

September 25, 2013

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
E-mail: marketregulation@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: Proposed Structure of Trading Facilities for a New Exchange to be Established by Aequitas Innovations Inc. (the Proposed Structure)

The Canadian Advocacy Council¹ for Canadian CFA Institute² Societies (the CAC) appreciates the opportunity to comment on the Proposed Structure.

In respect of all of our responses below, we have considered Hybrid to be in substance a dark market with limited additional publicly available order information that does not constitute quotes, and that OPR quote/order protection do not apply under the current regime.

The CAC wishes to respond to the following specific potential topics for consideration:

1: Should OPR apply to all visible markets and to all orders displayed on those markets, or are there circumstances where the application of OPR should be limited?

Within the context of the Proposed Structure review, the CAC feels that OPR rules should apply to all visible markets. In circumstances such as the Hybrid proposal, where trade pricing is determined by reference to NBBO and where said order book does not

¹The CAC represents the 13,000 Canadian members of CFA Institute and its 12 Member Societies across Canada. The CAC membership includes portfolio managers, analysts and other investment professionals in Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. See the CAC's website at <http://www.cfasociety.org/cac>. Our Code of Ethics and Standards of Professional Conduct can be found at <http://www.cfainstitute.org/ethics/codes/ethics/Pages/index.aspx>.

² CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion for ethical behavior in investment markets and a respected source of knowledge in the global financial community. The end goal: to create an environment where investors' interests come first, markets function at their best, and economies grow. CFA Institute has more than 113,000 members in 140 countries and territories, including 102,000 CFA charterholders, and 137 member societies. For more information, visit <http://www.cfainstitute.org/>.

contribute to the establishment of NBBO pricing, it is not necessary to apply OPR to orders in such order books.

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

The CAC feels that under the current proposals, Hybrid displays more features of a dark market, such as reference-based pricing, restrictions on types of orders, and lack of volume/order transparency, than a visible market. Therefore, OPR should not apply to orders on Hybrid.

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

Best-priced displayed orders on Hybrid should not be treated as protected quotes contributing to the NBBO. These orders should simply be treated as supplementary market information, similar to an indication of interest (IOI) on other dark markets, due to the fact that the order pricing is referenced to the NBBO. Including such orders within the consolidated display requirements (and presumably NBBO available quantity) would create a circular reference and not improve price discovery.

Question 4: What should the appropriate reference price be for determining whether a dark order on any other market has provided minimum price improvement as required under the Dark Rules – the Away NBBO or the NBBO that includes a Hybrid best bid and/or Hybrid best offer? Does the answer to this question depend on whether or not OPR applies to Hybrid?

The Away NBBO is the appropriate price as our premise is that OPR should not apply to Hybrid.

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

The CAC supports mandating access to visible markets for all market participants, and we believe that visible marketplaces should be prohibited from meaningful segmentation of order flow.

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

Visible marketplaces should be fully accessible to all participants. Restricting access could result in further fragmentation of pools of liquidity which we regard as a negative outcome. Criteria to ascertain “reasonable” access differences are difficult to establish in our view, given the unavailability of a controlled study environment in the equity markets context. As a result, monitoring of overall market quality and an isolated assessment as to the effect of individual changes in access or rules is very difficult (if not impossible). We would advise caution in approving access restrictions, as this would have implications for price formation and therefore market integrity that would be difficult to quantify.

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

Yes. As long as Hybrid is regarded as a dark marketplace (albeit with additional features in respect of existing Canadian dark markets), it should not be subject to fair access requirements and could impose access restrictions similar to other dark markets.

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

No, the SME marker is not an appropriate proxy in our view. Restricting access and segmentation/classification of market participant type is not the intended use of the SME marker and should therefore be questioned. We would urge additional study before approval on whether order flow marked with the SME marker includes the types of orders (and participants) which are linked to the behaviors Aequitas seeks to restrict.

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

We do not believe there would be any negative impact on market quality or liquidity if market makers were provided matching priority, provided that market makers are held to strict industry standards that contribute in a positive, meaningful manner to price stability, price formation, and overall market quality.

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

It is not reasonable to provide the benefit of priority to market makers in the Dark and Hybrid books unless the market makers have market making obligations in those books that contribute to price stability, price formation, and overall market quality in a positive, meaningful manner. We believe that the benefit should arise only where the obligation arises, in the lit markets. There should not be market making obligations in Aequitas' Dark or Hybrid books as there is no contribution to price formation and stability in those books as they use reference pricing from visible marketplaces.

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

Yes, in our view market making benefits should accrue regardless of where the securities are listed. As long as the market maker is carrying out its market making obligations on Aequitas, it should realize the benefit on Aequitas. We view market making obligations with respect to a security as not necessarily linked to the listing exchange of said security but instead linked to the marketplace (and its corresponding obligations) on which the obligations are imposed and the market making orders are entered.

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

We do not believe that DEA clients should be able to act as market makers due to the significant systemic risk issues that this proposal would entail. Market makers should be subject to the direct regulatory authority of the most applicable securities regulatory authority (in this case, IIROC) to properly control the various risks of market making activities. It is insufficient to rely on the regulation of a sponsoring IIROC member (who may not have capital to deal with the true risk posed by the DEA client) or a foreign regulator who may not be familiar with the specific issues raised by Canadian market making activity or who may not consider capital adequacy with respect to foreign (i.e. Canadian) market making activities.

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

We do not believe that DEA clients should be permitted to act as market makers. In the event that they are so permitted, they will have an advantage over directly regulated investment dealers due to the lack of Canadian oversight and supervision costs applicable to such DEA client market makers.

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

We do not believe that Hybrid will have a foreseeable material negative impact on the visible market. However, we would refer to our earlier comments that judgments as to the impact of specific changes to market structure are tenuous at best, due to the inability of the market to apply changes within a controlled study environment for proper assessment. We would additionally acknowledge the possibility that some participants could choose

to use the Hybrid order book for order placement instead of visible market order placement, with the potential at scale to harm price formation in the visible market.

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

We believe that the foreseeable benefits of Hybrid for market participants will outweigh the foreseeable risks. The main benefit is increased competition and lower costs, while we do not foresee any material new risks being added to the market.

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

Our preference is that the regulatory framework for such applications, if changes are pending, be finalized before the OSC considers Hybrid's application. We do not believe that a pilot project is an effective regulatory mechanism in this specific context.

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

As indicated above, we believe that Hybrid could be considered within the dark liquidity framework, given that pricing is with reference to the NBBO, orders need not be protected, and that Hybrid does not offer order-level transparency similar to existing visible marketplaces. On balance, we believe that Hybrid displays more features of a dark market than a lit market and should be considered under that regulatory regime with the potential for rule revisions to accommodate for or regulate the additional features that Hybrid seeks to provide in addition to those of other dark markets.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. Please feel free to contact us at chair@cfaadvocacy.ca on this or any other issue in future.

(Signed) Ada Litvinov

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