PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

The Secretary
Ontario Securities Commission
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September 27, 2013

Re: OSC Staff notice and request for comment regarding proposed structure of trading facilities of a new exchange proposed to be established by Aequitas Innovations

Dear Secretary, Ontario Securities Commission:

The Prospectors & Developers Association of Canada (PDAC) is the voice of the Canadian mineral exploration and development industry. With a membership of over 10,000, the PDAC's mission is to promote a responsible, vibrant and sustainable Canadian mineral exploration and development sector. A critical component of that mission is maintaining Canada's status as the premier jurisdiction in which to raise equity capital for the mining industry.

As of December 31, 2012, the TMX was home to 57% of the world's public mining companies (1,673), with $10.3 billion in equity capital being raised in 2012 through 1,700 financings (70% of the equity capital raised globally for mining companies). As of February 21, 2013, the TMX was home to over 1,200 exploration companies.

There is growing evidence to suggest that exploration companies are having difficulty raising capital for grassroots exploration in particular. During the first half of 2013, 12% of financings for exploration stage companies on the TSXV were for $100,000 or less. This compares with 5% of financings in 2012, and less than 0.5% of financings in 2010 – a 2400% increase in small financings. Using cash balance data from IntierraRMG, more than 600 companies on the TSXV reported less than $250,000 in cash at the end of Q1 2013. More than 340 had cash balances of less than $50,000.

It is within this context that the PDAC comments on the new exchange being proposed by Aequitas Innovations Inc., viewing it through two overarching policy lenses: whether the proposed design elements could help junior exploration companies to better access capital, and/or whether it will reduce the costs and regulatory burden faced by junior companies.

PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

Facilitating Access to Capital

The Ontario Securities Commission has stated that:

- "Issuers listed on the Toronto Stock Exchange (**TSX**) and TSX Venture Exchange (**TSXV**) raised approximately $51 billion in 2012, representing a 13% increase from the previous year. However, the amount of equity capital raised by new issuers (i.e. initial public offerings (**IPOs**)) continues to decline and represented less than 5% of the total capital raised in the public equity markets in 2012.

- Equity capital raised by reporting issuers through supplementary public offerings and private placements continued to represent the majority of capital raised by issuers listed on the TSX and TSXV.

- Private placements are an important method through which listed issuers, especially those listed on the TSXV, raise capital. However, the proportion of capital raised by issuers listed on the TSXV in this manner has declined from 88% in 2007 to 67% in 2012.

- In 2012, approximately $7 billion was raised in the Ontario exempt market through the issuance of equity by issuers other than investment funds. Non-reporting issuers raised close to 80% of that amount."

The figures provided by the OSC indicate that private placement of exempt market securities is on the rise. Moreover, a major portion of the capital raised by the mining and exploration industry is done by selling of such securities through the private placement mechanism.

Aequitas proposes to create a "centralized platform for exempt market securities focused on providing liquidity and strengthening the capital formation process", and including "capital formation enabling solutions" that are tailored to the unique needs of issuers. This 'exempt securities market' (ESM) proposes to allow early and mid-stage companies (like many junior exploration companies) the opportunity to "raise capital from accredited investors and other permitted participants" and also to improve liquidity through a secondary trading market. The ESM is intended to be a place for companies that are "not ready for a public listing, but need access to capital and liquidity".

The ESM proposal, while not a focus of discussion in your consultation paper, is of interest to the PDAC if it can indeed facilitate access to both capital and liquidity.

The potential of this ESM would be magnified if combined with other reforms to securities regulation to allow more people to participate in financing mineral exploration companies (e.g. allowing existing shareholders of exploration companies to participate in private placements, as has been suggested by John McCoach of the TSXV, creating portals to allow for crowd funding of mineral exploration companies, etc.).

PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

Reducing Regulatory Burden and Compliance Costs

Aequitas also proposes to put in place "highly competitive fee models", including what they refer to as a "low 'take-take' fee model" across the Aequitas Dark and Hybrid books, as well as discounts for retail trading networks. While this would not necessarily benefit participants in the ESM, the extension of this philosophy (of affordable access to capital markets) to the ESM certainly would.

Balancing Innovation with the Integrity of Capital Markets

Aequitas is proposing some innovative design elements to respond to perceived concerns (on the part of investors and issuers) about predatory high frequency trader (HFT) practices. While HFT activity accounts for a relatively small volume of all trades on the TSX-V, where most junior exploration companies are listed, PDAC members have repeatedly raised concerns about HFT practices and the potentially negative impact they may be having. These concerns were most recently raised in a cross-Canada consultation conducted by the PDAC in the spring of 2013. If there are negative impacts arising from certain HFT practices, and the proposals being put forward by Aequitas can address them, then this would be of value to the PDAC and its members.

The OSC has stated that it is not sure whether these design elements are consistent with some of the fundamental principles that underpin the existing regulatory framework (such as the Order Protection Rule), such as the principle that "*all* visible orders will be accessible to *all* parties". That being said, there is a possibility that the OPR may (unintentionally) be harming investors by forcing them into markets where HFTs operate without checks or balances.

As noted by Aequitas in Annex A of the OSC staff notice, National Instrument 21-201 asks that a marketplace not "unreasonably prohibit, condition or limit access by a person or company." If harm is being caused, and these marketplace restrictions can offer investors the choice of preventing that harm (with associated trade-offs) then it may be appropriate for market actors to decide if these restrictions are reasonable.

In a recent Globe and Mail article, Boyd Erman made a similar argument, noting that what Aequitas is offering is choice. Boyd argued that "investors can choose for themselves whether they want to go to a market such as Aequitas, where they are trading the guaranteed best prices for a lack of HFT competition."

Ultimately, it may be necessary to allow Aequitas to see how market participants respond to its proposals. As observed in the OSC staff notice itself (page 7), the "emergence of multiple marketplaces has also brought choice" to participants and investors, leading to innovations in fee models and technologies. This may be an opportunity for Canada to make a unique contribution to capital markets innovation.

PROSPECTORS & DEVELOPERS ASSOCIATION OF CANADA

While the devil is certainly in the details, the PDAC is cautiously optimistic about the potential of the new exchange to facilitate capital raising, reduce costs and offer more choice to issuers and investors.

Sincerely,

Ross Gallinger, P.Ag.,
Executive Director
Prospectors & Developers Association of Canada

Copy:
Barbara Hendrickson, Co-Chair PDAC Securities Committee
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