aequitas-listeds despite any indication of this in the Trading Policies, then we also suggest that either Aequitas or IIROC should be monitoring to ensure that prices placed on these crosses by dealers are in fact the 'closing price'. The alternative would be that Aequitas rejects the cross when entered with a price that does not match the 'closing price'.

2. Additional considerations relating to how Aequitas will implement the proposed segmentation strategies

As suggested earlier, it appears that Aequitas will be reliant on self-identification of TraderIDs as either LST, Neo Trader or Retail Customer, in addition to its planned monitoring of the activities of those self-identified Trader IDs, for the purposes of its various segmentation strategies targeted towards specific account or participant types (e.g., for any proposed access conditions, preferential fees / fee disincentives, and matching priorities).

As noted earlier, this will introduce significant subjectivity into the monitoring and enforcement by Aequitas of the proper categorization of TraderIDs which will necessitate significant attention and oversight by the regulators.

The proposed means of self-identification could also be subject to gaming by an LST seeking to gain access rights and benefits available to Neo Traders. The potential for gaming of the classifications will be difficult for Aequitas to monitor considering that behaviours or types of order flow exhibited on Aequitas through particular TraderIDs could possibly be conditioned differently than the behaviours and types of order flow exhibited through those same TraderIDs on other marketplaces. Unless Aequitas is able to conduct monitoring of a particular TraderID across all Canadian equities marketplaces, then it will likely be unsuccessful at its attempts to monitor for the proper use of the LST and Neo Trader classifications and order types, and therefore the benefits of its proposed segmentation models in both the Neo Book and Dark Book and the prioritization for Neo Traders in the Lit Book might not be realized. We note that Aequitas' ability to conduct monitoring of a particular TraderID across all Canadian equities marketplaces might be frustrated by the private nature of TraderID information in the context of public data dissemination.

In addition, while the definitions of Neo Trader and LST are tied to 'account types' or 'investors that trade through one of those account types', the Member agreement ties self-identification to TraderIDs. We understand from our discussion with Aequitas that categorizations will be established at the TraderID level, on the basis of member self-certification that the identified TraderID will be used exclusively for certain types of order flow. We note that it is not necessarily the case that order flow going through a particular TraderID will always be exclusive to a Retail, Neo Trader, or LST account. It is not clear how Aequitas intends to reconcile this and what it means for its planned classification monitoring and enforcement processes. On the basis of our understanding that Aequitas intends for self-identified TraderIDs to be used

exclusively for certain types of order flow, it could create additional complications for dealers that might currently stream multiple channels of order flow through a single TraderID.

3. Other potential issues or concerns associated with DMM program and benefits

We have already highlighted the lack of transparency that was provided in the published notice regarding certain DMM benefits. Despite the lack of information that was provided, and after further discussion with Aequitas that has facilitated a better understanding, we have identified certain potential issues or concerns with certain aspects of the DMM program and related benefits which. These are set out below. These are in addition to the issues already identified in connection with the MMC feature (see section 2 of Appendix A and section 4 of this Appendix B).

(a) MMVA priority allocation in any of the Lit Book, Neo Book and Dark Book

Based on our understanding of the MMVA priority feature for DMMs obtained through discussions with Aequitas, we believe that a DMM could potentially manage the MMVA to enable itself to gain priority for all incoming contra orders for an assigned symbol, and against consecutive incoming contra orders, until such point as the 15% cumulative threshold has been breached. For example, if DMM executions to a particular point during the day were achieved from the standard priority mechanisms in a particular book, then it appears to us as though the DMM would be in a position to dominate trading against a significant portion of incoming active orders, without any meaningful constraints around the amount that could be provided through priority on a fill-by-fill basis, or the ability to gain priority against each consecutive incoming contra order.

(b) Ability for DMMs to delay the opening

We note that a DMM can delay the opening if it determines it is “appropriate due to market conditions or in order to maintain a fair and orderly market.”²⁶ In our view, this is a broad and subjective standard subject to conflicts of interest. Aequitas will need to closely monitor DMMs to ensure that this policy is not abused. We note that while a TSX Market Maker can delay the opening call, the circumstances in which that would be permitted are more limited.²⁷

4. Potential opportunities for information leakage

There are potential opportunities for information leakage or order flow patterning inherent in the design of Aequitas’ market structure that should be considered and addressed in order to support market quality and integrity. We note the following as examples:

²⁶ See paragraph 6.06(1)(b) of the Trading Policies.

²⁷ Specifically, TSX Rule 4-702 states:

- (2) The Market Maker or Market Surveillance Official may delay the opening of a security for trading on the Exchange if:
 - (a) the COP differs from the previous closing price for the security or from the anticipated opening price on any other recognized stock exchange where the security is listed by an amount greater than the greater of 5% of the previous closing price for the security and \$0.05;
 - (b) the opening of another recognized exchange where the security is listed for trading has been delayed; or
 - (c) the COP is less than the permitted difference from the previous closing price for the security, but is otherwise unreasonable.

- Segmentation mechanisms based on account or participant type, and differences between Trading Books in how those mechanisms function, may help to facilitate identification and patterning of retail, institutional and LST order flow.
- We note earlier that implied information about resting orders in the Dark Book will be conveyed by the receipt of a Size-Up notification. The implied information arises as a result of the known parameters and conditions that will have to be met for a Size-Up notification to be triggered. (See section 1(c) of this Appendix B for more details.) Based on our understanding from discussions with Aequitas and the information in the trading policies, all resting orders within the Dark Book for a particular symbol that meet the “minimum dollar value and volume threshold”²⁸ and have designated themselves as being Size-Up eligible will receive the Size-Up notification, regardless of price. This will broaden the dissemination of the implied information to include tradable interests, as well as potentially non-tradable interests only interested in obtaining the Size-Up notifications. We appreciate that Aequitas intends to monitor for indications of use of the designation primarily for information gathering purposes, but believe that information leakage opportunities will remain nonetheless.²⁹
- Order types like the Derived Order, and the lack of minimum requirements on the size to be committed by a DMM when using the MMC, could facilitate ‘first look’ type opportunities for DMMs and other sophisticated latency sensitive participants. See section 2 of Appendix A for more details relating to the MMC functionality.

5. Aequitas functionality changes to be established by notice to industry

Various sections of the Trading Policies indicate that Aequitas may make periodic changes to certain parameters affecting marketplace functionality by way of industry notice. For example, Aequitas will use notice to industry to establish:

- the securities that will be made visible or dark for the purposes of National Best / Peg Orders pegged at offsets outside of the NBBO;³⁰
- the minimum dollar value and volume threshold that must be met for a Liquidity Providing Order to participate in Size-Up Calls;³¹
- the delay applicable to LST Take Orders sent to the Neo Book;³²
- the frequency of the period over which cumulative volume will be determined for the purposes of applying the MMVA percentage;³³
- the percentage of cumulative volume below which the DMM will have gain priority for its visible resting orders in the Lit Book, Neo Book and Dark Book.³⁴

²⁸ See subsection 7.06(1) of the Trading Policies.

²⁹ See commentary at the end of section 7.06 of the Trading Policies.

³⁰ See the commentary to the definition of National Best / Pegged Order in subsection 5.07(3) of the Trading Policies.

³¹ Subsection 7.06(1) of the Trading Policies.

³² See definition of ‘LST Take Order’ in section 8.02 of the Trading Policies.

³³ See definition of ‘Market Maker Volume Allocation’ in section 1.01 of the Trading Policies.

³⁴ See definition of ‘Market Maker Volume Allocation Percentage’ in section 1.01 of the Trading Policies.

Aequitas should ensure that the amount of advance notice to be provided when making the above changes will be sufficient to allow participants to assess the impact on their routing and algo strategies.

In addition, if the change could have a significant impact on participants, then it should be subject to filing, public comment and regulatory approval as is currently applicable to functionality changes on any other marketplace.

6. Conflicts of interest policies relating to administration of Trading Policies

Aequitas should be required to have clear and effective conflicts of interest policies to deal with the conflicts associated with overseeing and administering its trading policies, particularly considering that some of its direct and indirect trading participants are also its shareholders.

Specific conflicts of interest policies and procedures should be required to deal with the conflicts that arise in connection with DMM assignments and performance measurement for DMMs that are shareholders of Aequitas.

Specific conflicts of interest policies should also be required to address situations involving the monitoring and enforcement by Aequitas of shareholders' self-certification of TraderIDs as LST, Neo Trader and Retail.

APPENDIX C
COMMENTS ON THE PROPOSED
AEQUITAS TRADING POLICIES

Sections 1.01, 6.07, 6.13, 7.04, 7.06, and 8.04 – Definitions of ‘Market Maker Volume Allocation’ and ‘Market Maker Volume Allocation Percentage’, and priority for DMMs

From our discussions with Aequitas, we understand that the calculation of the MMVA percentage will be performed and applied separately for each Trading Book and will only take into account volume traded during the Continuous Trading Sessions. For the purposes of determining how the execution of a DMM's order is treated, we understand that a DMM's resting order that executed from standard priority (as opposed to MMVA priority) will be counted as part of the cumulative ‘other’ executed volume, and that volume executed from Size-Up executions will not be included in the calculation at all for determining MMVA priority in the Dark Book. Finally, we also understand that DMMs will not have priority for their dark resting orders (except in the Dark Book where all orders are dark), nor will they have priority during the extended trading session in the Lit Book. We submit that this was not sufficiently clear within the above noted sections of the Trading Policies.

Section 1.01 – Definitions of ‘Listed Security’ and ‘Other Traded Security’

There appears to be a lack of clarity as to how security cross-listed on both Aequitas and another recognized exchange would be classified. This has implications where features or functionalities are dependent on whether the securities are Aequitas-listed or OTS, for example, in connection with the MMC feature, opening and closing mechanisms.

Section 1.01 – Definition of ‘Size-Time’

Based on what we learned from our discussions with Aequitas, we believe that the reference to “size” and “remaining order volume” within the definition are not clear with respect to what each mean in relation to each other.

Subsection 5.07(3) – Definition of ‘Derived Order’

Based on our discussions with Aequitas, our understanding is that a Derived Order can be used with a variety of other order modifiers, but the creation of (or ability to create) the derived duplicate will be blocked where it would not fit within the permutations and combinations of derived orders permitted by the definition. If there are specific order types or modifiers that the Derived Order can and cannot be used with, these should be clear to allow users to better understand how these orders might be generated.

Subsection 5.07(3) – Definition of ‘National Best / Pegged Order’

Where a NB/PO pegged to an offset outside of the NBBO is to be made dark based on its liquidity profile (as set out by Aequitas by way of Notice), then we assume that it will be treated as a dark order for the purposes of price improvement and ‘lit-before-dark’ requirements under UMIR. It should not be given priority over a visible order or be permitted to execute without

price improvement based on it having been entered by the participant as a visible order but forced to be dark by Aequitas.

Subsection 6.02(2) – Definition of ‘Minimum Acceptable Quantity Match Type’

The MAQ for the Lit Book is broad enough to allow it to be applied to both visible and non-visible orders. If it could be entered on a visible order, then this would raise issues as to the appropriateness of displaying inaccessible liquidity. We note that footnote 21 on pg. 23 of the Aequitas application indicates that the MAQ is to be applied to a non-visible Limit Order. We therefore assume that the lack of clarity in the Trading Policies is an oversight, and should be remedied.

Sections 6.07 and 8.04 – Clarity of impact of MMC on priority mechanisms for the Lit Book and Neo Book

The provisions relating to the priority mechanisms for the continuous auction trading carried out within the Lit Book and Neo Book do not make reference to the effect of the MMC on the execution priority of a resting order. It should be made clear in these sections rather than only be disclosed in the Trading Policies sections on market making where most would not think to look when assessing how matching on the Lit Book and Neo Book will work.

Subsection 8.06(1) – Pre-trade transparency in the Neo Book

The description of transparency on page 25 of the Aequitas application appears to suggest that the volume of all resting orders (visible and dark) will be aggregated and displayed. For orders priced outside of the NBBO, volume will be aggregated and displayed on price-by-price level. For all orders priced at or within the NBBO, volume will be aggregated and displayed at the NBBO.

A read of section 8.06 of the Trading Policies suggests something different. It seems to suggest that for orders priced outside of the NBBO, only the volume of visible orders will be displayed. For orders priced at or within the NBBO, it appears that only visible orders priced at the NBBO, and that volume for only those dark orders that are NB/PO or Mid-Point Pegged orders, will be aggregated and displayed.

What is and is not displayed needs to be sufficiently clear to facilitate order routing, including for management of OPR obligations where the use of a bypass order might be needed to displace multiple price levels across markets.

Section 11.01 – Order Protection Rule compliance

This section makes reference only to orders entered to the Lit Book, and not the Neo Book or Crossing Book. As the Neo Book will display executable orders outside of NBBO that could trade through better-priced displayed orders on other marketplaces if executed, the section should explicitly include reference to the Neo Book. It appears as though this may have been an unintentional omission given the reference to OPR compliance mechanisms applicable to the Neo Book in the ‘commentary’ to section 11.01. We also understand that an OPR check will be performed on crosses entered to the Crossing Book, and so this should also be reflected in the Trading Policies.

Paragraphs 10.03(2)(d) and (3)(b) – MMC functionality

These paragraphs outline the functioning of the MMC relative to an incoming contra side order. Our understanding from discussions with Aequitas is that a DMM's committed volume under the MMC functionality will not be permitted to execute against a contra bypass order intended to displace multiple prices when entered on the Lit or Neo Books – otherwise, to permit this would facilitate trade-throughs. We suggest this could be made clearer in the Trading Policies.

APPENDIX D
COMMENTS ON THE PROPOSED
AEQUITAS LISTING MANUAL

Part I. Definitions, Interpretation and General Discretion

Rule 1.03 – General Discretion of the Exchange

We believe that Aequitas may not be able to effectively exercise its discretion with its proposed method of allowing listed issuers to proceed with certain transactions once posted, without prior acceptance. It may be impractical to exercise discretion retroactively and therefore we have concerns that this could compromise the integrity of the Canadian marketplace.

Part II. Original Listing Requirements

Rule 2.07 – Management of Listed Issuers

In light of the reliance that Aequitas is placing on listed issuers and their management to properly interpret and notify the market of certain transactions not requiring previous exchange approval, we believe that it is particularly important for market protection and transparency for Aequitas to clearly set out the details of how it will review and make suitability decisions regarding management of a listed issuer. Quality of management strikes at the core of market integrity and reputational concerns, particularly in instances of limited exchange oversight.

Rules 2.08 - Other Listed Issuers and 2.09 – Foreign Issuers

For the sake of transparency and protection of the Canadian capital markets, Aequitas should specifically provide the basis upon which it will consider granting an exemption to a Foreign Issuer or an Other Issuer from its rules (i.e. trading, location of management, shareholder base etc.). Aequitas should also indicate the requirements for which this exemption would be available or, conversely, unavailable. It is unclear whether the exemption will be granted indefinitely, reassessed periodically or on a transaction-by-transaction basis and it is therefore difficult to comment on the appropriateness of the proposed rule. We believe that such an exemption regime should be transparent to the investing public as it may result in a different investment decision by an investor.

Rule 2.11 – Sponsorship

Sponsorship should be a standing requirement for listed issuers that do not have an agent or underwriter with a concurrent financing at the time of or shortly before listing, with appropriate exemptions. The OSC has recently emphasized the importance of sponsorship especially regarding the listing of emerging market issuers. Given that the Aequitas proposal does not have a specific requirement for sponsorship, we believe that a significant gap may exist as sponsors are uniquely positioned to independently review and verify information about the issuer, in the absence of the underwriter or agent. We believe sponsors can play a critical role and act as important gatekeepers in the Canadian capital market. As proposed, the rules allow

Aequitas to require additional supporting documentation. However, in order to adequately protect the quality of the marketplace, there ought to be a requirement for sponsorship, coupled with circumstances where an exemption would be granted. By requiring sponsorship, Aequitas will have to support an exemption rather than simply having the ability to impose additional requirements as it sees fit.

Part IV. Ongoing Requirements and Posting Requirements

Rule 4.01 – Changes to Directors, Officers and Independent Review Committee

No timeframe is provided for posting the Notice of Change of Directors and Officers. For purposes of transparency and market protection and identifying whether issuers have complied with requirements, Aequitas should adopt a timeframe for these required postings.

Rule 4.02(1) – Insiders

No timeframe is provided for filing a Personal Information Form or a Declaration. For purposes of transparency and market protection and identifying whether issuers have complied with requirements, Aequitas should adopt a timeframe for these required filings.

Rule 4.02(3) – Insiders

If Aequitas deems an Insider, by virtue of his/her or its security holdings to be unsuitable, Aequitas has limited its role to being satisfied that “the shareholder does not and will not have any role in the governance of the Listed Issuer”. From our experience this limitation may be too narrow for Aequitas to satisfy its public interest mandate.

Part X. Corporate Governance and Security Holder Approval

Rule 10.10(2) – Financial Hardship

Listed issuers should be required to provide a comprehensive application, including submissions on the process undertaken prior to availing themselves of an exemption from shareholder approval due to financial hardship. In the experience of TSX, it is necessary to exercise discretion in this area to curtail regulatory abuse and these applications require close scrutiny. Furthermore, there should be some period of time following the press release to allow new information (including complaints from security holders) to be provided to the exchange prior to granting any relief. Reference should be made to TSX Staff Notice 2009-0003 which was drafted with input from the OSC.

Rule 10.19 - Coattail Provisions

It is unclear how Aequitas will have the ability to intervene in a take-over bid that has been structured to circumvent the coattail provisions. If a bidder is not listed on Aequitas, Aequitas will have no authority to intervene. Even if a bidder is listed on Aequitas, it is unclear that Aequitas will have the necessary authority to intervene, particularly if the bidder does not offer

equity securities. Accordingly, Aequitas must adopt appropriate measures to review and approve coattail provisions prior to listing such securities in order to protect market participants.

Part XI. Suspensions, Delistings and Other Remedial Actions

Rule 1.03(2) – Suspensions and Continuous Listing Criteria

Aequitas should establish time frames for its process to give issuers a right to be heard before Aequitas determines whether it will suspend trading. Circumstances in which investors are not permitted to trade are of particular public interest and should be very transparent.

Part XII. Appeals

Rule 12.01 – Appeals of Decision

Aequitas has not published its appeals procedures for listing rules and we note that it is not required to do so until 90 days after the effective date of the Recognition Order. There is no explanation as to what the requirements of the exchange with respect to appeals will be in the interim period. Due process and associated appeal rights should be available at the commencement of exchange operations as a matter of market integrity and investor confidence.

APPENDIX E

**QUESTIONS SENT TO AEQUITAS
DURING COMMENT PERIOD**
(sent August 8, 2014)

#	Item	Question
1.	Market Maker Volume Allocation (MMVA)	<p>The limited information in the notice indicates that the “DMM for the security is allocated a specified percentage of traded volume (initially set at 15% of traded volume for the security for the day) through the [MMVA]”.</p> <p>The only other source of information is found in the definitions of MMVA and MMVA Percentage on page 9 of Trading Policies. The definition of MMVA suggests that the DMM gets priority for its resting order on the next trade, “once orders in the queue for the security have executed against at least the Market Maker Volume Allocation Percentage (MMVA Percentage) of cumulative executed volume for the security for that trading day”.</p> <p>In order to assess and provide informed comments to the proposal related to the impact of the program, the benefits being provided to market makers and to properly assess whether benefits are unreasonable relative to obligations, please provide the following information:</p> <ul style="list-style-type: none">- Order book examples illustrating when a DMM’s resting order will (or will not) be given priority. The inclusion of illustrative examples in the notice would have been helpful.- Whether it is intended that the definition of MMVA and MMVA Percentage be read in the reverse from what is suggested in the notice – i.e., that it is meant to be read that a DMM’s order will be given priority on a trade if the cumulative amount executed by non-DMM orders, calculated as at the previous trade, equals or exceeds 85% of all volume traded in that security.- Whether the MMVA Percentage is calculated based on trading intra-book, or across books.- Whether and how DMM resting orders that have executed based on normal matching allocation (and not via MMVA priority) are counted in the 85% cumulative portion, are considered to be part of the 15% cumulative portion.- Whether and how executed trade volume resulting from the DMM’s use of the “Market Maker Commitment” is considered in the MMVA Percentage calculation.- Whether there are any limits on the size of a fill the DMM can receive, or the amount / percentage of the active order the DMM can interact with, when its resting order is given priority via MMVA.- Whether there are any restrictions on the ability for a DMM resting order to gain priority on consecutive trades, so long as the MMVA Percentage continues to be 85% or greater.

		<ul style="list-style-type: none"> - Whether MMVA also applies to provide priority for a DMM's resting dark order entered in the Lit Book or Neo Book, and under what circumstances the DMM's order can execute. - How volume traded in the non-continuous sessions is considered in the calculation of the MMVA Percentage. For example: <ul style="list-style-type: none"> - How volume traded in the Opening is considered in the MMVA Percentage calculation during the Continuous Trading Session. - How volume traded in the Closing Call is considered in the MMVA Percentage calculation and MMVA during the Extended Trading Session. - Whether the MMVA Percentage calculation during the Extended Trading Session is based only on the trades during that session, or whether it will consider the cumulative trading from the Continuous Trading Session. - How volume traded in the Odd Lot Facility is considered in the MMVA Percentage calculation. - How volume executed via the Size-Up functionality in the Dark Book is considered in the MMVA Percentage.
2.	Market Maker Commitment (MMC)	<p>It is generally not clear how the MMC feature will work and how DMMs will interact with it. It is also not clear how executions involving MMC committed amounts will work where there are prices displayed on other markets at NBBO. Please provide some examples to facilitate understanding. (Note: The Aequitas notice includes reference to the NYSE Capital Commitment schedule as being comparable. The public rule filing by NYSE with the SEC included various examples to facilitate understanding of that particular program.)</p> <p>Are there any minimum size requirements for the amounts 'committed' by the DMM through the MMC?</p> <p>Are there any requirements for the DMM to post two-sided committed amounts within the MMC in order to utilize the MMC feature?</p> <p>Will the MMC execute against an incoming contra order that is a "bypass order"?</p>
3.	Assignment of securities	<p>Will all securities made eligible by Aequitas for trading on its books be assigned to a DMM?</p>
4.	"Listed Security" vs. "OTS"	<p>A security listed on both Aequitas and another Exchange appears to fall within both the definition of "Listed Security" and "OTS".</p> <ul style="list-style-type: none"> - How will a cross-listed security be classified?
5.	Size-time priority	<p>Unclear as to what is meant by "remaining" order volume as one of the prioritization categories in the definition of "Size-Time" on pg. 12 of the Trading Policies. Can you please clarify?</p>

		<p>We assume the prioritization of 'Size-Time' is as follows:</p> <ul style="list-style-type: none"> - "Size" is meant to give priority to larger size orders over smaller size; - "Priority time-stamp" is intended to give priority to orders that have been in the book the longest vs. most recent as defined by the order entry time stamp; - "time of the last partial fill" is intended to give priority to orders that have not had partial executions over those that have and remain unfilled. - "remaining order volume" – We do not know what this means. See preceding request for clarification.
		<p>Not clear how each of (b), (c) and (d) of the definition of "Size-time" will be weighted to arrive at the weighted average – e.g., equally weighted?</p>
6.	<i>Derived order</i>	<p>It is identified in the Trading Policies as an order modifier, but it is unclear as to whether there are restrictions on the other types of modifiers that can be put on a Derived Order. For example, can a Derived Order be enabled together with an Iceberg order or National Best / Pegged order?</p>
		<p>Description at page 16 of notice outlines the possible Derived Order combinations.</p> <p>Please confirm that this list was not intended to be exhaustive as the definition of "Derived Order" on Pg. 32 of trading policies includes more possibilities, including:</p> <ul style="list-style-type: none"> - A non-visible resting order entered on Lit, replicated as a dark order on Neo Book per (ii) of the def'n. - A non-visible resting order entered on Neo Book that is duplicated in the Dark Book per (iii) of the def'n. <p>Would also like to confirm that the application of the definition precludes the following:</p> <ul style="list-style-type: none"> - The entry of a Derived Order on the Dark Book for the derived duplicated is created in either of the Lit or Neo Books; - The entry of a visible Derived Order on the Lit Book for which a derived <u>dark duplicate</u> is created on the Neo Book.
7.	<i>Execution of dark orders at NBBO</i>	<p>Please confirm that a dark order on one of the Aequitas books (e.g., on Dark Book) can execute at the NBBO ahead of a visible order at the same price on another of the Aequitas books (e.g., on Lit Book), assuming the necessary size requirements that provide for executions of dark orders at the NBBO under UMIR are met.</p>
8.	<i>Aggregated display</i>	<p>Please confirm that the volume of a dark order priced at the NBBO on Neo Book will not be included in the aggregated displayed volume.</p>

9.	Classification of 'Neo Take Order', 'LST Take Order', 'Dark Liquidity Taking Order', "Neo Order" and "Retail Order"	<p>Please confirm whether Aequitas intends that any restriction on use of these orders, or other features / benefits attributable to Retail Customers and Neo Traders, be based on TraderID or account level information.</p> <p>Defn's of these orders / order modifiers in the Trading Policies suggests classification at the account level, which would mean that a single Trader ID could enter both 'Neo Take Orders' and 'LST Take Orders', as an example. However, other information in the Notice (see pgs. 23, 25, 26) and the requirements in the Member Agreement suggest application at the Trader ID level – for example, if a Trader ID includes order flow classified as LST, then the Trader ID is considered LST for purposes of LST Take Order and definitions of Neo Trader and Retail Order. Please clarify.</p>
10.		<p>Will Aequitas automatically reject Neo Take Orders, Dark Liquidity Taking Orders and/or Retail Orders from a TraderID / account that has not been identified to Aequitas as being "Retail" or "Neo Trader" through the reporting required under the Member Agreement?</p> <p>Or will actions by Aequitas to reject these orders only be taken pursuant to s. 3.15 of the Trading Policies and based on trade behavior monitoring to be performed by Aequitas?</p>
11.	Monitoring for misclassification of LST as Neo Trader	<p>Will the monitoring of trading behavior by Aequitas to assess proper classification of Neo Trader, Retail Customer and LST for the purpose of the various affected order types and benefits / disincentives be conducted based on the trading activities on Aequitas only?</p> <p>How will Aequitas manage scenarios where the trading activities of the Trader ID / account on other markets are contrary to Aequitas' classification?</p>
12.	Mid-point calls	<p>S. 7.05(2) of the Trading Policies indicates that participation in mid-point calls is mandatory for Derived Orders derived into the Dark Book. Please confirm whether this is meant to imply that all Derived Orders entered must be designated as such or will be automatically designated as "Mid-Point Call" eligible, or provide explanation as to what is meant.</p>
		<p>Please confirm that 'price' is not a factor for determining priority in either of the mid-point call or size-up call.</p>
13.	Size-Up	<p>What is an "eligible Liquidity Providing Order" that is to be identified in 7.06(2)? Does it include resting LP orders that participated in the triggering mid-point call but did not receive a fill?</p>
		<p>For the purposes of the notification to be provided about Size-Up events, what constitutes an "originating Member" who will receive the notification? Is it meant to only include those that participated in and/or received a fill</p>

		from the mid-point execution that triggered the Size-Up event? Or is the extent of notification broader?
		What information will be provided in the notification?
14.	OPR mechanisms	Are there any marketplace-level OPR mechanisms applicable to the Crossing Book, or is it intended that members are responsible for compliance as signaled through the permitted cross-types.
15.	Cross-types	What is a "Specialty Price Cross" referred to in 9.04(2) and how does it relate to the three cross-types identified as the only types of crosses eligible for entry in the Crossing Book?
16.	Pricing of cross types	Will the price for the National Cross and Non-Aequitas Cross be attached to the trade by Aequitas, or will the price be assigned by the participant when entering?