**The Ontario Securities Commission**

# OSC Bulletin

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*Securities Act* of Ontario (R.S.O. 1990, c. S.5) and the
*Commodity Futures Act* of Ontario (R.S.O. 1990, c. C.20)

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# Chapter 1

# Notices / News Releases

## 1.1. Notices

### 1.1.1 Recognition of Aequitas Innovations Inc. and Aequitas Neo Exchange Inc. as an Exchange

Aequitas Innovations Inc. and Aequitas Neo Exchange Inc. (the Applicants) have each applied to the Commission for recognition as an exchange pursuant to section 21 of the *Securities Act* (Ontario). A notice requesting comment, the application submitted by the Applicants, a draft recognition order and other related materials were published on June 27, 2014 and are available at http://www.osc.gov.on.ca/documents/en/Marketplaces/xxr-aequitas_20140627_nrfc-application2.pdf. 60 comments have been received.

On November 13, 2014, each of the Applicants has been recognized as an exchange by the Commission. The notice of recognition approval (Notice), the recognition order and a summary of comments and a response prepared by Aequitas Neo Exchange Inc. are published in Chapter 13 of this Bulletin. The Notice, recognition order and the summary of comments and response, as well as other supporting materials are also available on the OSC website at www.osc.gov.on.ca.

## 1.4 Notices from the Office of the Secretary

### 1.4.1 TD Waterhouse Private Investment Counsel Inc. et al.

**FOR IMMEDIATE RELEASE**
**November 13, 2014**

**IN THE MATTER OF**
**THE SECURITIES ACT,**
**R.S.O. 1990, c. S.5, AS AMENDED**

**AND**

**IN THE MATTER OF**
**TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC., TD WATERHOUSE CANADA INC. and TD INVESTMENT SERVICES INC.**

**TORONTO** – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and TD Waterhouse Private Investment Counsel Inc., TD Waterhouse Canada Inc. and TD Investment Services Inc.

A copy of the Order dated November 13, 2014 and the Settlement Agreement dated November 7, 2014 are available at www.osc.gov.on.ca.

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1-877-785-1555 (Toll Free)

### 1.4.2 International Strategic Investments et al.

**FOR IMMEDIATE RELEASE**
**November 14, 2014**

**IN THE MATTER OF**
**THE SECURITIES ACT,**
**R.S.O. 1990, c. S.5, AS AMENDED**

**AND**

**IN THE MATTER OF**
**INTERNATIONAL STRATEGIC INVESTMENTS, INTERNATIONAL STRATEGIC INVESTMENTS INC., SOMIN HOLDINGS INC., NAZIM GILLANI AND RYAN J. DRISCOLL**

**TORONTO** – The Commission issued an Order in the above named matter which provides that Gillani has until December 15, 2014 to file any written response to the materials previously filed by Staff and Driscoll, and to arrange a schedule for cross examination of the affiants on materials previously filed.

A copy of the Order dated October 31, 2014 is available at www.osc.gov.on.ca.

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### 1.4.3 William McDonald Ferguson

**FOR IMMEDIATE RELEASE**
**November 18, 2014**

**IN THE MATTER OF**
**THE SECURITIES ACT,**
**R.S.O. 1990, c. S.5, AS AMENDED**

**AND**

**IN THE MATTER OF**
**WILLIAM McDONALD FERGUSON**

**TORONTO** – The Commission issued an Order in the above named matter which provides that:

1. Staff's application to proceed by way of written hearing is granted;

2. Staff's materials in respect of the written hearing shall be served and filed no later than 10 days following the issuance of this order;

3. Ferguson's responding materials, if any, shall be served and filed no later than 4 weeks from the effective date of service of Staff's materials; and

4. Staff's reply materials, if any, shall be served and filed no later than 2 weeks from effective date of service of Ferguson's materials.

A copy of the Order dated November 17, 2014 is available at www.osc.gov.on.ca.

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# Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Redwood Asset Management Inc.

**Headnote**

NP 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – approval granted for change of control of mutual fund manager under s. 5.5(1)(1.a) of NI 81-102 – there are no plans to change the manager of the fund, or to amalgamate or merge the current manager with any other entity in the immediate or foreseeable future.

**Applicable Legislative Provisions**

National Instrument 81-102 Investment Funds, ss. 5.5(1)(1.a), 19.1.

**November 12, 2014**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ONTARIO**
**(THE JURISDICTION)**

**AND**

**IN THE MATTER OF**
**THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS**

**AND**

**IN THE MATTER OF**
**REDWOOD ASSET MANAGEMENT INC.**
**(THE MANAGER)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Manager for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for approval pursuant to subsection 5.5(1)(a.1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) of a change of control of the Manager (the **Approval Sought**).

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a passport application):

(a) the Ontario Securities Commission (the **OSC**) is the principal regulator for this application; and

(b) the Manager has provided notice pursuant to section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) that the Approval Sought is intended to be relied upon in each province and territory of Canada.

**Interpretation**

Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision unless they are otherwise defined in this decision.

**Representations**

The decision is based on the following facts represented by the Manager:

*The Manager and the Funds*

1. The Manager is a corporation amalgamated under the laws of the Province of Ontario and has its head office in Toronto, Ontario.

2. The Manager is the manager of the investment funds listed in Schedule A hereto (the **Funds** and each a **Fund**).

3. The Manager is registered as an investment fund manager, portfolio manager and exempt market dealer in Ontario, as an investment fund manager and exempt market dealer in Quebec, as an investment fund manager in Newfoundland and Labrador, as an exempt market dealer in Alberta, and as an exempt market dealer in British Columbia.

4. The Funds are reporting issuers in the Jurisdictions noted on Schedule A and distribute, or have distributed, their securities to the public pursuant to disclosure documents filed under National Instrument 81-101 – *Mutual Fund Prospectus Disclosure*.

5. Neither the Manager nor any Fund is in default of applicable securities legislation in any of the Jurisdictions.

6. Extra Medium Inc. (the **Purchaser**) is a corporation incorporated under the *Business Corporations Act* (Ontario) and is an investment holding company that does not carry on any other business activities.

7. The Purchaser currently holds 388,266 common shares of the Manager, representing 23.72% of the aggregate voting percentage of the Manager.

8. Peter Shippen is the sole shareholder, sole director and sole officer of the Purchaser. Peter Shippen is also a Director, the President, the Chief Financial Officer and the Chief Compliance Officer of the Manager.

*Change of Control of the Manager*

9. It is proposed that the Purchaser purchase, in aggregate, 525,503 common shares of the Manager currently held by eight other shareholders of the Manager (collectively, the **Vendors**), representing in aggregate 32.10% of the 1,637,190 issued and outstanding common shares of the Manager (the **Proposed Transactions**). As a result, Peter Shippen will continue to control the 388,266 common shares of the Manager currently held by the Purchaser and will gain control over the 525,503 common shares to be acquired by the Purchaser from the Vendors. On completion of the Proposed Transactions, Peter Shippen will, therefore, control 913,769 common shares of the Manager, representing 55.81% of its issued and outstanding common shares.

10. As the share ownership of the Purchaser (and the indirect ownership of Mr. Shippen) will increase from 23.72% to 55.81%, the Proposed Transactions will result in a change of control of the Manager and accordingly regulatory approval is required pursuant to section 5.5(1)(a.1) of NI 81-102.

11. Written notice regarding the Proposed Transactions will be sent to each securityholder of the Funds pursuant to section 5.8(1) of NI 81-102 and will be filed on SEDAR.

12. Subject to all the relevant parties reaching a definitive agreement and the receipt of all requisite regulatory approvals, it is anticipated that the Proposed Transactions will be completed in the first quarter of 2015, upon the expiration of the 60-day notice period provided for in section 5.8(1) (a) of NI 81-102.

13. Notice of the Proposed Transactions was delivered to the Compliance & Registrant Regulation branch of the OSC, as well as other applicable Canadian securities administrators, pursuant to section 11.9 of National Instrument 31-103 *Registration Requirements and Exemptions* on October 16, 2014.

14. The Proposed Transactions will effectively result solely in a change in the ownership among existing shareholders of the Manager. Accordingly, completion of the Proposed Transactions is not expected to result in any material changes to the business or operations of any Fund or the Manager. In particular there is no current intention to:

    (a) change any of the directors or officers of the Manager. It is expected that all of the directors and officers of the Manager will continue to have the requisite integrity and experience as contemplated under section 5.7(1)(a)(v) of NI 81-102;

    (b) change how the Manager operates or administers the Funds or to change the fees or expenses that are charged to the Funds;

    (c) change any of the investment objectives or strategies of the Funds;

(d) implement any mergers involving the Funds or rename any Fund;

(e) have any Fund become a member of another fund family; or

(f) immediately following the closing of the Proposed Transactions or within the foreseeable period of time, merge the Manager with another entity or change the manager of the Funds to another investment fund manager.

15. Although the current members of the Funds' independent review committee (**IRC**) will automatically cease to be members of the IRC by operation of section 3.10(1)(c) of National Instrument 81-107 *Independent Review Committee for Investment Funds* following the Proposed Transactions, the Manager intends to reappoint them immediately after the closing of the Proposed Transactions.

16. The Proposed Transactions are not expected to impact the financial stability of the Manager or its ability to fulfill its regulatory obligations.

**Decision**

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Approval Sought is granted.

"Vera Nunes"
Manager, Investment Funds and Structured Products Branch
Ontario Securities Commission

**SCHEDULE A**

| FUND | REPORTING ISSUER JURISDICTIONS |
|---|---|
| REDWOOD DIVERSIFIED EQUITY FUND | Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan, Northwest Territories, Nunavut and Yukon |
| REDWOOD DIVERSIFIED INCOME FUND | Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan, Northwest Territories, Nunavut and Yukon |
| REDWOOD GLOBAL SMALL CAP FUND | Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan, Northwest Territories, Nunavut and Yukon |
| REDWOOD GLOBAL MACRO CLASS | Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan |
| REDWOOD EQUITY GROWTH CLASS | Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan |
| REDWOOD INCOME GROWTH CLASS | Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan |
| REDWOOD EMERGING MARKETS DIVIDEND FUND | Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan |
| REDWOOD UNCONSTRAINED BOND FUND | Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan |
| REDWOOD PENSION CLASS | Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan |
| TRAPEZE VALUE CLASS | Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, Saskatchewan |
| REDWOOD UNCONSTRAINED BOND CLASS | Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan |
| REDWOOD GLOBAL EQUITY STRATEGY CLASS | Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan |

### 2.1.2 Dunav Resources Ltd. – s. 1(10)

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for an order that the issuer is not a reporting issuer.

**Ontario Statutes**

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10).

November 14, 2014

Dunav Resources Ltd.
1111 St. Charles West
West Tower, Suite 101
Longueuil, Quebec J4K 5G4

Dear Sirs/Mesdames:

**Re: Dunav Resources Ltd. (the "Applicant") – application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland (the "Jurisdictions") that the Applicant is not a reporting issuer**

The Applicant has applied to the local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions for a decision under the securities legislation (the Legislation) of the Jurisdictions that the Applicant is not a reporting issuer.

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 Marketplace Operation or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer; and

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Kathryn Daniels"
Deputy Director, Corporate Finance
Ontario Securities Commission

### 2.1.3 Elgin Mining Inc. – s. 1(10)(a)(ii)

**Headnote**

Application for an order that the issuer is not a reporting issuer under applicable securities laws – requested relief granted.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

November 14, 2014

Elgin Mining Inc. c/o
Goodmans LLP
333 Bay Street, Suite 3400
Toronto, ON
M5H 2S7

Dear Sirs/Mesdames:

**Re: Elgin Mining Inc. (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland (the Jurisdictions) that the Applicant is not a reporting issuer**

The Applicant has applied to the local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions for a decision under the securities legislation (the Legislation) of the Jurisdictions that the Applicant is not a reporting issuer.

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer; and

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Kathryn Daniels"
Deputy Director, Corporate Finance
Ontario Securities Commission

### 2.1.4 Citizens Bank, National Association

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from dealer registration and prospectus requirements that may be applicable to certain trades in over-the-counter (OTC) derivatives with "permitted counterparties" – permitted counterparties will consist exclusively of persons or companies who are non-individual "permitted clients" as defined in Section 1.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – relief sought in Ontario and certain other jurisdictions as interim response to current regulatory uncertainty associated with OTC derivatives in Canada – Filer intends to rely on comparable exemptions in orders or rules of general application in certain jurisdictions for trades with "qualified parties" and, in Quebec, the exemption under Quebec derivatives legislation for trades with "accredited counterparties" – relief granted subject to certain terms and conditions, including sunset provision of up to four years

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 53(1), 74.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 1.1 ("permitted client").

**November 11, 2014**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ONTARIO**
**(the Jurisdiction)**

**AND**

**IN THE MATTER OF**
**THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS**

**AND**

**IN THE MATTER OF**
**CITIZENS BANK, NATIONAL ASSOCIATION**
**(the Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the dealer registration requirement and the prospectus requirement in the Legislation that may otherwise be applicable to a trade in or distribution of an OTC Derivative transaction (as defined below) made by either

i) a Filer to a "Permitted Counterparty" (as defined below), or

ii) by a Permitted Counterparty to a Filer,

shall not apply to the Filer or the Permitted Counterparty, as the case may be (the **Requested Relief**), subject to certain terms and conditions.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

(a) the Ontario Securities Commission is the principal regulator for the Application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Manitoba, Newfoundland and Labrador, New Brunswick (to the extent Local Rule 91-501 *Derivatives* does not apply), Northwest Territories, Nova Scotia, Prince Edward Island, Yukon and Nunavut.

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions* or MI 11-102 have the same meanings if used in this decision, unless otherwise defined.

The terms **OTC Derivative** and **Underlying Interest** are defined in the Appendix (the **Appendix**) to this decision.

The term **Permitted Counterparty** means a person or company that

(a) is a "permitted client", as that term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**); and

(b) is not an individual.

**Representations**

This decision is based on the following facts represented by the Filer:

*The Filer*

1. The Filer is a national full-service commercial and retail bank organized under the laws of the United States of America under charter number 24571. Its primary regulator in the United States is the Office of the Comptroller of the Currency. The Filer's head office is located at One Citizens Plaza, Providence, Rhode Island, 02903, USA.

2. The Filer is not currently registered in any capacity in Canada or with the U.S. Securities and Exchange Commission.

3. The Filer is not required to register under US law with the U.S. Commodity Futures Trading Commission as a swap dealer or a major swap participant.

4. Citizens Financial Group, Inc., the holding company for the Filer, is currently wholly owned by the Royal Bank of Scotland Group PLC. Citizens Financial Group, Inc. is expected to be spun off in tranches in an initial public offering commencing in the Fall of 2014. The full divestiture by Royal Bank of Scotland Group PLC is expected to occur over a two year period. Upon the offering of the first tranche, Citizens Financial Group, Inc. would become a publicly traded company in the United States registered with the Securities and Exchange Commission.

5. The Filer is not in default of securities legislation in any jurisdiction in Canada.

*Proposed Conduct of OTC Derivative Transactions*

6. The Filer proposes to enter into bilateral OTC Derivative transactions with counterparties located in all provinces and territories of Canada that consist exclusively of persons or companies that are Permitted Counterparties. The Filer understands that the Permitted Counterparties would be entering into the OTC Derivative transactions for hedging or investment purposes. The Underlying Interest of the OTC Derivatives that are entered into between a Filer and a Permitted Counterparty will consist of a commodity; an interest rate; a currency; a foreign exchange rate; a security; an economic indicator, an index; a basket; a benchmark; another variable; another OTC Derivative; or some relationship between, or combination of, one or more of the foregoing.

7. The Filer will not offer or provide credit or margin to any of their Permitted Counterparties for purposes of an OTC Derivative transaction.

8. The Filer seeks the Requested Relief as an interim, harmonized solution to the uncertainty and fragmentation that currently characterizes the regulation of OTC Derivatives across Canada, pending the development of a uniform framework for the regulation of OTC Derivative transactions in all provinces and territories of Canada.

*Regulatory Uncertainty and Fragmentation associated with the Regulation of OTC Derivative Transactions in Canada*

9. There has generally been a considerable amount of uncertainty respecting the regulation of OTC Derivative transactions as "securities" in the provinces and territories of Canada other than Quebec (the **Relevant Jurisdictions**).

10. In each of British Columbia, Saskatchewan, Prince Edward Island and New Brunswick, and in each of the Yukon, the Northwest Territories and Nunavut, OTC Derivative transactions are regulated as securities on the basis that the definition of the term "security" in the securities legislation of each of these jurisdictions includes an express reference to a "futures contract" or a "derivative".

11. In Alberta, the term "security" no longer includes an express reference to a "futures contract". Following the introduction, effective October 31, 2014, of a new framework and terminology for the regulation of derivatives, Alberta securities legislation now includes a definition of "derivative".

12. In each of Manitoba, Ontario, Nova Scotia and Newfoundland and Labrador, it is not certain whether, or in what circumstances, OTC Derivative transactions are "securities" because the definition of the term "security" in the securities legislation of each of these jurisdictions makes no express reference to a "futures contract" or a "derivative".

13. In October 2009, staff of the OSC published OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario* (**OSC Notice 91-702**). OSC Notice 91-702 states that OSC staff take the view that contracts for differences, foreign exchange contracts and similar OTC Derivative products, when offered to investors in Ontario, engage the purposes of the *Securities Act* (Ontario) (the **Ontario Act**) and constitute "investment contracts" and "securities" for the purposes of Ontario securities law. However, OSC Notice 91-702 also states that it is not intended to address direct or intermediated trading between institutions. OSC Notice 91-702 does not provide any additional guidance on the extent to which OTC Derivative transactions between the Filer and a Permitted Counterparty may be subject to Ontario securities law.

14. In Quebec, OTC Derivative transactions are subject to the *Derivatives Act* (Quebec), which sets out a comprehensive scheme for the regulation of derivative transactions that is distinct from Quebec's securities regulatory requirements.

15. In each of British Columbia, Alberta, Saskatchewan and New Brunswick (the **Blanket Order Jurisdictions**) and Quebec (collectively, the **OTC Exemption Jurisdictions**), OTC Derivative transactions are generally not subject to securities or derivative regulatory requirements, pursuant to applicable exemptions (the **OTC Derivative Exemptions**), when they are negotiated, bi-lateral contracts that are entered into between sophisticated non-retail parties, referred to as "Qualified Parties" in the Blanket Order Jurisdictions and "accredited counterparties" in Quebec.

16. The corresponding OTC Derivative Exemptions are as follows:

| | |
|---|---|
| British Columbia | Blanket Order 91-501 Over-the-Counter Derivatives |
| Alberta | ASC Blanket Order 91-506 Over-the-Counter Trades in Derivatives |
| Saskatchewan | General Order 91-907 Over-the-Counter Derivatives |
| Quebec | Section 7 of the Derivatives Act (Quebec) |
| New Brunswick | Local Rule 91-501 Derivatives |

17. Before March 27, 2010, section 3.3 [*Accredited investor*] of National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) provided an exemption from the dealer registration requirement for certain trades made to "accredited investors", which may have been relied upon by persons or companies entering into OTC Derivative transactions considered to be securities. However, in Ontario and Newfoundland and Labrador this exemption was not available to most "market intermediaries" due to section 3.0 [*Removal of exemptions – market intermediaries*].

*The Evolving Regulation of OTC Derivative Transactions as Derivatives*

18. Each of the OTC Exemption Jurisdictions has sought to address the regulatory uncertainty associated with the regulation of OTC Derivative transactions as securities by regulating them as derivatives rather than securities, whether directly through the adoption of a distinct regulatory framework for derivatives in Quebec, or indirectly through amendments to the definition of the term "security" in the securities legislation of the other OTC Exemption Jurisdictions and the granting of the OTC Derivative Exemptions.

19. Between 1994 and 2000, the OSC sought to achieve a similar objective by introducing proposed OSC Rule 91-504 *Over-the-Counter Derivatives* (the **Proposed OSC Rule**) for the purpose of establishing a uniform, clearly defined regulatory framework for the conduct of OTC Derivative transactions in Ontario, but the Proposed OSC Rule was returned to the OSC for further consideration by Ontario's Minister of Finance in November, 2000.

20. The Final Report of the Ontario Commodity Futures Act Advisory Committee, published in January, 2007, concluded that OTC Derivative contracts are not suited to being regulated in accordance with traditional securities regulatory requirements and should therefore be excluded from the scope of securities legislation, because they are used for commercial-risk management purposes and not for investment or capital-raising purposes.

21. Ontario has now established a framework for regulating the trading of derivatives in Ontario (the **Ontario Derivatives Framework**) through amendments to the Ontario Act that were made by the *Helping Ontario Families and Managing Responsibility Act, 2010* (Ontario).

22. The amendments to the Ontario Act establishing the Ontario Derivatives Framework will not become effective until the date on which they are proclaimed in force. These amendments are not expected to be proclaimed in force until an ongoing public consultation on the regulation of OTC Derivatives has been completed.

23. In 2013, Ontario, Quebec and Manitoba introduced Rule 91-507 *Trade Repositories and Derivatives Data Reporting* which requires, in certain circumstances, local counterparties to report certain information pertaining to derivatives transactions to a designated trade repository.

*Rationale for Requested Relief*

24. The Requested Relief would substantially address, for the Filer and its Permitted Counterparties, the regulatory uncertainty and fragmentation that is currently associated with the regulation of OTC Derivative transactions in Canada, by permitting these parties to enter into OTC Derivative transactions in reliance upon exemptions from the dealer registration and prospectus requirements of the securities legislation of each Relevant Jurisdiction that are comparable to the OTC Derivative Exemptions.

*Books and Records*

25. The Filer will become a "market participant" as a consequence of this decision. For the purposes of the Ontario Act, and as a market participant, the Filer is required by subsection 19(1) of the Ontario Act to: (i) keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, and the transactions that it executes on behalf of others; and (ii) keep such books, records and documents as may otherwise be required under Ontario securities law.

26. For the purposes of its compliance with subsection 19(1) of the Ontario Act, the books and records that the Filer will keep will include books and records that:

    (a) demonstrate the extent of the Filer's compliance with applicable requirements of securities legislation;

    (b) demonstrate compliance with the policies and procedures of the Filer for establishing a system of controls and supervision sufficient to provide reasonable assurance that the Filer, and each individual acting on its behalf, complies with securities legislation;

    (c) identify all OTC Derivative transactions conducted on behalf of the Filer and each of its clients, including the name and address of all parties to the transaction and its terms; and

    (d) set out for each OTC Derivative transaction entered into by the Filer, information corresponding to that which would be required to be included in an exempt distribution report for the transaction, if the transaction were entered into by the Filer in reliance upon the "accredited investor" prospectus exemption in section 2.3 [Accredited investor] of NI 45-106.

**Decision**

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator is that the Requested Relief is granted, provided that:

    (a) the counterparty to any OTC Derivative transaction that is entered into by the Filer is a Permitted Counterparty;

    (b) in the case of any trade made by the Filer to a Permitted Counterparty, the Filer does not offer or provide any credit or margin to the Permitted Counterparty; and

    (c) the Requested Relief shall terminate on the date that is the earlier of:

        (i) the date that is four years after the date of this decision; and

(ii) the coming into force in the Jurisdiction of legislation or a rule that specifically governs dealer, adviser or other registration requirements applicable to market participants in connection with OTC Derivative transactions.

"Deborah Leckman"
Commissioner
Ontario Securities Commission

"Christopher Portner"
Commissioner
Ontario Securities Commission

## Appendix

## Definitions

**"Clearing Corporation"** means an association or organization through which Options or futures contracts are cleared and settled.

**"Contract for Differences"** means an agreement, other than an Option, a Forward Contract, a spot currency contract or a conventional floating rate debt security, that provides for

(a) an exchange of principal amounts; or

(b) the obligation or right to make or receive a cash payment based upon the value, level or price, or on relative changes or movements of the value, level or price of, an Underlying Interest.

**"Forward Contract"** means an agreement, not entered into or traded on or through an organized market, stock exchange or futures exchange and cleared by a Clearing Corporation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

(a) make or take delivery of the Underlying Interest of the agreement; or

(b) settle in cash instead of delivery.

**"Option"** means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price determinable by reference to the agreement at or by a time established by the agreement:

(a) receive an amount of cash determinable by reference to a specified quantity of the Underlying Interest of the Option.

(b) purchase a specified quantity of the Underlying Interest of the Option.

(c) sell a specified quantity of the Underlying Interest of the Option.

**"OTC Derivative"** means one or more of, or any combination of, an Option, a Forward Contract, a Contract for Differences or any instrument of a type commonly considered to be a derivative, in which:

(a) the agreement relating to, and the material economic terms of, the Option, Forward Contract, Contract for Differences or other instrument have been customized to the purposes of the parties to the agreement and the agreement is not part of a fungible class of agreements that are standardized as to their material economic terms;

(b) the creditworthiness of a party having an obligation under the agreement would be a material consideration in entering into or determining the terms of the agreement; and

(c) the agreement is not entered into or traded on or through an organized market, stock exchange or futures exchange.

**"Underlying Interest"** means, for a derivative, the commodity, interest rate, currency, foreign exchange rate, security, economic indicator, index, basket, benchmark or other variable, or another derivative, and, if applicable, any relationship between, or combination of, any of the foregoing, from or on which the market price, value or payment obligations of the derivative are derived or based.

### 2.1.5 Excel Funds Management Inc. and Excel Capital Income Fund

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – approval of investment fund merger – approval required because the merger does not meet the criteria for pre-approved reorganizations and transfers in National Instrument 81-102 Investment Funds – terminating fund and continuing fund do not have substantially similar fundamental investment objectives and fee structures - merger is not a "qualifying exchange" or a tax-deferred transaction under the Income Tax Act – securityholders provided with timely and adequate disclosure regarding the merger.

**Applicable Legislative Provisions**

National Instrument 81-102 Investment Funds, ss. 5.5(1)(b), 5.6, 5.7(1)(b).

**November 14, 2014**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ONTARIO**
**(the Jurisdiction)**

**AND**

**IN THE MATTER OF**
**THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS**

**AND**

**IN THE MATTER OF**
**EXCEL FUNDS MANAGEMENT INC.**
**(the Filer or Excel)**

**AND**

**EXCEL CAPITAL INCOME FUND**
**(the Terminating Fund)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Terminating Fund for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for approval of the merger (the "**Merger**") of the Terminating Fund into Excel High Income Fund (the "**Continuing Fund**") (together with the Terminating Fund, the "**Funds**") under paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (such approval, the "**Approval Sought**").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator ("**Principal Regulator**") for this application, and

(b) the Filer has provided notice that subsection 4.7(2) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon.

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

**Representations**

This decision is based on the following facts represented by the Filer:

*The Filer*

1. Excel is a corporation governed by the laws of the Province of Ontario with its head office in Mississauga, Ontario.

2. Excel is the investment fund manager of the Funds and is registered as an investment fund manager in Newfoundland and Labrador, Ontario and Quebec.

*The Funds*

3. Each of the Funds is an open-end mutual fund trust established under the laws of the Province of Ontario.

4. The Terminating Fund was structured to provide tax-efficient returns that are similar to the returns of the Continuing Fund. To do so, the Terminating Fund entered into a share basket forward agreement (the "**Forward Agreement**") with a Canadian Chartered Bank (the "**Bank**"). Under the Forward Agreement, the Terminating Fund hedges its exposure to equities by forward-selling Canadian equity securities for a price determined based on the net asset value of the units of the Continuing Fund.

5. On March 21st, 2013, the Canadian government announced, through its federal budget, that, following a transitional period ending on December 31, 2014, it would eliminate certain tax benefits in investment funds, such as the Terminating Fund, that use forward agreements to convert income to capital gains for tax purposes. As a result of the announcement, Excel closed the Terminating Fund to additional investments on April 8, 2013.

6. Series A and Series F units of the Continuing Fund are currently qualified for sale under a simplified prospectus, annual information form and fund facts each dated September 30, 2014, (the "**Offering Documents**"). The Series I and Series O units of the Continuing Fund are offered under exemptions from the prospectus requirement. As noted above, the Terminating Fund was closed to new investments on April 8, 2013.

7. The Funds are reporting issuers under the applicable securities legislation of each province and territory of Canada. Neither Excel nor the Funds are in default of securities legislation in any province or territory of Canada.

8. Other than circumstances in which the securities regulatory authority of a province or territory of Canada has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices established under the Legislation.

9. The net asset value (**NAV**) for each series of units of each Fund is calculated as at 4:00 p.m. Eastern Time on each day that the Toronto Stock Exchange is open for trading.

*The Merger*

10. Given the elimination of the tax benefits for which the Terminating Fund was structured, it no longer makes sense to operate both the Terminating Fund and the Continuing Fund as the Terminating Fund will no longer provide the additional tax benefit to investors. Therefore Excel is proposing the Merger.

11. A press release and material change report in respect of the proposed Merger were filed on SEDAR on September 12, 2014.

12. As required by National Instrument 81-107 *Independent Review Committee for Investment Funds* ("**NI 81-107**"), an Independent Review Committee (the "**IRC**") has been appointed for the Funds. Excel presented the potential conflict of interest matters related to the proposed Merger to the IRC for a recommendation. On September 2, 2014, the IRC reviewed the potential conflict of interest matters related to the proposed Merger and provided its positive recommendation for the Merger, after determining that the proposed Merger, if implemented, would achieve a fair and reasonable result for each Fund.

13. Unitholders of the Terminating Fund will continue to have the right to redeem units of the Terminating Fund at any time up to the close of business on the business day immediately before the effective date of the Merger.

14. Approval of the Merger is required because the Merger does not satisfy all of the criteria for pre-approved reorganizations and transfers as set out in section 5.6 of NI 81-102, namely because: (i) the fundamental investment objective of the Continuing Fund is not, or may not be considered to be, "substantially similar" to the investment objective of the Terminating Fund; (ii) the fee structure of the Continuing Fund is not, or may not be considered to be, "substantially similar" to the fee structure of the Terminating Fund; and (iii) the Merger will not be completed as a "qualifying exchange" or a tax-deferred transaction under the *Income Tax Act* (Canada) (the "**Tax Act**").

15. Excel has determined that it would not be appropriate to effect the Merger as a "qualifying exchange" within the meaning of section 132.2 of the Tax Act or as a tax-deferred transaction for the following reasons: (i) the Terminating Fund will shelter any net capital gains that will arise for it on the Settlement of its Forward Agreement at the time of the Merger; (ii) effecting the Merger on a taxable basis would preserve the net losses and loss carry-forwards in the Continuing Fund; (iii) effecting the Merger on a taxable basis will have no tax impact on the Continuing Fund; and (iv) the Terminating Fund is able to settle the Forward Agreement for units of the Continuing Fund, rather than requiring the Bank to redeem its units of the Continuing Fund for cash.

16. A notice of meeting, management information circular and form of proxy in connection with the Merger were mailed to unitholders of the Terminating Fund on or about October 14, 2014 and were subsequently filed on SEDAR. The most recently filed fund facts documents for Series A and Series F of the Continuing Fund were also included in the meeting material package that was sent to unitholders of the Terminating Fund.

17. The management information circular provides unitholders of the Terminating Fund with information about (i) the investment objectives of the Funds, (ii) the fee structures of the Funds, (iii) the tax consequences of the Merger, and (iv) how unitholders of the Terminating Fund may obtain, at no cost, the most recent simplified prospectus, annual information form, fund facts document, interim and annual financial statements and management report of fund performance of the Continuing Fund. Accordingly, unitholders of the Terminating Fund will have sufficient information to make an informed decision about the Merger.

18. Excel will pay for all costs associated with the Merger. These costs consist mainly of legal, proxy solicitation, printing, mailing and regulatory fees.

19. No sales charges will be payable by unitholders of the Funds in connection with the Merger.

20. Unitholders of the Terminating Fund approved the Merger at a special meeting held on November 13, 2014.

21. If all the requisite approvals are obtained, it is anticipated that the Merger will be implemented following the close of business on or about November 17, 2014.

22. In connection with the Merger, the units of the Continuing Fund distributed to unitholders of the Terminating Fund will be exchanged for their units in the Terminating Fund on a dollar for dollar and series by series basis, as applicable.

23. Units of the Continuing Fund received by unitholders of the Terminating Fund, as a result of the Merger, will have the same sales charge options as their previous units. For units of the Terminating Fund that were purchased under a low load option, the remaining deferred sales charge schedule will apply to the units of the Continuing Fund.

24. Following the Merger, and in any case before December 31, 2014, the Terminating Fund will be wound up.

25. The Merger is conditional on the approval of (i) the unitholders of the Terminating Fund; and (ii) the Principal Regulator. If the necessary approvals are obtained, the following steps will be carried out to effect the Merger, which is proposed to occur following the close of business on or about November 17, 2014:

    (a) Prior to effecting the Merger, the Terminating Fund will settle (the "**Settlement**") the Forward Agreement it has in place with the Bank by delivering its Canadian share portfolio to the Bank in exchange for units of the Continuing Fund that the Bank owns.

    (b) The units of the Continuing Fund to be received by the Terminating Fund from the Bank will have an aggregate net asset value equal to the purchase price determined under the Forward Agreement.

    (c) The Terminating Fund will distribute a sufficient amount of its net income and net realized capital gains, if any, to unitholders to ensure that it will not be subject to tax for its current tax year.

    (d) The Continuing Fund will not assume any liabilities of the Terminating Fund and the Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the effective date of the Merger.

    (e) The Terminating Fund will then distribute units of the Continuing Fund to its unitholders on the redemption of their units of the Terminating Fund.

    (f) The units of the Continuing Fund distributed to unitholders of the Terminating Fund will be exchanged for their units in the Terminating Fund on a dollar for dollar and series by series basis, as applicable.

    (g) Following the Merger, and in any case within 60 days thereof, the Terminating Fund will be wound up.

26. As a consequence of the Settlement and the completion of the Merger as outlined in the steps above, the units of the Continuing Fund held by the Bank will, following the Merger, be held directly by the unitholders of the Terminating Fund. As this change is not anticipated by the Filer to have any impact on the size, current holdings, investment objective or investment strategies of the Continuing Fund, the Filer does not view the Merger as a material change for the Continuing Fund.

27. The Continuing Fund is, and is expected to continue to be at all material times, a mutual fund trust under the Tax Act and, accordingly, units of the Continuing Fund are "qualified investments" under the Tax Act for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered education savings plans, registered disability savings plans, locked-in retirement accounts, life income funds, locked-in retirement income funds and tax-free savings accounts.

28. Excel believes that the Merger will be beneficial to unitholders of the Funds for the following reasons:

    (a) given the elimination of the tax benefits for which the Terminating Fund was structured, it no longer makes sense to continue to operate both the Terminating Fund and the Continuing Fund as the Terminating Fund will no longer provide an additional tax benefit to investors;

    (b) following the Merger, the unitholders of the Terminating Fund will continue to have the same investment exposure as they currently have (without the expense of the Forward Agreement and without the tax benefits that are being eliminated by the Canadian government) but the exposure will be through a direct investment in the Continuing Fund;

    (c) unitholders of the Terminating Fund will not be subject to any increased management fees as the management fees that are charged to both the A and F series of units of the Continuing Fund are the same as the management fees that are currently charged to both the A and F series of units of the Terminating Fund. The management fees that are charged on the series I and O units will continue to be negotiated directly with the investor; and;

    (d) by merging the Terminating Fund instead of terminating it, there will be a savings for the Terminating Fund in brokerage charges associated with the liquidation of the Terminating Fund's portfolio on a wind up. The unitholders of the Terminating Fund will not be responsible for the costs associated with the Merger.

Accordingly, Excel has recommended to the unitholders of the Terminating Fund that they vote for the resolutions that will authorize Excel to effect the Merger.

**Decision**

The Principal Regulator is satisfied that the decision meets the test set out in the Legislation for the Principal Regulator to make the decision.

The decision of the Principal Regulator under the Legislation is that the Approval Sought is granted.

"Vera Nunes"
Manager
Investment Funds and Structured Products Branch
Ontario Securities Commission

### 2.1.6 Reckitt Benckiser Group PLC and Indivior PLC

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – permission to make listing representations in a circular, a prospectus and related news releases, stating that Indivior plc intends to make application to have its shares listed and traded on the London Stock Exchange – relief is required as listing representations in such documents are prohibited under Ontario securities laws without the permission of the Director but are required under the prospectus rules and listing rules of the UK securities regulator in the context of the application process for listing and trading of shares on the London Stock Exchange – formal application to have shares listed and traded on the London Stock Exchange will not have been made at the time of publishing the circular, the prospectus and related news releases - relief granted.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., s. 38(1).

**November 12, 2014**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ONTARIO, ALBERTA, MANITOBA, NEW BRUNSWICK,**
**NEWFOUNDLAND AND LABRADOR, NORTHWEST TERRITORIES,**
**NOVA SCOTIA, NUNAVUT, PRINCE EDWARD ISLAND,**
**QUEBEC, SASKATCHEWAN, AND YUKON**
**(THE JURISDICTIONS)**

**AND**

**IN THE MATTER OF**
**THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS**

**AND**

**IN THE MATTER OF**
**RECKITT BENCKISER GROUP PLC (RB)**

**AND**

**INDIVIOR PLC**
**(NEWCO, AND TOGETHER WITH RB, THE FILERS)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Makers**) has received an application from Filers for a decision under the securities legislation of the Jurisdictions (the **Legislation**):

(a) granting written permission to the Filers, in the case of Ontario, Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon; and

(b) granting authorization to the Filers, in the case of Quebec,

to refer to NewCo's intention to make application to list the shares of NewCo (the **NewCo Shares**), a newly incorporated entity, on the premium listing segment of the official list of the UK Listing Authority (the **UKLA**) and be admitted to trading on the main market for listed securities of the London Stock Exchange (the **LSE**) in each of:

(i) the Circular (as defined below);

(ii) the Prospectus (as defined below); and

(iii) the News Releases (as defined below) (collectively, the **Exemptive Relief Sought**).

Furthermore, the Decision Makers have received an application from the Filers for a decision that the application and this decision be kept confidential and not be made public, or in the case of Quebec, declared inaccessible, until the earlier of: (a) the date on which the Filers publicly announce the intention to float the NewCo Shares on the LSE; (b) the date on which the Filers mail the Circular to RB shareholders; (c) the date on which the Filers advise the principal regulator that there is no longer any need for the application and this decision to remain confidential; and (d) the date that is 90 days after the date of this decision (the **Confidentiality Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

(a) the Ontario Securities Commission (the OSC) is the principal regulator for this application; and

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

**Representations**

This decision is based on the following facts represented by the Filers:

*RB*

1. RB is a public limited company incorporated in England under the *Companies Act 1985*.

2. RB is currently not a reporting issuer or the equivalent under the securities legislation of any province or territory of Canada and is not in default of any requirements under the securities legislation of any province or territory of Canada.

3. RB has a premium listing on the official list of the UKLA and is admitted to trading on the LSE's main market for listed securities.

4. As of October 28, 2014, RB has 94 registered shareholders holding a total of 56,951 shares in Canada. Of these shareholders, 6 are located in Alberta, 15 in British Columbia, 2 in Manitoba, 1 in Nova Scotia, 64 in Ontario, 5 in Quebec and 1 in Saskatchewan.

*The Demerger*

5. RB intends to undertake a proposed demerger (the **Demerger**) of RB's pharmaceuticals business (**RBP**) which will be effected as an indirect dividend demerger. RB will declare a dividend in specie to its shareholders which will be satisfied by (a) the transfer of RBP to NewCo, and (b) the issuance by NewCo of NewCo Shares to RB shareholders in proportion to their holdings in RB.

6. NewCo Shares will be issued to existing RB shareholders only and there is intended to be no sale or public offering of NewCo Shares. NewCo will not receive any cash proceeds as a result of the Demerger.

7. NewCo Shares issued to Canadian RB shareholders will be issued pursuant to the business combination and reorganization prospectus exemption found in section 2.11 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

8. In connection with the Demerger, RB shareholders, including RB shareholders in Canada, will be sent a notice of meeting and circular prepared in relation to the Demerger (the **Circular**) which will contain a letter from the Chairman of RB, an explanatory statement regarding the Demerger and its effects, and a notice of the general meeting at which RB shareholders will vote on a resolution to approve the dividend in specie. RB shareholders will also be sent proxy forms in respect of the general meeting.

9. The Circular, together with any RB public announcements regarding the Demerger, will be made available via UK regulatory news websites as well as the RB website.

*NewCo*

10. In connection with the Demerger, NewCo has been incorporated in England under the *Companies Act 2006* as a public limited company.

11. NewCo is currently not a reporting issuer or the equivalent under the securities legislation of any province or territory of Canada and is not in default of any requirements under the securities legislation of any province or territory of Canada.

*Listing of the NewCo Shares*

12. NewCo intends to make application (i) to the UKLA for the admission of all of the NewCo Shares to be issued pursuant to the Demerger on the premium listing segment of the official list of the UKLA, and (ii) to the LSE for such NewCo Shares to be admitted to trading on the LSE's main market for listed securities (**Admission**). A prospectus relating to the admission of NewCo to the official list of the UKLA (the **Prospectus**) will be prepared in accordance with the Prospectus Rules and Listing Rules of the Financial Conduct Authority (**FCA**) made under the UK *Financial Services and Markets Act 2000* (as amended) (**FSMA**).

13. In order for the NewCo Shares to be listed and admitted to trading on the LSE, the Prospectus must be approved by the UKLA in its capacity as the competent authority under FSMA. To date, the Filers have submitted for the UKLA's review 3 drafts of the Prospectus.

14. The Prospectus relating to the admission of NewCo to the official list of the UKLA will be made available via UK regulatory news websites as well as the RB website.

15. News releases relating to the filing of the Prospectus and the intention to float the NewCo Shares on the LSE (the **News Releases**, and together with the Circular and the Prospectus, the **Documents**) may also be issued and made available on the RB website.

*Listing Representations*

16. The UKLA will only approve the Prospectus on the day it is dated and published. The formal application for a listing is submitted to the UKLA and a formal application for admission to trading is submitted to the LSE after this time but before the date on which the Demerger is intended to take effect. The admission to listing is officially granted by the UKLA in conjunction with admission to trading being granted by the LSE.

17. As a result of the foregoing timing, formal application will not have been made nor will the UKLA have granted approval (conditional or otherwise) to the listing of the NewCo Shares at the time of publishing the Documents.

18. Despite the foregoing, given the fact that the Filers will be in the process of making application for Admission, the Filers wish to refer in each of the Documents to the fact that NewCo intends to make application for Admission as RB believes that this information would be relevant to an RB shareholder in deciding whether to vote in favour of the Demerger.

19. It is required by the Prospectus Rules of the FCA in the context of the application process for Admission that RB and NewCo disclose in the Documents one or more representations identical or substantially similar to the following (the **Listing Representation**):

> "Application will be made to the UKLA for all of the NewCo Shares to be admitted to the premium listing segment of the official list of the UKLA and to the LSE for such NewCo Shares to be admitted to trading on the LSE's main market for listed securities. Admission to trading on the LSE's main market for listed securities constitutes admission to trading on a regulated market. It is expected that Admission will become effective, and that dealings in the NewCo Shares will commence, on 23 December 2014."

20. Except as described in paragraph 19, neither RB nor NewCo will make any other written or oral representations that the NewCo Shares will be listed on any other exchanges or quoted on a quotation and trade reporting system.

21. The Filers are of the understanding that neither the UKLA or LSE will provide them with written confirmation indicating that it does not object to the Listing Representation or that it consents to the Listing Representation, other than its eventual formal approval of the Circular and Prospectus.

22. BC Notice 47-701 *Blanket Permission Under Section 50(1)(c) of the Securities Act* is applicable to the Filers.

23. Absent the Exemptive Relief Sought from all of the Decision Makers, the Listing Representation in the Documents would be in violation of the certain provisions as detailed in Appendix A to this Decision.

24. The communication of the application and the supporting materials before the date on which the Filers publicly announce the Demerger and its intention to float the NewCo Shares on the LSE could result in serious prejudice to the Filers.

**Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

Furthermore, the decision of the Decision Makers is that the Confidentiality Sought is granted.

"Sonny Randhawa"
Manager, Corporate Finance Branch
Ontario Securities Commission

**APPENDIX A**

| Province/Territory | Prohibition on Listing Representation (Securities Act) |
|---|---|
| Alberta | 92(3)(b)(ii) |
| Manitoba | 69(3) |
| New Brunswick | 58(3) |
| Newfoundland and Labrador | 39(3) |
| Northwest Territories | 147(1)(c) |
| Nova Scotia | 44(3) |
| Nunavut | 147(1)(c) |
| Ontario | 38(3) |
| Prince Edward Island | 147(1)(c) |
| Quebec | 199(4) |
| Saskatchewan | 44(3)(b) |
| Yukon | 147(1)(c) |

### 2.1.7 Invesco Canada Ltd.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Temporary relief granted to permit two mutual funds to each increase their respective exposure to the counterparty to their forward contracts to 20% of net asset value – funds' objectives are to provide tax-efficient returns to investors – due to amendments to the Income Tax Act (Canada) funds would lose tax-efficiency of forward contracts if contracts were pre-settled to reduce counterparty exposure – relief subject to conditions and a sunset clause – National Instrument 81-102 Investment Funds.

**Applicable Legislative Provisions**

National Instrument 81-102 Investment Funds, ss. 2.7(4), 19.1.

**October 30, 2014**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ONTARIO**
**(the Jurisdiction)**

**AND**

**IN THE MATTER OF**
**THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS**

**AND**

**IN THE MATTER OF**
**INVESCO CANADA LTD.**
**(the Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer on its behalf and on behalf of PowerShares Tactical Bond Capital Yield Class (the "**PowerShares Top Fund**") and Invesco Intactive Strategic Capital Yield Portfolio Class (the "**Invesco Top Fund**"), each a mutual fund managed by the Filer, for an exemption from section 2.7(4) of National Instrument 81-102 *Investment Funds* ("**NI 81-102**") pursuant to section 19.1 of NI 81-102 (the "**Exemption Sought**") to permit each of PowerShares Top Fund and Invesco Top Fund (collectively, the "**Top Funds**") to maintain the Forward (as defined below) where the mark-to-market exposure of the Top Fund under the Forward with the Counterparty (as defined below) exceeds, for a period of 30 days or more, 10% but is no more than 20% of the net asset value of the Top Fund.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

a. the Ontario Securities Commission is the principal regulator for this application;

b. the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon.

**Interpretation**

Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision unless they are defined in this decision. The following additional terms shall have the following meanings:

**"Counterparty"** means the counterparty to the forward contract with a Top Fund.

**"ICCI"** means Invesco Corporate Class Inc.

**"ITA"** means *Income Tax Act* (Canada).

**"Reference Funds"** means Invesco Intactive Strategic Yield Portfolio and PowerShares Tactical Bond Fund.

**Representations**

1. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is the manager of the Top Funds and the Reference Funds.

3. The Filer is not in default of securities legislation in any jurisdiction in Canada.

4. Each Top Fund is (a) an open-ended mutual fund that is a class of shares of ICCI, a corporation amalgamated under the laws of the Province of Ontario; (b) a reporting issuer in every jurisdiction in Canada but no longer offers it securities for sale to the general public; and (c) not in default of securities legislation in any jurisdiction in Canada.

5. The investment objectives of each Top Fund seek to provide returns (before fees and expenses) similar to those of its Reference Fund on a tax-efficient basis.

6. Each Top Fund seeks to achieve its investment objective by investing primarily in Canadian equity securities (the "**Equity Basket**") and by entering into a forward contract (the "**Forward**") with the Counterparty pursuant to which on the settlement date the Counterparty will deliver the investment return of a notional number of securities of the Reference Fund less the cost of the Forward and any hedging costs incurred by the Counterparty (collectively, the "**Forward Fee**") and the Top Fund will deliver the Equity Basket. Each Top Fund may also invest directly in securities of its Reference Fund.

7. Each Reference Fund is: (a) an open-ended mutual fund trust established under the laws of the Province of Ontario whose securities are offered for sale to the general public under a simplified prospectus filed in every jurisdiction in Canada; (b) a reporting issuer in every jurisdiction in Canada; and (c) not in default of any securities legislation in any jurisdiction of Canada.

8. The Counterparty may but is not obliged to hedge its obligations under the Forwards by purchasing securities of the Reference Funds.

9. The investment of each of the Top Funds in its Reference Fund (either through the Forwards or by directly purchasing securities of the Reference Fund) complies with the requirements of section 2.5 of NI 81-102 as amended by relief obtained by the Top Funds.

10. Each Forward has a 5 year term. The maturity dates for the Forwards of PowerShares Top Fund and Invesco Top Fund are September 17, 2015 and May 17, 2017, respectively. The terms of the Forwards provide that they may be partially settled prior to their maturity. If there is a partial pre-settlement, the Top Fund will deliver a portion of the Equity Basket to the Counterparty who will deliver an amount equal to the return on a notional number of securities of the Reference Fund less the Forward Fees. This partial pre-settlement will result in the Top Fund realizing a capital gain or a capital loss for tax purposes on the sale of a portion of the Equity Basket.

11. The Forwards are entered into by each Top Fund in accordance with the requirements of NI 81-102, including in particular sections 2.7 and 2.8 thereof.

12. Since the Top Funds began offering their securities to the public, each Top Fund has solely used the Counterparty as the counterparty to the Forwards.

13. The Counterparty is a foreign entity whose obligations are fully guaranteed by a Canadian financial institution.

14. The Canadian financial institution is a Schedule I bank under the *Bank Act* (Canada) which currently has a designated rating by a designated rating organization.

15. The Counterparty is not an acceptable clearing corporation or a clearing corporation that clears and settles transactions made on a futures exchange listed in Appendix A of NI 81-102.

16. Pursuant to section 2.7(4) of NI 81-102, the mark-to market exposure of a mutual fund under a specified derivative with a counterparty may not exceed 10% of the net asset value of the fund (the "**Maximum Exposure**") for a period of 30 days or more.

17. The mark-to market exposure of:

    i) PowerShares Top Fund to the Counterparty has exceeded the Maximum Exposure since October 4, 2014; and

    ii) Invesco Top Fund to the Counterparty is close to but has not exceeded the Maximum Exposure.

18. In light of the current Canadian equity market volatility, there is a possibility that PowerShares Top Fund's exposure to its Counterparty will continue to exceed the Maximum Exposure for 30 days or more or that Invesco Top Fund's exposure to its Counterparty will exceed the Maximum Exposure and that that exposure may continue for 30 days or more.

19. Under normal conditions, a Top Fund would partially pre-settle its Forward with the Counterparty to reduce the mark-to-market exposure to the Counterparty and would have the flexibility in the future to upsize or increase the size of the Forward when the mark-to-market exposure of the Counterparty improved.

20. The 2013 federal budget introduced section 12(1)(z.7)(ii) of the ITA which provision requires all profits from a derivative forward contract to be treated on account of income rather than capital. Under the transitional rules, section 12(1)(z.7)(ii) of the ITA generally only applies to the proceeds of forward contracts that were entered into after March 20, 2013.

21. As a result of the introduction of section 12(1)(z.7)(ii) of the ITA, it is not possible for the Top Funds to:

    i) enter into any new forward contract with a counterparty where the profits from that forward contract will be treated on account of capital on maturity of that forward contract;

    ii) extend the term of the existing Forward under any circumstances; or

    iii) upsize or increase the size of the existing Forward except under limited circumstances, namely where the Top Fund holds cash as of March 20, 2013 which cash was committed to be used to upsize or increase the size of the existing Forward.

22. Accordingly, while it is possible for a Top Fund to partially pre-settle the Forward to reduce its counterparty exposure, it is not desirable to do so as it will not be able to upsize or increase the size of the Forward or enter into a comparable forward contract with the Counterparty or another counterparty in the future as:

    i) any such upsizing or increasing the size of the Forward would taint the entire Forward, namely, all profits from the Forward on maturity (not only the portion upsized or increased) would be treated on account of income rather than capital; and

    ii) entering into a new forward contract with the Counterparty or another counterparty will result in the profits of that forward contract on maturity being treated on account of income rather than capital.

    In both instances, this would be contrary to the investment objectives of the Top Funds, namely to provide tax efficient returns.

23. The Filer has considered a direct investment in their Reference Funds by the Top Funds. However, this is not desirable as the Reference Funds will distribute income to the Top Funds. As the Top Funds are part of ICCI, each year all income of the Top Funds together with all other funds that are classes of ICCI (the "**ICCI Classes**") are aggregated and deducted against (i) all expenses of the ICCI Classes, and (ii) any non-capital loss carryforwards of ICCI. To the extent that the income exceeds expenses and loss carryforwards, ICCI will become taxable. Accordingly, any direct investment by the Top Funds in the Reference Funds should only be considered as a last resort measure to ensure the Top Funds meet their investment objectives until the maturity date of the Forwards.

24. The Exemption Sought is in the best interests of the Top Funds.

**Decision**

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator is that the Exemption Sought is granted provided that:

(a) the mark-to-market value of the exposure of the Top Fund to the Counterparty under the Forward does not exceed, for a period of 30 days or more, 20% of the net asset value of the Top Fund;

(b) the Forwards for PowerShares Top Fund and Invesco Top Fund mature on September 17, 2015 and May 17, 2017, respectively and that the terms of such Forwards are not extended;

(c) the Counterparty's obligations under the Forward continue to be guaranteed by a Canadian financial institution which financial institution is a Schedule I bank under the Bank Act (Canada) which has a designated rating by a designated rating organization; and

(d) securities of the Top Funds are not, and will not be made, available for sale to investors.

This decision will terminate on September 17, 2015.

"Raymond Chan"
Manager, Investment Fund and Structured Products
Ontario Securities Commission

## 2.2 Orders

### 2.2.1 TD Waterhouse Private Investment Counsel Inc. et al. – ss. 127(1), 127(2), 127.1

**IN THE MATTER OF**
**THE SECURITIES ACT,**
**R.S.O. 1990, c. S.5, AS AMENDED**

**AND**

**IN THE MATTER OF**
**TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC.,**
**TD WATERHOUSE CANADA INC.**
**and TD INVESTMENT SERVICES INC.**

**ORDER (Subsections 127(1) and 127(2) and section 127.1)**

**WHEREAS** on November 7, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) and 127(2) and section 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in relation to the Statement of Allegations filed by Staff of the Commission ("Commission Staff") on November 7, 2014 with respect to TD Waterhouse Private Investment Counsel Inc. ("TDWPIC"), TD Waterhouse Canada Inc. ("TD Waterhouse") and TD Investment Services Inc. ("TDIS") (collectively, the "TD Entities") relating to four allegations of control and supervision inadequacies which resulted in clients of the TD Entities paying excess fees (the "Control and Supervision Inadequacies");

**AND WHEREAS** Commission Staff are satisfied that the TD Entities discovered and self-reported the Control and Supervision Inadequacies to Commission Staff;

**AND WHEREAS** Commission Staff are satisfied that during the investigation of the Control and Supervision Inadequacies by Commission Staff, the TD Entities provided prompt, detailed and candid cooperation to Commission Staff, staff of the Investment Industry Regulatory Organization of Canada and staff of the Mutual Fund Dealers Association of Canada;

**AND WHEREAS** Commission Staff are satisfied that the TD Entities had formulated an intention to pay appropriate compensation to clients and former clients in connection with their report of the first three Control and Supervision Inadequacies to Commission Staff;

**AND WHEREAS** Commission Staff are satisfied that thereafter, the TD Entities co-operated with Commission Staff and agreed to pay appropriate compensation to clients and former clients that were harmed by any of the four Control and Supervision Inadequacies (the "Affected Clients"), in accordance with a plan submitted by the TD Entities to Commission Staff (the "Compensation Plan");

**AND WHEREAS** the TD Entities entered into a Settlement Agreement with Commission Staff dated November 7, 2014 (the "Settlement Agreement") in which the TD Entities and Commission Staff agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated November 7, 2014, subject to approval by the Commission;

**AND WHEREAS** as part of the Settlement Agreement, the TD Entities undertake to:

a. pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission (the "OSC Manager") in accordance with the Compensation Plan;

b. make a voluntary payment of $50,000 to be allocated to the costs of the investigation in accordance with subsection 3.4(2)(a) of the Act; and

c. make a further voluntary payment of $600,000 to be designated for allocation to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

(the "Undertaking")

**AND WHEREAS** the Notice of Hearing issued on November 7, 2014 also announced that the Commission proposed to hold a hearing to consider whether it is in the public interest to approve the Settlement Agreement;

**AND UPON** reviewing the Settlement Agreement, the Notices of Hearing and the Statement of Allegations of Commission Staff and upon hearing submissions of counsel for the TD Entities and from Commission Staff;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this order;

**IT IS HEREBY ORDERED THAT:**

a) the Settlement Agreement is approved;

b) within 90 days of the Order approving the Settlement Agreement, the TD Entities shall provide to the OSC Manager, revised written policies and procedures for each of the TD Entities (the "Revised Policies and Procedures") that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Staff as at the date of the Order approving this Settlement Agreement with regard to the TD Entities' policies and procedures to establish the Enhanced Control and Supervision Procedures;

c) within 8 months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the remaining issues raised by Staff (the "Confirmation Date"), the TD Entities shall submit a letter (the "Attestation Letter"), signed by the Ultimate Designated Person ("UDP") and the Chief Compliance Officer ("CCO") for each of the TD Entities, to the OSC Manager, on whether the Enhanced Control and Supervision Procedures are (i) being followed by the TD Entities; (ii) working appropriately; and (iii) being adequately administered and enforced by the TD Entities for the six month period commencing from the Confirmation Date;

d) the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;

e) the TD Entities shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the TD Entities have complied with subparagraphs (c)(i), (ii) and (iii) above;

f) any of the TD Entities or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b) to (e) above; and

g) the TD Entities shall comply with the Undertaking to:

   i. pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Compensation Plan;

   ii. make a voluntary payment of $50,000 to be allocated to the costs of the investigation in accordance with subsection 3.4(2)(a) of the Act; and

   iii. make a further voluntary payment of $600,000 to be designated for allocation to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

**DATED** at Toronto, Ontario this 13th day of November, 2014

"Judith Robertson"

"Christopher Portner"

"Mary G. Condon"

### 2.2.2 International Strategic Investments et al.

**IN THE MATTER OF**
**THE SECURITIES ACT,**
**R.S.O. 1990, c. S.5, AS AMENDED**

**AND**

**IN THE MATTER OF**
**INTERNATIONAL STRATEGIC INVESTMENTS,**
**INTERNATIONAL STRATEGIC INVESTMENTS INC.,**
**SOMIN HOLDINGS INC., NAZIM GILLANI**
**AND RYAN J. DRISCOLL**

**ORDER**

**WHEREAS** on March 6, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Notice of Hearing") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 5, 2012, to consider whether it is in the public interest to make certain orders as against International Strategic Investments, International Strategic Investments Inc., (collectively, "ISI"), Nazim Gillani ("Gillani"), Ryan J. Driscoll ("Driscoll") and Somin Holdings Inc. ("Somin");

**AND WHEREAS** on April 3, 2012, a hearing was held before the Commission and Staff appeared and filed the Affidavit of Peaches A. Barnaby, sworn on March 29, 2012, evidencing service of the Notice of Hearing and the Statement of Allegations on ISI, Gillani and Driscoll;

**AND WHEREAS** on April 3, 2012 counsel for ISI and Gillani and counsel for Driscoll appeared and made submissions;

**AND WHEREAS** on April 3, 2012, the Commission ordered that a status hearing take place on April 13, 2012, for Staff to update the Commission on the status of service on Somin (the "Status Hearing") and that a pre-hearing conference is scheduled for Wednesday, June 6, 2012;

**AND WHEREAS** on April 13, 2012, the Status Hearing was held and Staff provided the Commission with the Affidavit of Peaches A. Barnaby, sworn April 10, 2012, outlining efforts of service on Somin;

**AND WHEREAS** on April 13, 2012, Staff and counsel for Gillani appeared and made submissions;

**AND WHEREAS** on April 13, 2012, the Status Hearing was adjourned to April 30, 2012 at 10:00 a.m. to determine whether service had been effected on Somin pursuant to Rule 1.5.1 of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017;

**AND WHEREAS** on April 30, 2012, Staff and counsel for Gillani appeared and made submissions and no one appeared on behalf of Somin or ISI;

**AND WHEREAS** on April 30, 2012, Staff provided the Commission with the Affidavit of Peaches A. Barnaby, sworn April 27, 2012;

**AND WHEREAS** on April 30, 2012, Staff undertook to continue to serve Somin through David F. Munro and Nazim Gillani;

**AND WHEREAS** on April 30, 2012, the Commission was satisfied that Somin had been served and accepted Staff's undertaking for future service;

**AND WHEREAS** on June 6, 2012, a confidential pre-hearing conference was held and Staff, counsel for Gillani and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin or ISI;

**AND WHEREAS** on June 6, 2012, Staff agreed to continue to serve Somin through David F. Munro and Nazim Gillani personally;

**AND WHEREAS** on June 6, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to August 20, 2012;

**AND WHEREAS** on August 20, 2012, a confidential pre-hearing conference was held and Staff, counsel for Gillani and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin or ISI;

**AND WHEREAS** on August 20, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to October 9, 2012;

**AND WHEREAS** on October 9, 2012, a confidential pre-hearing conference was held and Staff, counsel for Gillani and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin or ISI;

**AND WHEREAS** on October 9, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to November 20, 2012;

**AND WHEREAS** on November 20, 2012, the Commission was not available to hold the confidential pre-hearing conference, Staff, counsel for Gillani and counsel for Driscoll consented via email to adjourning the confidential pre-hearing conference to December 3, 2012 and no one responded on behalf of Somin or ISI although duly notified via email;

**AND WHEREAS** on November 20, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to December 3, 2012;

**AND WHEREAS** on December 3, 2012, a confidential pre-hearing conference was held and Staff, counsel for Gillani and International Strategic Investments Inc. and counsel for Driscoll appeared and made

submissions and no one appeared on behalf of Somin or International Strategic Investments;

**AND WHEREAS** on December 3, 2012, the Commission ordered that the confidential pre-hearing conference be adjourned to January 16, 2013;

**AND WHEREAS** on January 16, 2013, a confidential pre-hearing conference was held and Staff, Gillani appearing on his own behalf and on behalf of ISI, and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin;

**AND WHEREAS** on January 16, 2013, the Commission ordered that the confidential pre-hearing conference be adjourned to March 5, 2013;

**AND WHEREAS** on March 5, 2013, a confidential pre-hearing conference was held and Staff, counsel for Gillani and ISI, and counsel for Driscoll appeared and made submissions and no one appeared on behalf of Somin;

**AND WHEREAS** on March 5, 2013, the Commission ordered that the confidential pre-hearing conference be adjourned to November 27, 2013;

**AND WHEREAS** on November 27, 2013, the confidential pre-hearing conference continued and Staff, counsel for Gillani and ISI, and Driscoll appearing on his own behalf made submissions and no one appeared on behalf of Somin;

**AND WHEREAS** on November 27, 2013, the Commission ordered that the hearing on the merits shall commence on January 13, 2014 and shall continue on January 15th for half a day, January 16, 20, 21, 27, 29, 30, and 31, February 3-7 inclusive, February 10, 12-14 inclusive, February 18 and 19, or on such further or other dates as may be agreed to by the parties and set by the Office of the Secretary and that the confidential pre-hearing conference be adjourned to December 5, 2013;

**AND WHEREAS** on December 5, 2013, the confidential pre-hearing conference continued and Staff, counsel for Gillani and ISI, and Driscoll appearing on his own behalf made submissions and no one appeared on behalf of Somin;

**AND WHEREAS** on December 5, 2013, the Commission ordered that the confidential pre-hearing conference be adjourned to December 12, 2013;

**AND WHEREAS** on December 12, 2013, the confidential pre-hearing conference continued and Staff requested that all or substantially all of the hearing on the merits be converted to a written hearing, pursuant to Rule 11.5 of the Commissions Rules of Procedure (the "Rules"), in accordance with the schedule set out below;

**AND WHEREAS** counsel for Gillani and ISI, and Driscoll appearing on his own behalf consented to this matter proceeding as a hearing in writing and no one appeared on behalf of Somin;

**AND WHEREAS** on December 12, 2013 the Commission ordered that the dates for the previously ordered hearing on the merits be vacated and pursuant to Rule 11.5, the hearing on the merits shall proceed as a written hearing, in accordance with the following schedule:

1. Staff shall file evidentiary briefs in the form of affidavits, as well as written submissions on the relevant facts and law, with the Secretary's Office no later than February 14, 2014;

2. The Respondents shall file any responding materials by April 14, 2014;

3. Staff shall file any reply submissions or evidence by May 5, 2014;

4. Staff and any participating Respondents will attend at a date appointed by the panel after May 5, 2014, to answer questions, make submissions or make any necessary witnesses available for cross-examination.

**AND WHEREAS** on April 11, 2014, Driscoll, through his new counsel, brought a motion with the consent of Staff, Gillani and ISI to amend the timeline for delivery of the Respondents' materials and Staff's reply materials;

**AND WHEREAS** the Respondent, Somin, which was served with Driscoll's motion record, did not object to the proposed amended timeline for delivery of the Respondents' materials and Staff's reply materials

**AND WHEREAS** the Commission confirmed on April 14, 2014 that it approved of the amended timetable as follows:

1. The Respondents shall file any responding materials by no later than June 13, 2014;

2. Staff shall file any reply submissions or evidence by no later than July 11, 2014;

3. Staff and any participating Respondents will attend at a date appointed by the panel after July 11, 2014, to answer questions, make submissions or make any necessary witnesses available for cross-examination;

**AND WHEREAS** on June 13, 2014, the Respondent, Driscoll, filed responding materials;

**AND WHEREAS** on July 11, 2014, Staff filed reply submissions;

**AND WHEREAS** on August 22, 2014, counsel for Gillani inquired of the Acting Secretary to the Commission as to the status of the matter and the availability of a motion hearing date to be removed as counsel;

**AND WHEREAS** a Status Hearing was set for September 5, 2014 at 10:00am;

**AND WHEREAS** counsel for Gillani was unable to attend the Status Hearing scheduled for September 5, 2014;

**AND WHEREAS** the Commission ordered that the Status Hearing scheduled for September 5, 2014 was adjourned until September 24, 2014 at 3:00pm;

**AND WHEREAS** on September 24, 2014 at 3:00 p.m. the Status Hearing was held and Staff, counsel for Driscoll and an agent for Gillani appeared and made submissions and no one appeared on behalf of Somin;

**AND WHEREAS** the agent for Gillani filed a Notice of Intention to Act in Person on Gillani's behalf dated September 23, 2014;

**AND WHEREAS** the Panel requested Staff to contact Gillani and advise Gillani that he has until Monday October 20th at 11:00 a.m. to advise Staff whether he will request leave to submit any written materials and whether he will request leave to cross examine any witnesses on affidavits filed in the written hearing, notwithstanding that Gillani has filed nothing to date;

**AND WHEREAS** on October 20, 2014 Staff provided the Registrar and counsel for Driscoll with the correspondence in relation to Gillani's leave requests;

**AND WHEREAS** on October 31, 2014, the Status Hearing was held and Staff, counsel for Driscoll and Gillani appeared (Gillani via phone conference) and made submissions and no one appeared on behalf of Somin;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this order;

**IT IS HEREBY ORDERED** that Gillani has until December 15, 2014 to file any written response to the materials previously filed by Staff and Driscoll, and to arrange a schedule for cross examination of the affiants on materials previously filed.

**DATED** at Toronto this 31st day of October, 2014.

"James E. A. Turner"

### 2.2.3 Elgin Mining Inc. – s. 1(6) of the OBCA

**Headnote**

Applicant deemed to have ceased to be offering its securities to the public under the OBCA.

**Statute Cited**

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 1(6).

**IN THE MATTER OF**
**THE BUSINESS CORPORATIONS ACT (ONTARIO),**
**R.S.O. 1990, c. B. 16, AS AMENDED**
**(the "OBCA")**

**AND**

**IN THE MATTER OF**
**ELGIN MINING INC.**
**(the "Applicant")**

**ORDER**
**(Subsection 1(6) of the OBCA)**

**UPON** the application of the Applicant to the Ontario Securities Commission (the "**Commission**") for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

**AND UPON** the Applicant representing to the Commission that:

1. The Applicant is an "offering corporation" as defined in the OBCA, and has an authorized capital consisting of an unlimited number of common shares (the "**Elgin Shares**").

2. The head office of the Applicant is located at #1204-700 West Pender Street, Vancouver, British Columbia, V6C 1G8.

3. On September 10, 2014 Mandalay Resources Corporation ("**Mandalay**") acquired all of the issued and outstanding Elgin Shares pursuant to a plan of arrangement under an amended and restated arrangement agreement between the Applicant and Mandalay dated July 25, 2014. As a result, Mandalay became the sole beneficial holder of all Elgin Shares.

4. The Elgin Shares have been de-listed from the Toronto Stock Exchange, effective as of the close of trading on September 11, 2014.

5. No securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and

sellers of securities where trading data is publicly reported.

6. Pursuant to BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status*, the British Columbia Securities Commission confirmed the Applicant's non-reporting issuer status in British Columbia effective October 16, 2014.

7. The Applicant is a reporting issuer, or the equivalent, in Alberta, Manitoba, Saskatchewan, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and Ontario (the "**Jurisdictions**") and is currently not in default of any of the applicable requirements under the legislation of the Jurisdictions.

8. On October 3, 2014, the Applicant made an application to the Ontario Securities Commission, as principal regulator on behalf of the securities regulatory authorities in the Jurisdictions, for a decision that the Applicant is not a reporting issuer in the Jurisdictions (the "**Reporting Issuer Relief Requested**").

9. The Applicant has no intention to seek public financing by way of an offering of securities.

10. Upon the granting of the Reporting Issuer Relief Requested, the Applicant will not be a reporting issuer or equivalent in any jurisdiction of Canada.

**AND UPON** the Commission being satisfied that to do so would not be prejudicial to the public interest;

**IT IS HEREBY ORDERED** by the Commission pursuant to subsection 1(6) of the OBCA that the Applicant be deemed to have ceased to be offering its securities to the public for the purpose of the OBCA.

**DATED** at Toronto on this 14th day of November, 2014.

"Edward Kerwin"
Ontario Securities Commission

"Anne Marie Ryan"
Ontario Securities Commission

**2.2.4 William McDonald Ferguson – ss. 127(1), 127(10)**

**IN THE MATTER OF**
**THE SECURITIES ACT,**
**R.S.O. 1990, c. S.5, AS AMENDED**

**AND**

**IN THE MATTER OF**
**WILLIAM McDONALD FERGUSON**

**ORDER**
**(Subsections 127(1) and 127(10) of the Securities Act)**

**WHEREAS** on September 22, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of William McDonald Ferguson ("Ferguson");

**AND WHEREAS** on September 22, 2014, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

**AND WHEREAS** on October 24, 2014, Staff appeared before the Commission and brought an application to convert this matter to a written hearing;

**AND WHEREAS** on October 24, 2014, Staff filed an affidavit of service sworn by Lee Crann, a Law Clerk with the Commission, and marked as Exhibit "1", which documented steps taken by Staff to serve Ferguson with the Notice of Hearing, Statement of Allegations and Staff's disclosure materials, and made submissions to the Commission;

**AND WHEREAS** Ferguson did not appear;

**AND WHEREAS** on October 24, 2014, the Commission ordered that:

1. Ferguson shall advise of any objections he has to proceeding by way of written hearing within 5 days following service of the order; and

2. once Staff has advised the Office of the Secretary that the period for objections has passed, the Commission will issue an order addressing Staff's application;

**AND WHEREAS** Ferguson received service of the October 24, 2014 order on November 3, 2014;

**AND WHEREAS** Ferguson did not object to Staff's application to proceed by way of written hearing within the time allotted by the Commission's Rules of Procedure;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this order;

**IT IS HEREBY ORDERED THAT:**

1. Staff's application to proceed by way of written hearing is granted;

2. Staff's materials in respect of the written hearing shall be served and filed no later than 10 days following the issuance of this order;

3. Ferguson's responding materials, if any, shall be served and filed no later than 4 weeks from the effective date of service of Staff's materials; and

4. Staff's reply materials, if any, shall be served and filed no later than 2 weeks from effective date of service of Ferguson's materials.

**DATED** at Toronto this 17th day of November, 2014.

"Mary G. Condon"

# Chapter 3

# Reasons: Decisions, Orders and Rulings

## 3.1 OSC Decisions, Orders and Rulings

### 3.1.1 TD Waterhouse Private Investment Counsel Inc. et al.

**IN THE MATTER OF**
**THE SECURITIES ACT,**
**R.S.O. 1990, c. S.5, AS AMENDED**

**AND**

**IN THE MATTER OF**
**TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC.,**
**TD WATERHOUSE CANADA INC.**
**and TD INVESTMENT SERVICES INC.**

**SETTLEMENT AGREEMENT BETWEEN**
**STAFF OF THE COMMISSION**
**and**
**TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC.,**
**TD WATERHOUSE CANADA INC.**
**and TD INVESTMENT SERVICES INC.**

**PART I – INTRODUCTION**

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders in respect of TD Waterhouse Private Investment Counsel Inc. ("TDWPIC"), TD Waterhouse Canada Inc. ("TD Waterhouse") and TD Investment Services Inc. ("TDIS").

2. TDWPIC is a corporation incorporated pursuant to the laws of Canada and is registered with the Commission as an Exempt Market Dealer and Portfolio Manager.

3. TD Waterhouse is a corporation incorporated pursuant to the laws of Ontario. TD Waterhouse is a member of the Investment Industry Regulatory Organization of Canada ("IIROC") and is registered with the Commission as an Investment Dealer. The matters described below with regard to TD Waterhouse pertain only to the business units within TD Waterhouse that provide advice, namely Financial Planning and Private Investment Advice.

4. TDIS is a corporation incorporated pursuant to the laws of Ontario. TDIS is a member of the Mutual Fund Dealers Association of Canada ("MFDA") and is registered with the Commission as a Mutual Fund Dealer.

5. TDWPIC, TD Waterhouse and TDIS (the "TD Entities") are subsidiaries of The Toronto-Dominion Bank.

6. During the period May to September 2014, the TD Entities self-reported to Staff of the Commission ("Commission Staff") four separate matters. During Commission Staff's investigation of these four matters, the TD Entities provided prompt, detailed and candid co-operation to Commission Staff, Staff of the IIROC ("IIROC Staff") and Staff of the MFDA ("MFDA Staff").

7. As summarized at paragraph 13 below and more fully described in Part III below, it is Commission Staff's position that in relation to each of the four matters, there were inadequacies in the TD Entities' systems of controls and supervision which formed part of their compliance systems (the "Control and Supervision Inadequacies") which resulted in clients paying, directly or indirectly, excess fees that were not detected or corrected by the TD Entities in a timely manner.

**PART II – JOINT SETTLEMENT RECOMMENDATION**

8. Commission Staff and the TD Entities have agreed to a settlement of the proceeding initiated in respect of the TD Entities by Notice of Hearing dated November 7, 2014 (the "Proceeding") on the basis of the terms and conditions set

out in this settlement agreement ("Settlement Agreement"). Commission Staff have consulted with IIROC Staff and MFDA Staff in relation to the underlying facts which are the subject matter of this Settlement Agreement.

9. Pursuant to this Settlement Agreement, Commission Staff agree to recommend to the Commission that the Proceeding be resolved and disposed of in accordance with the terms and conditions contained herein.

10. It is Commission Staff's position that:

a. the statement of facts set out by Commission Staff in Part III below, which is based on an investigation carried out by Commission Staff following the self-reporting by the TD Entities, is supported by the evidence reviewed by Commission Staff and the conclusions contained in Part III are reasonable; and

b. it is in the public interest for the Commission to approve this Settlement Agreement, having regard to the following considerations:

(i) Commission Staff's allegations are that each of the TD Entities failed to establish, maintain and apply procedures to establish controls and supervision:

A. sufficient to provide reasonable assurance that the TD Entities, and each individual acting on behalf of the TD Entities, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and

B. that were reasonably likely to identify the non-compliance described in A. above at an early stage and that would have allowed the TD Entities to correct the non-compliant conduct in a timely manner;

(ii) Commission Staff do not allege, and have found no evidence of dishonest conduct by the TD Entities;

(iii) the TD Entities discovered and self-reported the Control and Supervision Inadequacies to Commission Staff;

(iv) during the investigation of the Control and Supervision Inadequacies following the self-reporting by the TD Entities, the TD Entities provided prompt, detailed and candid cooperation to Commission Staff, IIROC Staff and MFDA Staff;

(v) the TD Entities had formulated an intention to pay appropriate compensation to clients and former clients in connection with their report of the first three Control and Supervision Inadequacies to Commission Staff and, thereafter, the TD Entities co-operated with Commission Staff with a view to providing appropriate compensation to clients and former clients that were harmed by any of the four Control and Supervision Inadequacies (the "Affected Clients");

(vi) as part of this Settlement Agreement, the TD Entities have agreed to pay appropriate compensation to the Affected Clients, in accordance with a plan submitted by the TD Entities to Commission Staff and presented to the Commission (the "Compensation Plan"). As at the date of this Settlement Agreement, the TD Entities anticipate paying compensation to Affected Clients of over $13,500,000 in the aggregate in respect of the first three Control and Supervision Inadequacies and additional compensation in respect of the fourth Control and Supervision Inadequacy which has not yet been quantified;

(vii) the Compensation Plan prescribes, among other things:

A. the detailed methodology to be used for determining the compensation to be paid to the Affected Clients;

B. the detailed methodology to be used for determining the compensation to be paid to the Affected Clients representing the time value of money in respect of any monies owed by the TD Entities to the Affected Clients;

C. the approach to be taken with regard to contacting and making payments to the Affected Clients;

D. the timing to complete the various steps included in the Compensation Plan;

E. a $25 *de minimis* exception (the aggregate of such *de minimis* amounts as at the date of this Settlement Agreement is approximately $17,400 for the first three Control and Supervision Inadequacies as compared to $13,500,000 in compensation to be paid for the first three Control and Supervision Inadequacies, which amount will be donated to the Prosper Canada Centre for Financial Literacy);

F. the approach to be taken to any remaining funds that are not paid out to Affected Clients after the steps included in the Compensation Plan have been fully implemented. In that regard, the Compensation Plan provides that if the TD Entities are not able to contact any former Affected Clients, notwithstanding the steps described in the Compensation Plan, each TD Entity will use reasonable efforts to locate any Affected Clients who are entitled to payment of $200 or more including directory searches, internet searches, and the employment of third parties to assist in the search. If the TD Entity determines that a client is deceased but does not know the identity of the personal representative of the client's estate, and the estate is entitled to more than $400, the TD Entity shall make reasonable efforts to identify the personal representative of the deceased client. Subject to any applicable unclaimed property legislation, any amounts remaining undistributed to non-located clients by December 31, 2016 will be donated to the Prosper Canada Centre for Financial Literacy;

G. the resolution of client inquiries through an escalation process; and

H. regular reporting to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission ("OSC Manager") detailing the TD Entities' progress with respect to the implementation of the Compensation Plan, including with regard to the resolution of client inquiries;

(viii) at the request of Commission Staff, the TD Entities conducted an extensive review of their other Canadian business lines to identify whether there were any other instances of inadequacies in their systems of controls and supervision leading to clients directly paying excess fees or indirectly paying excess fees on mutual funds managed by TD Asset Management Inc. ("TDAM"), a subsidiary of The Toronto-Dominion Bank; based on this review, the TD Entities have advised Commission Staff that there are no other instances other than the four instances of Control and Supervision Inadequacies described herein;

(ix) the TD Entities are taking corrective action including implementing additional controls and supervision to address the Control and Supervision Inadequacies including establishing procedures and implementing controls, supervisory and monitoring systems designed to prevent the re-occurrence of the Control and Supervision Inadequacies in the future (the "Enhanced Control and Supervision Procedures") and, as part of this Settlement Agreement, the TD Entities are required to report to the OSC Manager on the development and implementation of the Enhanced Control and Supervision Procedures;

(x) the TD Entities have agreed to make a voluntary payment of $600,000 to the Commission to advance the Commission's mandate of protecting investors and fostering fair and efficient capital markets and to make a further voluntary payment of $50,000 to be allocated to costs;

(xi) the total agreed settlement amount of $650,000 will be paid by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission; and

(xii) the terms of this Settlement Agreement are appropriate in all the circumstances, including mitigating factors and the principles of general and specific deterrence. Commission Staff are of the view that the voluntary payments referred to above in addition to the amounts to be paid as compensation to Affected Clients by the TD Entities will emphasize to the marketplace that Commission Staff expect registrants to have compliance systems with appropriate controls and supervision in place which:

A. provide reasonable assurance that registrants, and each individual acting on behalf of registrants, are complying with securities legislation, including the requirement to deal fairly with clients including, without limitation, with regard to fees; and

B. are reasonably likely to allow registrants to identify and correct non-compliance with securities legislation in a timely manner.

11. The TD Entities neither admit nor deny the accuracy of the facts or the conclusions of Commission Staff as set out in Part III of this Settlement Agreement.

12. The TD Entities agree to this Settlement Agreement and to the making of an order in the form attached as Schedule "A".

**PART III – COMMISSION STAFF'S STATEMENT OF FACTS AND CONCLUSIONS**

**A. Overview**

13. During the period May to September 2014, the TD Entities self-reported the Control and Supervision Inadequacies to Commission Staff, IIROC Staff and MFDA Staff. The Control and Supervision Inadequacies are summarized as follows:

    a. Certain TDAM managed mutual funds with embedded advisor fees held in fee-based accounts with TDWPIC were incorrectly included in account fee calculations, thereby resulting in some clients paying excess fees during the period November 2000 to February 2014;

    b. Certain investment products with embedded advisor fees held in fee-based accounts with TD Waterhouse were incorrectly included in account fee calculations, thereby resulting in some clients paying excess fees during the period December 2007 to September 2014;

    c. Beginning in 2005, some clients of TD Waterhouse and TDIS were not advised that they qualified for a lower Management Expense Ratio ("MER") series of a TDAM managed mutual fund within the TD Managed Assets Program and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund; and

    d. Beginning in 2010, some clients of TD Waterhouse were not advised that they qualified for a lower MER series of TDAM managed mutual funds (other than those within the TD Managed Assets Program) and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund.

14. In each instance, the Control and Supervision Inadequacies continued undetected for an extended period of time. The TD Entities discovered the Control and Supervision Inadequacies following inquiries made and/or reviews conducted by the relevant TD Entities.

15. As set out in greater detail below in the section entitled Mitigating Factors, the TD Entities have taken several remedial steps in order to correct the Control and Supervision Inadequacies.

**B. The Control and Supervision Inadequacies**

16. Each of the four instances of Control and Supervision Inadequacies is described below.

**(a) Excess asset management fees paid by some TDWPIC clients**

17. TDWPIC is a discretionary asset manager. TDWPIC charges clients a direct fee based on the client's assets under management (the "PIC Fee").

18. For some TDWPIC clients, assets under management historically included Investor series units in certain TDAM managed mutual funds (the "I Series Funds"). The I Series Funds have higher MERs than other series of the same fund because they include, as part of their MERs, embedded advisor fees that are payable to advisors.

19. I Series Funds were available for purchase by TDWPIC's clients from the inception of TDWPIC in November 2000 until May 2011. TDWPIC's account and service agreements and related disclosure documents provided to clients up to May 2011 specified that certain TD mutual funds would be excluded from the calculation of the PIC Fee. TDWPIC's intention had always been to exclude the I Series Funds from the calculation of the PIC Fee. As a result, TDWPIC applied an operational procedure to exclude these assets from the calculation of the PIC Fee.

20. In July 2012, during a review requested by TDWPIC's internal compliance department, TDWPIC identified that its operational procedure to exclude the I Series Funds from the calculation of the PIC Fee was not consistently applied and, as a result, some TDWPIC clients were charged excess PIC Fees. Specifically:

    a. TDWPIC determined that it did not have adequate systems of internal controls and supervision in place to ensure that the I Series Funds were consistently excluded from the calculation of the PIC Fee;

b. TDWPIC determined that its internal controls failed to detect this Control and Supervision Inadequacy in a timely manner; and

c. TDWPIC took immediate steps to ensure that I Series Funds were consistently excluded from the calculation of the PIC Fee on a going forward basis.

21. An internal investigation was commenced by TDWPIC in July 2012 to determine the extent of the problem and how to compensate clients who paid excess PIC Fees. TDWPIC engaged independent third parties to identify, calculate and validate the amounts to be paid to clients as compensation for the excess PIC Fees paid by the clients. Having taken the steps described above, TDWPIC self-reported this Control and Supervision Inadequacy to Commission Staff in May 2014.

22. TDWPIC has determined that, as a result of this Control and Supervision Inadequacy, approximately 4,680 client accounts were charged excess PIC Fees during the period November 2000 to February 2014.

23. TDWPIC has agreed to compensate the Affected Clients of these client accounts in accordance with the Compensation Plan, which requires that TDWPIC pay to the Affected Client:

a. the excess PIC Fees;

b. an amount representing the applicable sales taxes charged on the excess PIC Fees; and

c. an amount representing the time value of money in respect of the excess PIC Fees from the time the excess PIC Fees were charged to November 30, 2014, based on composite index returns on a balanced portfolio (the "PIC Fees Foregone Investment Opportunity Cost").

24. As at the date of this Settlement Agreement, TDWPIC has determined that the total amount to be paid as compensation to these Affected Clients pursuant to the Compensation Plan, inclusive of the PIC Fees Foregone Investment Opportunity Cost, is approximately $1,700,000.

**(b) Excess asset management fees paid by some TD Waterhouse clients**

25. TD Waterhouse is an investment dealer that provides investment and wealth management services. In some cases, clients of TD Waterhouse Private Investment Advice have fee-based accounts and TD Waterhouse charges these clients a direct fee based on the client's assets under management (the "Asset Management Fee").

26. For some TD Waterhouse fee-based clients, assets under management included investment products that had embedded advisor fees included in the product's MER. Similar to TDWPIC and consistent with representations made to TD Waterhouse clients, TD Waterhouse's intention had been to exclude from the calculation of the Asset Management Fee, any series of any security that included an embedded advisor fee.

27. In or about November 2013, as a result of inquiries made by its investment advisers, TD Waterhouse discovered that a number of investment products had been incorrectly excluded from the calculation of the Asset Management Fee in some fee-based accounts, such that clients were undercharged. At that time, TD Waterhouse also discovered, in other cases, that certain investment products with embedded advisor fees had been incorrectly included in the calculation of the Asset Management Fee in some fee-based accounts, such that clients were overcharged. As a result, starting in December 2007, some TD Waterhouse clients were charged excess Asset Management Fees. At that time,

a. TD Waterhouse determined that it did not have adequate systems of internal controls in place to ensure that investment products with embedded advisor fees were appropriately classified in the TD Waterhouse billing system to ensure their consistent exclusion from the calculation of the Asset Management Fee;

b. TD Waterhouse determined that its internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and

c. Commencing in November 2013, TD Waterhouse took steps to ensure that investment products with embedded advisor fees were excluded from the calculation of the Asset Management Fee on a going forward basis.

28. Thereafter, TD Waterhouse took steps to determine the extent of the problem and how to compensate Affected Clients. TD Waterhouse self-reported this Control and Supervision Inadequacy to IIROC Staff in June 2014 and to Commission Staff in July 2014.

29. TD Waterhouse has determined that, as a result of this Control and Supervision Inadequacy, approximately 1,840 client accounts were charged excess Asset Management Fees during the period December 2007 to September 2014.

30. TD Waterhouse has agreed to compensate the Affected Clients of these client accounts in accordance with the Compensation Plan, which requires that TD Waterhouse pay to the Affected Clients:

    a. the excess Asset Management Fees;

    b. an amount representing the applicable sales taxes charged on the excess Asset Management Fees; and

    c. an amount representing the time value of money in respect of the excess Asset Management Fees from the time the excess Asset Management Fees were charged to November 30, 2014, based on a simple interest rate of 5% per annum calculated monthly (the "Asset Management Fees Foregone Investment Opportunity Cost").

31. Where Asset Management Fees were undercharged to the client, the benefit of those undercharges will not be set off against any compensation amounts paid to the client. The undercharges will also not otherwise be charged to Affected Clients or any other clients.

32. As at the date of this Settlement Agreement, TD Waterhouse has determined that the total amount to be paid as compensation to these Affected Clients pursuant to the Compensation Plan is approximately $780,000, inclusive of the Asset Management Fee Foregone Investment Opportunity Cost.

**(c) Excess management fees paid by some clients of TD Waterhouse and TDIS who invested in the TD Managed Assets Program**

33. The TD Managed Assets Program consists of sixteen mutual funds managed by TDAM.

34. The TD Managed Assets Program mutual funds are available in different series. The MER differs for each series of the same mutual fund with the MER being lower for series with higher minimum investment thresholds (the "Premium Series").

35. Beginning in November 2005 and up to June 30, 2014, the majority of the TD Managed Assets Program mutual funds offered Premium series that were generally available to TD Waterhouse and TDIS clients where the amount invested was $250,000 or greater. The MERs for the Premium Series were generally 50 basis points lower than the other series available for the same mutual fund.

36. In September 2013, TD Waterhouse conducted a review of the minimum investment thresholds (the "Threshold Review") with respect to the TD Managed Assets Program which resulted in a lowering of the minimum investment thresholds for the Premium Series to $150,000 beginning in July, 2014. In July, 2014, the Premium Series of the TD Managed Assets Program were no longer offered by TDIS.

37. In the context of the Threshold Review, TD Waterhouse discovered, in September 2013, that certain client accounts invested in a TD Managed Assets Program mutual fund that appeared to qualify for a Premium Series of the mutual fund were not invested in that series and therefore the holders of those client accounts did not benefit from the Premium Series' lower MER with regard to their investment in the mutual fund. TDIS became aware of the issue in or around April 2014. Specifically,

    a. TD Waterhouse and TDIS determined that they did not have adequate systems of internal controls and supervision in place to ensure that when a purchase or transfer of investments in a TD Managed Assets Program mutual fund exceeded the minimum investment thresholds, the client was consistently advised that a lower MER Premium Series of the same mutual fund was available to the client;

    b. TD Waterhouse and TDIS determined that their internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and

    c. TD Waterhouse and TDIS began to implement enhancements to their processes to help identify clients that meet the minimum investments thresholds required to qualify for the Premium Series.

38. TD Waterhouse and TDIS engaged independent third parties to identify, calculate and validate the amounts to be paid to clients as appropriate compensation.

39. TD Waterhouse and TDIS self-reported this Control and Supervision Inadequacy to Commission Staff, IIROC Staff and MFDA Staff in July 2014.

40. TD Waterhouse has determined that there are approximately 3,960 client accounts that ought to have been invested in the Premium series of the same mutual fund but were not from November 2005 to the date of this Settlement Agreement.

41. In accordance with the Compensation Plan, in respect of those client accounts, TD Waterhouse has agreed to pay:

    a. an amount representing the return that the Affected Client would have received on any units held by the client of a TD Managed Asset Program mutual fund had the client been invested in the Premium Series units of that mutual fund in a timely manner upon becoming eligible to invest in the Premium Series, less the return actually received by the Affected Client on any Non-Premium Series units held in that mutual fund for the entire period in which the Affected Client qualified for the Premium Series units of that mutual fund (the "Difference in Return"); and

    b. an amount representing the time value of money in respect of the Difference in Return in respect of any Non-Premium Series units from the date of sale, conversion, transfer or disposition of such units for any periods up to November 30, 2014, based on a simple interest rate of 5% per annum calculated monthly (the "TD MAP Foregone Investment Opportunity Cost").

42. On this basis, TD Waterhouse has determined that the total compensation to be paid to Affected Clients as a result of this Control and Supervision Inadequacy is approximately $11,080,000, inclusive of the TD MAP Foregone Investment Opportunity Cost, where applicable.

43. TDIS has determined that there were approximately 40 current client accounts that held TD Managed Assets Program mutual funds as at April 30, 2014 that ought to have been invested in the Premium Series of the mutual fund but were not. TDIS has agreed to compensate these current clients on the same basis as set out above in relation to TD Waterhouse clients. TDIS has determined that the total compensation to be paid to these current clients pursuant to the Compensation Plan is approximately $291,000.00 inclusive of Foregone Investment Opportunity Cost, based on a simple interest rate of 5% per annum calculated monthly, where applicable.

44. In addition, TDIS has also agreed to compensate current TDIS clients and former TDIS clients (where the former client's account data is available on the electronic database currently used by TDIS) that formerly held a TD Managed Assets Program mutual fund with TDIS and ought to have been invested in the Premium Series of the mutual fund but were not. TDIS has agreed to quantify compensation and compensate these Affected Clients on the same basis as set out above. In addition, as part of the Compensation Plan, TDIS will provide regular reporting to the OSC Manager regarding the compensation of these Affected Clients in accordance with the Compensation Plan.

45. In the event that any former TDIS client, whose account data is unavailable on the TDIS electronic database, contacts TDIS and provides information in support of a claim that the client would have been entitled to compensation sufficient to allow TDIS, acting reasonably, to verify such claim, TDIS will make reasonable efforts to verify such claim and compensate the client in the same manner as an Affected Client.

**(d) Excess management fees paid by some TD Waterhouse clients who invested in other TDAM managed mutual funds where Premium Series were available**

46. In addition to the TD Managed Assets Program mutual funds, TD Waterhouse offers other mutual funds managed by TDAM to their clients which are available in a Premium Series with a lower MER to investors that meet certain minimum investment thresholds. TDIS offers one such fund, however no MER differential currently exists. TD Waterhouse offers five mutual funds managed by TDAM for which a Premium Series became available in September 2010 and two additional mutual funds managed by TDAM for which a Premium Series became available in May 2013 (collectively the "Other TDAM Managed Mutual Funds"). In each case, the minimum investment thresholds for the Premium Series of the Other TDAM Managed Mutual Funds are generally $100,000 and the MER is 0 to 52 basis points lower than the MER for the equivalent non-premium series for the same mutual fund.

47. In June 2014, following the Threshold Review for the TD Managed Assets Program, TD Waterhouse conducted a review of the Other TDAM Managed Mutual Funds and identified that a Control and Supervision Inadequacy similar to the one described above for the TD Managed Assets Program existed for these Other TDAM Managed Mutual Funds. In particular, TD Waterhouse determined that certain client accounts that appeared to qualify for the Premium Series of the same mutual fund were not invested in that series and therefore the holders of those client accounts did not benefit from the Premium Series' lower MER with regard to their investments in the Other TDAM Managed Mutual Funds. Specifically,

a. TD Waterhouse determined that it did not have adequate systems of internal controls and supervision in place to ensure that clients were consistently advised that the lower MER Premium Series of the same mutual fund was available to them when their purchase or transfer of investments in one of these Other TDAM Managed Mutual Funds brought them over the minimum investment thresholds;

b. TD Waterhouse determined that its internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and

c. TD Waterhouse began to implement enhancements to its processes to help identify clients that meet the minimum investments thresholds required to qualify for the Premium Series.

48. TD Waterhouse self-reported this Control and Supervision Inadequacy to Commission Staff and IIROC Staff in September 2014.

49. As part of the Compensation Plan, TD Waterhouse has agreed to pay compensation to Affected Clients as a result of this Control and Supervision Inadequacy following a calculation methodology that is the same as the methodology employed to calculate compensation for Affected Clients of the TD Managed Assets Program described in paragraph 41 above. The calculation and validation of compensation payments to clients will be performed by an independent third party. Any differences in the method of payment will be subject to approval by the OSC Manager. In addition, as part of the Compensation Plan, TD Waterhouse is required to provide regular reporting to the OSC Manager regarding the compensation of these Affected Clients in accordance with the Compensation Plan.

**C. Breaches of Ontario Securities Law**

50. In each of the four instances of Control and Supervision Inadequacies, the relevant TD Entities failed to establish, maintain and apply procedures to establish controls and supervision:

a. sufficient to provide reasonable assurance that the TD Entities, and each individual acting on behalf of the TD Entities, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and

b. that were reasonably likely to identify the non-compliance described in a. above at an early stage and that would have allowed the TD Entities to correct the non-compliant conduct in a timely manner.

51. As a result, each of the four instances of Control and Supervision Inadequacies constituted a breach of section 11.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103"). In addition, the failures in the TD Entities' systems of controls and supervision associated with the Control and Supervision Inadequacies were contrary to the public interest.

**D. Mitigating Factors**

52. Commission Staff's allegations are that each of the TD Entities failed to establish, maintain and apply procedures to establish controls and supervision:

a. sufficient to provide reasonable assurance that the TD Entities, and each individual acting on behalf of the TD Entities, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and

b. that were reasonably likely to identify the non-compliance described in a. above at an early stage and that would have allowed the TD Entities to correct the non-compliant conduct in a timely manner

and that these failures resulted in breaches of Ontario securities law.

53. Commission Staff do not allege, and have found no evidence of dishonest conduct by the TD Entities.

54. The TD Entities discovered and self-reported the Control and Supervision Inadequacies to Commission Staff.

55. During the investigation of the Control and Supervision Inadequacies following the self-reporting by the TD Entities, the TD Entities provided prompt, detailed and candid cooperation to Commission Staff, IIROC Staff and MFDA Staff.

56. The TD Entities had formulated an intention to pay appropriate compensation to clients and former clients in connection with their report of the first three Control and Supervision Inadequacies to Commission Staff and, thereafter, the TD

Entities co-operated with Commission Staff with a view to providing appropriate compensation to the Affected Clients that were harmed by any of the four Control and Supervision Inadequacies.

57. As part of this Settlement Agreement, the TD Entities have agreed to pay appropriate compensation to the Affected Clients, in accordance with the Compensation Plan. As at the date of this Settlement Agreement, the TD Entities anticipate paying compensation to Affected Clients of over $13,500,000 in the aggregate in respect of the first three Control and Supervision Inadequacies and additional compensation in respect of the fourth Control and Supervision Inadequacy which has not yet been quantified.

58. The Compensation Plan prescribes, among other things:

a. the detailed methodology to be used for determining the compensation to be paid to the Affected Clients;

b. the detailed methodology to be used for determining the compensation to be paid to the Affected Clients representing the time value of money in respect of any monies owed by the TD Entities to the Affected Clients;

c. the approach to be taken with regard to contacting and making payments to the Affected Clients;

d. the timing to complete the various steps included in the Compensation Plan and the person(s) responsible for implementation of these steps;

e. a $25 *de minimis* exception (the aggregate of such *de minimis* amounts as at the date of this Settlement Agreement is approximately $17,400 for the first three Control and Supervision Inadequacies as compared to $13,500,000 in compensation to be paid for the first three Control and Supervision Inadequacies, which amount will be donated to the Prosper Canada Centre for Financial Literacy);

f. the approach to be taken to any remaining funds that are not paid out to Affected Clients after the steps included in the Compensation Plan have been fully implemented. In that regard, the Compensation Plan provides that if the TD Entities are not able to contact any former Affected Clients, notwithstanding the steps described in the Compensation Plan, each TD Entity will use reasonable efforts to locate any Affected Clients who are entitled to payment of $200 or more including directory searches, internet searches, and the employment of third parties to assist in the search. If the TD Entity determines that a client is deceased but does not know the identity of the personal representative of the client's estate, and the estate is entitled to more than $400, the TD Entity shall make reasonable efforts to identify the personal representative of the deceased client. Subject to any applicable unclaimed property legislation, any amounts remaining undistributed to non-located clients on December 31, 2017 will be donated to the Prosper Canada Centre for Financial Literacy;

g. the resolution of client complaints through an escalation process; and

h. regular reporting to the OSC Manager detailing the TD Entities' progress with respect to the implementation of the Compensation Plan, including with regard to the resolution of client inquiries.

59. At the request of Commission Staff, the TD Entities conducted an extensive review of their other Canadian business lines to identify whether there were any other instances of inadequacies in their systems of controls and supervision leading to clients directly paying excess fees or indirectly paying excess fees on TDAM managed mutual funds; based on this review, the TD Entities have advised Commission Staff that there are no other instances other than the four instances of Control and Supervision Inadequacies described herein.

60. The TD Entities are taking corrective action including implementing the Enhanced Control and Supervision Procedures and, as part of this Settlement Agreement, the TD Entities are required to report to the OSC Manager on the development and implementation of the Enhanced Control and Supervision Procedures.

61. The TD Entities have agreed to make a voluntary payment of $600,000 to the Commission to advance the Commission's mandate of protecting investors and fostering fair and efficient capital markets and to make a further voluntary payment of $50,000 to be allocated to costs.

62. The TD Entities will pay the total agreed settlement amount of $650,000 by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission.

63. The terms of settlement are appropriate in all the circumstances, including mitigating factors and the principles of general and specific deterrence. Commission Staff are of the view that the voluntary payments referred to above in

addition to the amounts to be paid as compensation to Affected Clients by the TD Entities will emphasize to the marketplace that Commission Staff expect registrants to have compliance systems with appropriate controls and supervision in place which:

a. provide reasonable assurance that registrants, and each individual acting on behalf of registrants, are complying with securities legislation, including the requirement to deal fairly with clients, including, without limitation, with regard to fees; and

b. are reasonably likely to allow registrants to identify and correct non-compliance with securities legislation in a timely manner.

**E. The TD Entities' Undertaking**

64. By signing this Settlement Agreement, the TD Entities undertake to:

a. pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Compensation Plan;

b. make a voluntary payment of $50,000 to be allocated to the costs of the investigation in accordance with subsection 3.4(2)(a) of the Act; and

c. make a further voluntary payment of $600,000 to be designated for allocation to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

(the "Undertaking")

**PART IV – TERMS OF SETTLEMENT**

65. The TD Entities agree to the terms of settlement listed below and consent to the Order attached hereto, pursuant to subsection 127(1) and section 127.1 of the Act, that:

a. the Settlement Agreement is approved;

b. within 90 days of the Order approving this Settlement Agreement, the TD Entities shall provide to the OSC Manager, revised written policies and procedures for each of the TD Entities (the "Revised Policies and Procedures") that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Staff as at the date of the Order approving this Settlement Agreement with regard to the TD Entities' policies and procedures to establish the Enhanced Control and Supervision Procedures;

c. within 8 months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the remaining issues raised by Staff (the "Confirmation Date"), the TD Entities shall submit a letter (the "Attestation Letter"), signed by the Ultimate Designated Person ("UDP") and the Chief Compliance Officer ("CCO") for each of the TD Entities, to the OSC Manager, on whether the Enhanced Control and Supervision Procedures are (i) being followed by the TD Entities; (ii) working appropriately; and (iii) being adequately administered and enforced by the TD Entities for the six month period commencing from the Confirmation Date;

d. the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;

e. the TD Entities shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the TD Entities have complied with subparagraphs (c)(i), (ii) and (iii) above;

f. any of the TD Entities or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b) to (e) above; and

g. the TD Entities shall comply with the Undertaking to:

i. pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Compensation Plan;

ii. make a voluntary payment of $50,000 to be allocated to the costs of the investigation in accordance with subsection 3.4(2)(a) of the Act; and

iii. make a further voluntary payment of $600,000 to be designated for allocation to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

66. The TD Entities agree to make the payments described above by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement.

**PART V – COMMISSION STAFF COMMITMENT**

67. If the Commission approves this Settlement Agreement, Commission Staff will not commence any proceeding under Ontario securities law in relation to the Commission Staff's Statement of Facts and Conclusions set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 68 below and except that with respect to paragraph 59 above, nothing in this Settlement Agreement shall be interpreted as limiting Commission Staff's ability to commence proceedings against the TD Entities in relation to any control and supervision inadequacies leading to clients paying excess fees other than the four Control and Supervision Inadequacies described herein.

68. If the Commission approves this Settlement Agreement and any of the TD Entities fails to comply with any of the terms of this Settlement Agreement, Commission Staff may bring proceedings under Ontario securities law against the TD Entities. These proceedings may be based on, but are not limited to, the Commission Staff's Statement of Facts and Conclusions set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

**PART VI – PROCEDURE FOR APPROVAL OF SETTLEMENT**

69. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for November 13, 2014, or on another date agreed to by Commission Staff and the TD Entities, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

70. Commission Staff and the TD Entities agree that this Settlement Agreement will form all of the evidence that will be submitted at the settlement hearing on the TD Entities' conduct, unless the parties agree that additional evidence should be submitted at the settlement hearing.

71. If the Commission approves this Settlement Agreement, the TD Entities agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

72. If the Commission approves this Settlement Agreement, the TD Entities will not make any public statement that is inconsistent with this Settlement Agreement or with any additional evidence submitted at the settlement hearing. In addition, the TD Entities agree that they will not make any public statement that there is no factual basis for this Settlement Agreement. Nothing in this paragraph affects the TD Entities' testimonial obligations or the right to take legal or factual positions in other investigations or legal proceedings in which the Commission and/or Commission Staff is not a party or in which any provincial or territorial securities regulatory authority in Canada and/or its Commission Staff is not a party ("Other Proceedings") or to make public statements in connection with Other Proceedings.

73. Whether or not the Commission approves this Settlement Agreement, the TD Entities will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

**PART VII – DISCLOSURE OF SETTLEMENT AGREEMENT**

74. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

a. this Settlement Agreement and all discussions and negotiations between Commission Staff and the TD Entities before the settlement hearing takes place will be without prejudice to Commission Staff and the TD Entities; and

b. Commission Staff and the TD Entities will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any

proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

75. All of the parties will keep the terms of this Settlement Agreement confidential until the commencement of the public hearing to obtain approval of this Settlement Agreement by the Commission. Any obligations of confidentiality shall terminate upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve this Settlement Agreement, the terms of this Settlement Agreement remain confidential indefinitely, unless Commission Staff and the TD Entities otherwise agree or if required by law.

**PART VIII – EXECUTION OF SETTLEMENT AGREEMENT**

76. This agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

77. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated this 7th day of November, 2014

"David A. Hausman"
Witness

TD Waterhouse Private Investment Counsel Inc.
"Paul Whitehead Jr."
Per: Paul Whitehead, Jr.

"David A. Hausman"
Witness

TD Waterhouse Canada Inc.
"Leovigildo Salom Jr."
Per: Leovigildo Salom, Jr.

"David A. Hausman"
Witness

TD Investment Services Inc.
"Thomas Dyck"
Per: Thomas Dyck

"Kelly Gorman"
For Tom Atkinson
Director, Enforcement Branch

**SCHEDULE "A"**

**IN THE MATTER OF**
**THE SECURITIES ACT,**
**R.S.O. 1990, c. S.5, AS AMENDED**

**AND**

**IN THE MATTER OF**
**TD WATERHOUSE PRIVATE INVESTMENT COUNSEL INC.,**
**TD WATERHOUSE CANADA INC.**
**and TD INVESTMENT SERVICES INC.**

**ORDER**
**(Subsections 127(1) and 127(2) and section 127.1)**

**WHEREAS** on November 7, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) and 127(2) and section 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in relation to the Statement of Allegations filed by Staff of the Commission ("Commission Staff") on November 7, 2014 with respect to TD Waterhouse Private Investment Counsel Inc. ("TDWPIC"), TD Waterhouse Canada Inc. ("TD Waterhouse") and TD Investment Services Inc. ("TDIS") (collectively, the "TD Entities") relating to four allegations of control and supervision inadequacies which resulted in clients of the TD Entities paying excess fees (the "Control and Supervision Inadequacies");

**AND WHEREAS** Commission Staff are satisfied that the TD Entities discovered and self-reported the Control and Supervision Inadequacies to Commission Staff;

**AND WHEREAS** Commission Staff are satisfied that during the investigation of the Control and Supervision Inadequacies by Commission Staff, the TD Entities provided prompt, detailed and candid cooperation to Commission Staff, IIROC Staff and MFDA Staff;

**AND WHEREAS** Commission Staff are satisfied that the TD Entities had formulated an intention to pay appropriate compensation to clients and former clients in connection with their report of the first three Control and Supervision Inadequacies to Commission Staff;

**AND WHEREAS** Commission Staff are satisfied that thereafter, the TD Entities co-operated with Commission Staff and agreed to pay appropriate compensation to clients and former clients that were harmed by any of the four Control and Supervision Inadequacies (the "Affected Clients"), in accordance with a plan submitted by the TD Entities to Commission Staff (the "Compensation Plan");

**AND WHEREAS** the TD Entities entered into a Settlement Agreement with Commission Staff dated November 7, 2014 (the "Settlement Agreement") in which the TD Entities and Commission Staff agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated November 7, 2014, subject to approval by the Commission;

**AND WHEREAS** as part of the Settlement Agreement, the TD Entities undertake to:

a. pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Compensation Plan;

b. make a voluntary payment of $50,000 to be allocated to the costs of the investigation in accordance with subsection 3.4(2)(a) of the Act; and

c. make a further voluntary payment of $600,000 to be designated for allocation to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

(the "Undertaking")

**AND WHEREAS** the Notice of Hearing issued on November 7, 2014 also announced that the Commission proposed to hold a hearing to consider whether it is in the public interest to approve the Settlement Agreement;

**AND UPON** reviewing the Settlement Agreement, the Notices of Hearing and the Statement of Allegations of Commission Staff and upon hearing submissions of counsel for the TD Entities and from Commission Staff;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this order;

**IT IS HEREBY ORDERED THAT:**

a) the Settlement Agreement is approved;

b) within 90 days of the Order approving the Settlement Agreement, the TD Entities shall provide to the OSC Manager, revised written policies and procedures for each of the TD Entities (the "Revised Policies and Procedures") that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Staff as at the date of the Order approving this Settlement Agreement with regard to the TD Entities' policies and procedures to establish the Enhanced Control and Supervision Procedures;

c) within 8 months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the remaining issues raised by Staff (the "Confirmation Date"), the TD Entities shall submit a letter (the "Attestation Letter"), signed by the Ultimate Designated Person ("UDP") and the Chief Compliance Officer ("CCO") for each of the TD Entities, to the OSC Manager, on whether the Enhanced Control and Supervision Procedures are (i) being followed by the TD Entities; (ii) working appropriately; and (iii) being adequately administered and enforced by the TD Entities for the six month period commencing from the Confirmation Date;

d) the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;

e) the TD Entities shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the TD Entities have complied with subparagraphs (c)(i), (ii) and (iii) above;

f) any of the TD Entities or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b) to (e) above; and

g) the TD Entities shall comply with the Undertaking to:

   i. pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Compensation Plan;

   ii. make a voluntary payment of $50,000 to be allocated to the costs of the investigation in accordance with subsection 3.4(2)(a) of the Act; and

   iii. make a further voluntary payment of $600,000 to be designated for allocation to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act.

**DATED** at Toronto, Ontario this _____ day of November, 2014

# Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

| Company Name | Date of Temporary Order | Date of Hearing | Date of Permanent Order | Date of Lapse/Revoke |
|---|---|---|---|---|
| Argonaut Exploration Inc. | 5 November 14 | 17 November 14 | 17 November 14 | |
| EmberClear Corp. | 5 November 14 | 17 November 14 | 17 November 14 | |

### 4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

| Company Name | Date of Order or Temporary Order | Date of Hearing | Date of Permanent Order | Date of Lapse/ Expire | Date of Issuer Temporary Order |
|---|---|---|---|---|---|
| | | | | | |

**THERE ARE NO ITEMS TO REPORT THIS WEEK.**

### 4.2.2 Outstanding Management & Insider Cease Trading Orders

| Company Name | Date of Order or Temporary Order | Date of Hearing | Date of Permanent Order | Date of Lapse/ Expire | Date of Issuer Temporary Order |
|---|---|---|---|---|---|
| Besra Gold Inc. | 10 October 14 | 22 October 14 | 22 October 14 | | |

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## Chapter 7

# Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

## Chapter 8

# Notice of Exempt Financings

**REPORT OF TRADES ON FORM 45-106F1 AND 45-501F1**

There are no Reports of Exempt Distribution on Forms 45-106F1 or 45-501F1 (Reports) in this Bulletin.

Reports filed on or after February 19, 2014 must be filed electronically.

As a result of the transition to mandated electronic filings, the OSC is considering the most effective manner to make data about filed Reports available to the public, including whether and how this information should be reflected in the Bulletin. In the meantime, Reports filed with the Commission continue to be available for public inspection during normal business hours.

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## Chapter 11

# IPOs, New Issues and Secondary Financings

**Issuer Name:**
Ag Growth International Inc.
Principal Regulator - Manitoba
**Type and Date:**
Preliminary Short Form Prospectus dated November 17, 2014
NP 11-202 Receipt dated November 17, 2014
**Offering Price and Description:**
$45,013,850 - 967,000 Subscription Receipts
each representing the right to receive one Common Share
Price: $46.55 per Subscription Receipt
and
$45,000,000 - 5.25% Extendible Convertible Unsecured Subordinated Debentures
Price: $1,000 per Debenture
**Underwriter(s) or Distributor(s):**
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
CORMARK SECURITIES INC.
ALTACORP CAPITAL INC.
LAURENTIAN BANK SECURITIES INC.
PARADIGM CAPITAL INC.
**Promoter(s):**
-
**Project** #2277210

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**Issuer Name:**
AGF Global Convertible Bond Fund
Principal Regulator - Ontario
**Type and Date:**
Amended and Restated Preliminary Simplified Prospectus dated November 14, 2014
NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
Mutual Fund Series, Series F, Series O, Series Q, Series V and Series W Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
AGF Investments Inc.
**Project** #2276226

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**Issuer Name:**
Aston Hill Voya Floating Rate Income Fund
Aston Hill Strategic Yield Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectuses dated November 10, 2014
NP 11-202 Receipt dated November 11, 2014
**Offering Price and Description:**
Series A, F, I, UA and UF Units
**Underwriter(s) or Distributor(s):**
Aston Hill Asset Management Inc.
**Promoter(s):**
Aston Hill Asset Management Inc.
**Project** #2277236

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**Issuer Name:**
Cambridge U.S. Dividend Registered Fund
Marret Investment Grade Bond Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectuses dated November 13, 2014
NP 11-202 Receipt dated November 13, 2014
**Offering Price and Description:**
Class A, E, F, I and O Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
CI Investments Inc.
**Project** #2278576

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**Issuer Name:**
Cominar Real Estate Investment Trust
Principal Regulator - Quebec
**Type and Date:**
Preliminary Base Shelf Prospectus dated November 12, 2014
NP 11-202 Receipt dated November 12, 2014
**Offering Price and Description:**
$1,500,000,000.00
Units
Debt Securities
Warrants
Subscription Receipts

**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #2277771

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**Issuer Name:**
Dividend Growth Split Corp.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated November 14, 2014
NP 11-202 Receipt dated November 17, 2014
**Offering Price and Description:**
Maximum: $ * - * Up to * Preferred Shares and * Class A Shares
Prices: $ * per Preferred Share and $ * per Class A Share
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
TD Securities Inc.
National Bank Financial Inc.
GMP Securities L.P.
Raymond James Ltd.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Dundee Securities Ltd.
Industrial Alliance Securities Inc.
Mackie Research Capital Corporation
Manulife Securities Incorporated
**Promoter(s):**
-
**Project** #2279802

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**Issuer Name:**
Elkwater Resources Ltd.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Short Form Prospectus dated November 13, 2014
NP 11-202 Receipt dated November 13, 2014
**Offering Price and Description:**
$90,000,000.00 - 240,000,000 Common Shares and 120,000,000 Warrants issuable upon the exercise of 240,000,000 issued and outstanding Subscription Receipts
Price: $0.375 per Subscription Receipt
**Underwriter(s) or Distributor(s):**
Desjardins Securities Inc.
TD Securities Inc.
FirstEnergy Capital Corp.
Dundee Securities Ltd.
Clarus Securities Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
Cormark Securities Inc.
GMP Securities L.P.
Scotia Capital Inc.

**Promoter(s):**
-
**Project** #2278956

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**Issuer Name:**
Horizons Cdn Insider Index ETF
Horizons S&P/TSX Composite Shareholder Yield Index ETF
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated November 17, 2014
NP 11-202 Receipt dated November 17, 2014
**Offering Price and Description:**
Class A Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
HORIZONS ETFs MANAGEMENT (CANADA) INC.
**Project** #2280222

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**Issuer Name:**
InnVest Real Estate Investment Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated November 12, 2014
NP 11-202 Receipt dated November 12, 2014
**Offering Price and Description:**
$63,262,500.00 - 12,050,000 Units
Price: $5.25 per Unit
**Underwriter(s) or Distributor(s):**
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
**Promoter(s):**
-
**Project** #2275964

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**Issuer Name:**
Killam Properties Inc.
Principal Regulator - Nova Scotia
**Type and Date:**
Preliminary Short Form Prospectus dated November 14, 2014
NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
$40,090,000.00 - 3,800,000 Common Shares
Price: $10.55 per Common Share
**Underwriter(s) or Distributor(s):**
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
DUNDEE SECURITIES LTD.
GMP SECURITIES L.P.
BROOKFIELD FINANCIAL CORP.
**Promoter(s):**
-
**Project** #2277001

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**Issuer Name:**
KWG Resources Inc.
Principal Regulator - Quebec
**Type and Date:**
Amended and Restated Preliminary Short Form Prospectus dated November 13, 2014
NP 11-202 Receipt dated November 13, 2014
**Offering Price and Description:**
Minimum Offering $4,000,000 - Maximum Offering $10,000,000
Up to 50,000,000 Units
Price: 0.15 per Unit
and
Up to 50,000,000 Flow-Through Shares
Price: $0.05 per Flow-Through Share
**Underwriter(s) or Distributor(s):**
Secutor Capital Management Corporation
**Promoter(s):**
-
**Project** #2245835

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**Issuer Name:**
Mira VI Acquisition Corp.
Principal Regulator - Ontario
**Type and Date:**
Preliminary CPC Prospectus dated November 14, 2014
NP 11-202 Receipt dated November 17, 2014
**Offering Price and Description:**
$250,000 - 2,500,000 Common Shares
Price: $0.10 per Common Share
**Underwriter(s) or Distributor(s):**
Richardson GMP Limited
**Promoter(s):**
Ronald D. Schmeichel
**Project** #2279873

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**Issuer Name:**
Monarques Resources Inc.
Principal Regulator - Quebec
**Type and Date:**
Preliminary Short Form Prospectus dated November 10, 2014
NP 11-202 Receipt dated November 11, 2014
**Offering Price and Description:**
Minimum Offering: $1,500,000.00 - A minimum of 2,307,692 A Units, 1,000 B Units and 1,250,000 C Units
Maximum Offering: $3,000,000.00 - Subject to the Minimum Offering, any combination of A Units, B Units and C Units
Price: $0.13 per A Unit, $1,000 per B Unit and $0.16 per C Unit
**Underwriter(s) or Distributor(s):**
Industrial Alliance Securities Inc.
**Promoter(s):**
-
**Project** #2277069

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**Issuer Name:**
NEI Global Strategic Yield Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectus dated November 14, 2014
NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
Series A units, Series F units, Series I units, Series T units, Series P units and Series PF Units
**Underwriter(s) or Distributor(s):**
Credential Asset Management Inc.
**Promoter(s):**
Northwest & Ethical Investments Inc.
**Project** #2279622

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**Issuer Name:**
NorthWest International Healthcare Properties Real Estate Investment Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated November 11, 2014
NP 11-202 Receipt dated November 11, 2014
**Offering Price and Description:**
$30,001,100.00 - 13,954,000 Units
Price: $2.15 per Unit
**Underwriter(s) or Distributor(s):**
National Bank Financial Inc.
GMP Securities L.P.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
Scotia Capital Inc.
Dundee Securities Ltd.
Raymond James Ltd.
Manulife Securities Incorporated
Laurentian Bank Securities Inc.
Mackie Research Capital Corporation
All Group Financial Services Inc.
**Promoter(s):**
-
**Project** #2274991

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**Issuer Name:**
Paramount Resources Ltd.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Base Shelf Prospectus dated November 14, 2014
NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
$800,000,000.00
Debt Securities
Class A Common Shares
Subscription Receipts
Warrants
Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #2279785

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**Issuer Name:**
Power Corporation of Canada
Principal Regulator - Quebec
**Type and Date:**
Preliminary Base Shelf Prospectus dated November 17, 2014
NP 11-202 Receipt dated November 17, 2014
**Offering Price and Description:**
$2,000,000,000.00
Debt Securities (unsecured)
Subordinate Voting Shares
First Preferred Shares
Subscription Receipts
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #2280246

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**Issuer Name:**
Power Financial Corporation
Principal Regulator - Quebec
**Type and Date:**
Preliminary Base Shelf Prospectus dated November 17, 2014
NP 11-202 Receipt dated November 17, 2014
**Offering Price and Description:**
$3,000,000,000.00
Debt Securities (unsecured)
Common Shares
First Preferred Shares
Subscription Receipts
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #2280254

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**Issuer Name:**
REALnorth Opportunities Fund
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Long Form Prospectus dated November 14, 2014
NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
Maximum: $30,000,000.00 - 30,000 Trust Units
Minimum: $18,000,000.00 -18,000 Trust Units
Price: $1,000.00 per Trust Units
**Underwriter(s) or Distributor(s):**
Dundee Securities Ltd.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
Canaccord Geunity Corp.
GMP Securities L.P.
National Bank Financial Inc.
Burgeovnest Bick Securities Ltd.
Raymond James Ltd.
Integral Wealth Securities Limited
**Promoter(s):**
REALnorth Opportunites Inc.
**Project** #2280048

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**Issuer Name:**
Bell Canada
Principal Regulator - Quebec
**Type and Date:**
Final Base Shelf Prospectus dated November 14, 2014
NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
$4,000,000,000.00
Debt Securities
(UNSECURED)
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #2276279

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**Issuer Name:**
Brookfield Office Properties Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Base Shelf Prospectus dated November 13, 2014
NP 11-202 Receipt dated November 13, 2014
**Offering Price and Description:**
C$1,000,000,000.00
Class AAA Preference Shares
Debt Securities
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #2276233

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**Issuer Name:**
Carlaw Capital V Corp.
Principal Regulator - Ontario
**Type and Date:**
Final CPC Prospectus dated November 12, 2014
NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
MINIMUM OFFERING: $300,000.00 or 1,500,000 Common Shares
MAXIMUM OFFERING: $400,000.00 or 2,000,000 Common Shares
PRICE: $0.20 per Common Share
**Underwriter(s) or Distributor(s):**
Canaccord Genuity Corp.
**Promoter(s):**
Amar Bhalla
**Project** #2268985

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**Issuer Name:**
Fidelity Conservative Income Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 units)
Fidelity U.S. Bond Investment Trust
(Series O units)
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated November 13, 2014
NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
Series B, Series O, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 units
**Underwriter(s) or Distributor(s):**
Fidelity Investments Canada ULC
**Promoter(s):**
FIDELITY INVESTMENTS CANADA ULC
**Project** #2267943

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**Issuer Name:**
Horizons Cdn Equity Managed Risk ETF (formerly Horizons Canadian Black Swan ETF)
Horizons US Equity Managed Risk ETF (formerly Horizons US Black Swan ETF)
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated November 12, 2014 to the Long Form Prospectus dated May 9, 2014
NP 11-202 Receipt dated November 13, 2014
**Offering Price and Description:**
Advisor Class Units and Class E Units @ net asset value
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
ALPHAPRO MANAGEMENT INC.
**Project** #2188617

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**Issuer Name:**
LAURENTIAN BANK OF CANADA
Principal Regulator - Quebec
**Type and Date:**
Final Base Shelf Prospectus dated November 10, 2014
NP 11-202 Receipt dated November 11, 2014
**Offering Price and Description:**
$1,000,000,000.00
Debt Securities (subordinated indebtedness)
Common Shares
Class A Preferred Shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #2265570

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**Issuer Name:**
relating to the units of the following series
Regular Front End Load, Regular F, High Net Worth Front End Load,
High Net Worth F, Ultra High Net Worth Front End Load and Institutional Front End Load, Deferred Load and Low Load (the "Series") of
NexGen Canadian Cash Fund
NexGen Canadian Bond Fund
NexGen Corporate Bond Fund
NexGen Canadian Diversified Income Registered Fund
NexGen Turtle Canadian Balanced Registered Fund
NexGen Intrinsic Balanced Registered Fund
NexGen Canadian Dividend Registered Fund
NexGen Turtle Canadian Equity Registered Fund
NexGen North American Large Cap Registered Fund
NexGen Intrinsic Growth Registered Fund
NexGen U.S. Dividend Plus Registered Fund
NexGen U.S. Growth Registered Fund
NexGen Global Equity Registered Fund
and relating to units of the following series
Regular Front End Load, Regular F, Institutional Front End Load,
Deferred Load and Low Load (the "Preferred Series") of
NexGen Canadian Preferred Share Registered Fund
and relating to shares of the Series of
NexGen Canadian Cash Tax Managed Fund
and relating to shares of the Series of
Return of Capital 40 Class, Dividend Tax Credit 40 Class, Capital Gains Class,
Return of Capital Class, Dividend Tax Credit Class and Compound Growth Class of
NexGen Canadian Bond Tax Managed Fund
and relating to shares of the Series of
Capital Gains Class, Return of Capital 40 Class,
Dividend Tax Credit 40 Class and Compound Growth Class of
NexGen Corporate Bond Tax Managed Fund
NexGen Turtle Canadian Balanced Tax Managed Fund
NexGen Turtle Canadian Equity Tax Managed Fund
NexGen Intrinsic Growth Tax Managed Fund
NexGen U.S. Dividend Plus Tax Managed Fund
NexGen U.S. Growth Tax Managed Fund
NexGen Global Equity Tax Managed Fund
and relating to shares of the Series of
Capital Gains Class, Return of Capital Class,
Dividend Tax Credit Class and Compound Growth Class of
NexGen Canadian Diversified Income Tax Managed Fund
NexGen Intrinsic Balanced Tax Managed Fund
NexGen Canadian Dividend Tax Managed Fund
NexGen North American Large Cap Tax Managed Fund
and relating to the shares of the Preferred Series of
Capital Gains Class, Return of Capital Class,
Dividend Tax Credit Class and Compound Growth Class of
NexGen Canadian Preferred Share Tax Managed Fund
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated October 31, 2014 to the Simplified Prospectuses and Annual Information Form dated May 28, 2014
NP 11-202 Receipt dated November 17, 2014
**Offering Price and Description:**
Units of the following series of Regular Front End Load, Regular F, High Net Worth Front End Load, High Net Worth F, Ultra High Net Worth Front End Load and Institutional Front End Load, Deferred Load and Low Load, units of the following series Regular Front End Load, Regular F, Institutional Front End Load, Deferred Load and Low Load (the "Preferred Series"), shares of the Series of Return of Capital 40 Class, Dividend Tax Credit 40 Class, Capital Gains Class, Return of Capital Class, Dividend Tax Credit Class and Compound Growth Class, and relating to shares of the Series of Capital Gains Class, Return of Capital 40 Class, Dividend Tax Credit 40 Class and Compound Growth Class, shares of the Series of Capital Gains Class, Return of Capital Class, Dividend Tax Credit Class and Compound Growth Class, shares of the Preferred Series of Capital Gains Class, Return of Capital Class, Dividend Tax Credit Class and Compound Growth Class
**Underwriter(s) or Distributor(s):**
NexGen Financial Limited Partnership
**Promoter(s):**
NexGen Financial Limited Partnership
**Project** #2189306

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**Issuer Name:**
Pinnacle Balanced Portfolio
Pinnacle Growth Portfolio
Pinnacle Income Portfolio
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated November 12, 2014
NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
Series A Units
**Underwriter(s) or Distributor(s):**
Scotia Capital Inc.
**Promoter(s):**
-
**Project** #2266208

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**Issuer Name:**
Saputo Inc.
Principal Regulator - Quebec
**Type and Date:**
Final Base Shelf Prospectus dated November 14, 2014
NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
$2,000,000,000.00
Medium Term Notes (Unsecured)
**Underwriter(s) or Distributor(s):**
NATIONAL BANK FINANCIAL INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
DESJARDINS SECURITIES INC.
MERRILL LYNCH CANADA INC.
SCOTIA CAPITAL INC.
**Promoter(s):**
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**Project** #2276716

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**Issuer Name:**
Scotia T-Bill Fund (Series A units)
Scotia Premium T-Bill Fund (Series A units)
Scotia Money Market Fund (Series A, Series I and Premium Series units)
Scotia U.S. $ Money Market Fund (Series A units)
Scotia Mortgage Income Fund (Series A, Series F and Series I units)
Scotia Conservative Income Fund (Series A units)
Scotia Bond Fund (Series A and Series I units)
Scotia Canadian Income Fund (Series A, Series F and Series I units)
Scotia U.S. $ Bond Fund (Series A and Series F units)
Scotia Global Bond Fund (Series A, Series F and Series I units)
Scotia Diversified Monthly Income Fund (Series A, Series D and Series F units)
Scotia Income Advantage Fund (Series A and Series D units)
Scotia Canadian Balanced Fund (Series A, Series D and Series F units)
Scotia Dividend Balanced Fund (formerly Scotia Canadian Dividend Income Fund) (Series A, Series D and Series I units)
Scotia Balanced Opportunities Fund (formerly Scotia Canadian Tactical Asset Allocation Fund) (Series A, Series D and Series F units)
Scotia Global Balanced Fund (Series A, Series D and Series I units)
Scotia U.S. $ Balanced Fund (Series A units)
Scotia Canadian Dividend Fund (Series A, Series F and Series I units)
Scotia Canadian Blue Chip Fund (Series A,Series F and Series I units)
Scotia Canadian Growth Fund (Series A, Series F and Series I units)
Scotia Canadian Small Cap Fund (Series A, Series F and Series I units)
Scotia Resource Fund (Series A, Series F and Series I units)
Scotia U.S. Dividend Fund (Series A and Series I units)
Scotia U.S. Blue Chip Fund (Series A, Series F and Series I units)
Scotia U.S. Opportunities Fund (formerly Scotia U.S. Value Fund) (Series A, Series F and Series I units)
Scotia International Value Fund (Series A, Series F and Series I units)
Scotia European Fund (Series A, Series F and Series I units)
Scotia Pacific Rim Fund (Series A, Series F and Series I units)
Scotia Latin American Fund (Series A, Series F and Series I units)
Scotia Global Dividend Fund (Series A and Series I units)
Scotia Global Growth Fund (Series A, Series F and Series I units)
Scotia Global Small Cap Fund (Series A, Series F and Series I units)
Scotia Global Opportunities Fund (Series A, Series F and Series I units)
Scotia Canadian Bond Index Fund (Series A, Series D, Series F and Series I units)
Scotia Canadian Index Fund (Series A, Series D, Series F and Series I units)
Scotia U.S. Index Fund (Series A, Series D, Series F and Series I units)
Scotia CanAm Index Fund (Series A and Series F units)
Scotia Nasdaq Index Fund (Series A, Series D and Series F units)
Scotia International Index Fund (Series A, Series D, Series F and Series I units)
Scotia Selected Income Portfolio (Series A units)
Scotia Selected Balanced Income Portfolio (formerly Scotia Selected Income & Modest Growth Portfolio) (Series A and Series F units)
Scotia Selected Balanced Growth Portfolio (formerly Scotia Selected Balanced Income & Growth Portfolio) (Series A and Series F units)
Scotia Selected Growth Portfolio (formerly Scotia Selected Moderate Growth Portfolio) (Series A and Series F units)
Scotia Selected Maximum Growth Portfolio (formerly Scotia Selected Aggressive Growth Portfolio) (Series A and Series F units)
Scotia Partners Income Portfolio (formerly Scotia Partners Diversified Income Portfolio) (Series A units)
Scotia Partners Balanced Income Portfolio (formerly Scotia Partners Income & Modest Growth Portfolio) (Series A and Series F units)
Scotia Partners Balanced Growth Portfolio (formerly Scotia Partners Balanced Income & Growth Portfolio) (Series A and Series F units)
Scotia Partners Growth Portfolio (formerly Scotia Partners Moderate Growth Portfolio) (Series A and Series F units)
Scotia Partners Maximum Growth Portfolio (formerly Scotia Partners Aggressive Growth Portfolio) (Series A and Series F units)
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated November 12, 2014

NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
Series A, F, D, I and Premium Series units @ net asset value
**Underwriter(s) or Distributor(s):**
Scotia Securities Inc.
**Promoter(s):**
1832 Asset Management L.P.
**Project #**2263083

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**Issuer Name:**
Scotia Money Market Fund
Scotia Canadian Income Fund
Scotia Diversified Monthly Income Fund
Scotia Balanced Opportunities Fund
Scotia Canadian Dividend Fund
Scotia Canadian Growth Fund
Scotia International Value Fund
Scotia Global Growth Fund
Scotia Global Opportunities Fund
Scotia Selected Balanced Income Portfolio
Scotia Selected Balanced Growth Portfolio
Scotia Selected Growth Portfolio
Scotia Selected Maximum Growth Portfolio
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated November 12, 2014
NP 11-202 Receipt dated November 17, 2014
**Offering Price and Description:**
Advisor Series units
**Underwriter(s) or Distributor(s):**
Scotia Securities Inc.
**Promoter(s):**
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**Project #**2263127

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**Issuer Name:**
Scotia Money Market Fund (Series M units)
Scotia Canadian Income Fund (Series M units)
Scotia Private Canadian Corporate Bond Pool (Series I and Series M units)
Scotia Private Short-Mid Government Bond Pool (Series I and Series M units)
Scotia Short Term Bond Fund (Series I and Series M units)
Scotia Floating Rate Income Fund (Series I and Series M units)
Scotia Mortgage Income Fund (Series M units)
Scotia Income Advantage Fund (Series M units)
Scotia Private Canadian Preferred Share Pool (Series I and Series M units)
Scotia Canadian Dividend Fund (Series M units)
Scotia Private Canadian Equity Pool (Series I and Series M units)
Scotia Canadian Small Cap Fund (Series M units)
Scotia Private North American Dividend Pool (Series M units)
Scotia Private U.S. Dividend Pool (Series I and Series M units)
Scotia Private U.S. Equity Pool (Series I and Series M units)
Scotia Private Real Estate Income Pool (Series I and Series M units)
Scotia Private International Core Equity Pool (Series I and Series M units)
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated November 12, 2014
NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
Series I and Series M Units
**Underwriter(s) or Distributor(s):**
Scotia Securities Inc.
**Promoter(s):**
-
**Project #**2263109

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**Issuer Name:**
Scotia INNOVA Income Portfolio (Series A and Series T Units)
Scotia INNOVA Balanced Income Portfolio (Series A and Series T Units)
Scotia INNOVA Balanced Growth Portfolio (Series A and Series T Units)
Scotia INNOVA Growth Portfolio (Series A Units)
Scotia INNOVA Maximum Growth Portfolio (Series A Units)
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated November 12, 2014
NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
Series A and Series T Units @ Net Asset Value
**Underwriter(s) or Distributor(s):**
Scotia Securities Inc.
**Promoter(s):**
1832 Asset Management L.P.
**Project #**2266207

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**Issuer Name:**
Scotia Private Short Term Income Pool (Pinnacle Series and Series F units)
Scotia Private Income Pool (Pinnacle Series, Series F and Series I units)
Scotia Private High Yield Income Pool (Pinnacle Series, Series F, Series I and Series M units)
Scotia Private American Core-Plus Bond Pool (Pinnacle Series, Series F and Series I units)
Scotia Private Strategic Balanced Pool (Pinnacle Series and Series F units)
Scotia Private Canadian Value Pool (Pinnacle Series, Series F and Series I units)
Scotia Private Canadian Mid Cap Pool (Pinnacle Series, Series F and Series I units)
Scotia Private Canadian Growth Pool (Pinnacle Series, Series F and Series I units)
Scotia Private Canadian Small Cap Pool (Pinnacle Series, Series F and Series I units)
Scotia Private U.S. Value Pool (Pinnacle Series, Series F and Series I units)
Scotia Private U.S. Large Cap Growth Pool (Pinnacle Series, Series F and Series I units)
Scotia Private U.S. Mid Cap Value Pool (Pinnacle Series, Series F, Series I and Series M units)
Scotia Private U.S. Mid Cap Growth Pool (Pinnacle Series, Series F, Series I and Series M units)
Scotia Private International Equity Pool (Pinnacle Series, Series F and Series I units)
Scotia Private International Small to Mid Cap Value Pool (Pinnacle Series, Series F and Series I units)
Scotia Private Emerging Markets Pool (Pinnacle Series, Series I and Series M units)
Scotia Private Global Equity Pool (Pinnacle Series, Series F and Series I units)
Scotia Private Global Real Estate Pool (Pinnacle Series, Series F and Series I units)
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated November 12, 2014
NP 11-202 Receipt dated November 14, 2014
**Offering Price and Description:**
Pinnacle Series, Series F, I and M units @ net asset value
**Underwriter(s) or Distributor(s):**
Scotia Capital Inc.(for Pinnacle Class and Class F units only)
Scotia Capital Inc. (for Pinnacle Class only)
Scotia Capital Inc. (for Pinnacle Class and Class F units)
Scotia Captial Inc. (for Pinnacle Class and Class F units only)
Scotia Capital Inc. (for Class A and F units only)
**Promoter(s):**
1832 Asset Management L.P.
**Project** #2266209

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# Chapter 12

# Registrations

### 12.1.1 Registrants

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| Voluntary Surrender | Westpoint Capital Corporation | Exempt Market Dealer | November 11, 2014 |
| Change in Registration Category | Kyklopes Capital Management Ltd. | From: Restricted Portfolio Manager, Exempt Market Dealer & Investment Fund Manager<br><br>To: Exempt Market Dealer & Investment Fund Manager | November 18, 2014 |
| Firm Name Change | From: WHV Investment Management, Inc.<br><br>To: WHV Investments, Inc. | Portfolio Manager | November 4, 2014 |
| Firm Name Change | From: Newedge Canada Inc.<br><br>To: Société Générale Capital Canada Inc. | Investment Dealer and Futures Commission Merchant | November 1, 2014 |

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# Chapter 13

# SROs, Marketplaces, Clearing Agencies and Trade Repositories

## 13.2 Marketplaces

### 13.2.1 Recognition of Aequitas Innovations Inc. and Aequitas Neo Exchange Inc.

**RECOGNITION OF**
**AEQUITAS INNOVATIONS INC. AND AEQUITAS NEO EXCHANGE INC.**

**NOTICE OF APPROVAL**

On November 13, 2014, the Commission recognized each of Aequitas Innovations Inc. (Aequitas Innovations) and Aequitas Neo Exchange Inc. (Aequitas Neo Exchange) as an exchange. The recognition is effective as at March 1, 2015.

The Recognition Order sets out the terms and conditions of recognition and includes the review process to be followed for the rules, policies and other similar instruments of Aequitas Neo Exchange.

Pursuant to various terms and conditions of recognition, the Commission has also approved the following:

- The Rules of Aequitas Neo Exchange, these being the Trading Policies of Aequitas Neo Exchange (Trading Policies), the Member Agreement, the Designated Market Maker Agreement and the Listing Manual and Related Forms of Aequitas Neo Exchange;
- The ownership interest of Aequitas Innovations in Aequitas Neo Exchange, pursuant to section 3 of Schedule 2 of the Recognition Order;
- The ownership interest of Barclays Corporation Limited, CI Investments Inc., IGM Financial Inc., ITG Canada Corp., OMERS OCM Investments II Inc., PSP Public Markets Inc. and RBC Dominion Securities Inc. in Aequitas Innovations; and
- The regulation services to be performed by IIROC for Aequitas Neo Exchange, pursuant to subsection 10(b) of Schedule 2 of the Recognition Order.

**1. Issues**

The application for recognition (Application) was published on June 27, 2014 for a 60 day comment period. 60 comment letters were received. Along with the Application, we published a staff notice (June Notice), seeking comments on all aspects of the Application and on a number of specific issues. A summary of the comments and responses prepared by Aequitas Neo Exchange is attached at Appendix A of this notice. Staff have reviewed the summary of comments and responses prepared by Aequitas Neo Exchange to assess their adequacy and, where appropriate, we have added our comments. In this notice, staff specifically address the comments regarding the access to the Neo Book of Aequitas Neo Exchange and on the specific issues we raised in the June Notice.

*a. Access to the Neo Book*

In the June Notice, we noted our view that the different treatment of orders from Latency Sensitive Traders[1] (LSTs), which would be subject to speed bumps and higher fees on the Neo Book, did not unreasonably prohibit, condition or limit LSTs' access to the Neo Book. We requested comment on this matter. A number of commenters raised concerns that these features, and especially the imposition of speed bumps, would result in unequal and restricted access to the marketplace. Commenters also noted that, if this model is adopted by Aequitas Neo Exchange, it could lead to a proliferation of segmentation on visible markets, which could impact market quality by restricting interaction of market participants' order flow.

We have considered the comments received and note the concerns raised. We agree that Aequitas Neo Exchange would be the first transparent marketplace to introduce differentiated access standards to its facilities. This was a significant consideration in

[1] As defined in the Trading Policies published for comment with the Application.

our review. We have assessed whether the trading model and access standards of Aequitas Neo Exchange comply with the fair access requirements articulated in National Instrument 21-101 *Marketplace Operation* (NI 21-101), which require that a marketplace not unreasonably prohibit, condition or limit access by a person or company to services offered by it. We are of the view that the model proposed is not inconsistent with these requirements. While the standards for access will not be the same for all participants, we believe some flexibility and differentiation is not unreasonable, as long as participants are not unreasonably prohibited or limited from accessing a marketplace. In our view, while the access to the Neo Book will be different for the LSTs, there is no unreasonable limit or barrier to access this book that would apply to any group of participants.

We recognize that this model may lead to other proposals that may differentiate between marketplace participants. We have always reviewed proposed changes to the Canadian market, including each new marketplace, or new or changes in trading structures and access requirements, by considering the impact of every change on the market. We will continue this process and will review each proposal considering its impact on the market and market participants and with a view to factors such as fairness, transparency, liquidity and market integrity.[2]

*b. Definition of LST*

A number of commenters noted that the definition of LST included in the draft Trading Policies published with the Application was too broad and could have included accounts that are not necessarily used for latency-sensitive trading strategies. Commenters also indicated that there was potential to circumvent the definition by market participants. Concerns were raised regarding the process to monitor whether market participants are adequately categorized as LST participants. In response to these comments, Aequitas Neo Exchange revised the LST definition. LSTs will now only include proprietary traders of dealers using automated, co-located trading strategies, and direct electronic access clients that use automated, co-located trading strategies. The new definition is included in the Trading Policies published with this notice. Staff are satisfied that this definition is appropriate and its application can be effectively monitored by Aequitas Neo Exchange.

*c. Governance Requirements*

The Recognition Order of Aequitas Neo Exchange and Aequitas Innovations is similar to recognition orders currently in place for other exchanges operating in Ontario. Staff note, however, that the terms and conditions in this Recognition Order, including those applicable to governance, are tailored to the operations of Aequitas Neo Exchange and to the functions and responsibilities of Aequitas Innovations. Some differences exist as a result of the significantly smaller size and scope of the operations of Aequitas Neo Exchange.

*d. Other Changes*

Subsequent to the publication of the Application, and further to public comments and additional staff comments received, Aequitas Neo Exchange made a number of non-material changes to the Trading Policies, Member Agreement, the Designated Market Maker Application Form and Agreement and Listing Manual (together, the Manuals).

The Manuals published with this notice and the Recognition Order reflect these changes.

*e. Responses to Staff's Questions*

In the June Notice, we requested comment on all aspects of the Application and on a number of specific issues. These issues, comments received and our responses are set out below.

**(i) Benefits and obligations of market makers**

We asked whether market makers should have obligations with respect to the Dark Book of Aequitas Neo Exchange and, generally, to a non-transparent marketplace.

Almost all commenters believed that market makers should not have obligations in a dark book. They noted that quoting obligations are designed to be visible and to benefit price discovery, which is in contrast with the whole concept of a dark book, where it is not known whether there is available liquidity. Further, imposing quoting obligations for venues in which quotes are never disseminated does little to further the goals of market efficiency, price discovery, or preventing price dislocations, which are the objectives of the market making function.

Commenters also noted that imposing market maker obligations in a dark book could promote the increased execution of smaller sized orders in the dark, as dealers would be expected to direct their orders to dark markets in order to meet best

[2] The characteristics of an ideal market underlying our regulatory objectives are set out in a number of publications, including CSA Notice and Request for Comment – *Proposed Amendments to National Instrument 23-101 Trading Rules* published on May 15, 2014 and available at http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20140515_23-101_rfc-pro-amd.htm. They are liquidity, immediacy, transparency, price discovery, fairness, market integrity and transaction costs.

execution obligations. This could negatively impact the effectiveness of the price formation and discovery process in the visible markets.

One commenter believed that there should be obligations for market makers in a dark book, but only in addition to the market makers' existing obligations to provide liquidity in the visible markets.

Staff agree with commenters that market makers should not have obligations in a non-transparent marketplace. This would effectively confirm to market participants that market makers are present and actively providing liquidity in the dark book. This, in turn, is inconsistent with the nature of a dark market, where no guarantee of liquidity is provided, as one of the trade-offs of trading "in the dark".

We also requested comment on whether it is appropriate to have benefits in the Dark Book but no obligations. Some of the commenters who expressed views on this issue were supportive of market makers receiving benefits in the Dark Book, despite the fact that they have no obligations. It was noted that offering benefits in the Dark Book of Aequitas Neo Exchange for the satisfaction of obligations in the Lit and Neo Books was reasonable, as these benefits would service as further incentives to provide liquidity and improve market efficiency and quality of the market as a whole. That is, benefits received by market makers on all the books should be viewed as an overall package that will promote liquidity provision.

Some commenters, however, were not supportive. They indicated that the benefit of the trading priority in the Dark Book is not aligned with the obligation to provide a quote. One commenter believed that it was not appropriate for quoting obligations in one order book to translate to benefits in a different book.

Based on the concerns raised, it has been determined that it is not appropriate for benefits to be provided to Designated Market Makers in the Dark Book where no obligations exist. As a result, Aequitas Neo Exchange has revised its Trading Policies to remove the benefits for market makers on this book. With respect to the overall market making program, staff intend to monitor the proportionality of the benefits and obligations of Designated Market Makers and have amended the recognition order to require reporting of statistics and analysis to assess this.

**(ii) Market Makers' Commitment (MMC)**

We requested specific feedback on whether the MMC, which would 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 Neo Exchange, would provide too great an incentive to the market maker at the expense of existing orders in the book.

Almost all commenters who commented on the MMC functionality were supportive of this feature. They noted that this is a tool that can help market makers and, at the same time, is beneficial to liquidity in periods of market stress. It was noted that the incentive is adequate given the risk and liability maker makers take on to fulfill their obligations.

One commenter noted, however, that the MMC will enable the market makers to systematically trade with small incoming orders within the national bid and national best bid and best offer (NBBO), while avoiding large incoming orders. Aequitas Neo Exchange recognized this unintended consequence and responded by amending the functionality of the MMC by removing the ability for designated market makers to submit volume inside the NBBO.

Based on comments received and the change to the MMC functionality referred to above, staff have no further concerns with this functionality.

**(iii) Listings and Cross-Listings of Investment Products**

We requested comments regarding a process to notify the Commission prior to the listing or cross-listing of novel investment products. We currently have such a process in place for the TSX.

Commenters were generally supportive of the idea, most citing regulatory arbitrage as a primary concern. No commenters took the position that the novel listing or cross-listing notification should not be in place.

As reflected in the commentary to section 2.01 of the Listing Manual, Aequitas Neo Exchange agreed to codify the protocols and standards with respect to the notification process and will notify the Commission of any listing or cross-listing applications of novel products. Staff have no further concerns.

**(iv) Emerging Market Issuers – Gatekeeper Concerns**

We advised that Aequitas Neo Exchange has agreed not to accept applications to list securities of emerging market issuers (EM Issuers) until it has adopted listing requirements or procedures applicable to these issuers. We asked for specific feedback on the elements that should be included in Aequitas Neo Exchange's requirements or procedures for EM Issuers.

Many commenters specifically agreed (and no commenters disagreed) that additional procedures should be developed by Aequitas Neo Exchange to identify and address the risks associated with the listing of EM Issuers. A few commenters stated that Aequitas Neo Exchange's requirements for EM Issuers should be consistent with OSC Staff Notice 51-719 *Emerging Market Issuer Review*. While several commenters believed that Aequitas Neo Exchange should have the ability to develop its own policies to address EM Issuers, several were of the view that those policies should be at least as onerous as those applied on other Canadian exchanges or that listing requirements for EM Issuers should generally be consistent across Canadian listing exchanges. Commenters suggested elements that should be included in Aequitas Neo Exchange's requirements or procedures for EM Issuers. Each of these recommendations will be considered when Aequitas Neo Exchange adopts listing requirements or procedures related to EM Issuers.

**(v) Application of the Order Protection Rule (OPR)3**

We asked whether it is appropriate for the OPR to apply to the Neo Book, given that this book would have differentiated treatment between its marketplace participants.

The majority of the commenters were supportive of the application of OPR to the Neo Book. They were of the view that OPR should apply to this book as it does to any other transparent marketplace.

A few commenters, however, believed that a market that treats one class of participants differently than another should not be protected.

Staff agree that the Neo Book is differentiating different types of market participants by applying speed bumps and higher fees to the LSTs. However, as we stated above, it is our view that the different treatment of LST orders in the Neo Book does not unreasonably prohibit, condition or limit access to the Neo Book. On this basis, we are of the view that OPR should apply to the Neo Book as it would to any other transparent marketplace.

We also requested comment whether OPR should apply to a new marketplace, in light of *Proposed Amendments to National Instrument 23-101 Trading Rules* published for comment on May 15, 2014 that, if implemented as proposed, would introduce a market share threshold at, or above which, the displayed orders on a marketplace will be protected.

Almost all commenters indicated that OPR requirements should apply to new marketplaces based on existing rules and not on proposed OPR changes that may not come into effect for some time. Requiring Aequitas Neo Exchange to be held to a different standard than all other marketplaces was viewed as inconsistent and unreasonable. Commenters were concerned that fundamental market structure rules such as OPR should only be subject to alterations through the normal rule-making process. They noted that it is important to maintain the integrity of the rule making process to ensure that all relevant issues are identified and considered.

Some commenters noted that it may be more appropriate to require Aequitas to defer its launch until after OPR amendments have been finalized and implemented, as either option of imposing OPR on the Aequitas Neo Exchange or providing some form of exemption will likely result in complications, costs and burden on industry participants.

At this time, staff are reviewing the public responses received on the proposed OPR amendments and will determine next steps regarding this regulatory initiative. Given the volume of comments received and the issues raised, it is unlikely that the finalization of the OPR requirements is imminent. For this reason, and for fairness and consistency with other marketplaces that have launched in recent years, OPR will apply to Aequitas Neo Exchange in its current form. We are also of the view that, as a matter of fairness, the launch of Aequitas Neo Exchange should not be delayed to accommodate the completion of this particular policy project. That said, Aequitas Neo Exchange will comply with the requirements regarding availability of technology requirements and testing facilities set out in NI 21-101.[4]

[3] Part 6 of National Instrument 23-101 *Trading Rules*.

[4] Subsection 12.3(1) of NI 21-101.

AEQUITAS NEO EXCHANGE INC.

## Summary of Comments

We received sixty comment letters from a wide range of industry participants. Please see Appendix A for a full list of commenters.

**COMMENT LETTERS**

| | |
|---|---|
| Dealers | 15 |
| Buy-side | 14 |
| Issuers | 6 |
| Associations | 7 |
| Competitors | 2 |
| Other (individuals, vendors) | 16 |
| **Total Letters** | **60** |

**OSC Request for Comments – Specific Questions Raised**

1. *Benefits and obligations of designated market makers (DMM)* - comment was requested regarding 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.

Comments on obligations in the Dark Book or dark pools generally

- Obligations are not required in the Dark Book (or any dark venue) because of the nature of market making obligations, i.e., if in the dark, they would not contribute to the goals of market efficiency and price discovery nor help stabilize pricing [D. Allan, BMO NB, CFA, CI, CIBC WM, CSTA, KOR Group, NBF, RBC CM, TMX]
- There is no benefit to obligations in the dark [D. Allan, Maison]
- Unnecessary as trades do not occur outside the NBBO [Barclays, CI, KOR Group, TMX]
- It would contradict the purpose of dark pools, i.e. to limit information leakage and market impact [Barclays]
- Market making has never been associated with dark pools [CIBC WM, RBC CM, RBC GAM]
- Market makers have a general obligation to maintain fair and orderly markets across all books [Barclays]
- It is appropriate to have obligations in the Dark Book and dark pools as market participants have an expectation that their orders will fill at the current market – in all markets, displayed or non-displayed – but that the obligations in the non-displayed are supplemental to those in the displayed markets [Virtu]

Comments on benefits without obligations

- Benefits should be linked to obligations [CFA, CSTA, TD]
- Acceptable because it supports the incentive for market makers to provide services in the displayed books [D. Allan, BBS Securities, Davis Rea, KOR Group, Maison, NBF]
- Benefit is balanced by fact that the market maker must provide price improvement in the Dark Book and pay active fees [GLC, RBC CM, RBC GAM]
- Appropriate since the DMM program should be viewed across all books [BBS Securities, CSTA, OMERS, RBC CM]
-

- Agree with so long as total benefits and obligations are balanced [Davis Rea, Jitneytrade, RBC GAM, Scotiabank] and there is ongoing evaluation of DMM program [Davis Rea, GLC, WDL]

Aequitas Response

Most commenters supported our view that obligations are not appropriate or necessary with respect to non-displayed trading and, in contrast, can have negative effects. Although a number were also not concerned that there would be benefits without specific corresponding obligations in the Dark Book, some raised concerns that it was not appropriate for market makers to have benefits applied there. In consideration of this concern we will not, at this time, apply the MMVA in the Dark Book. We agree, however, with the comment that DMMs have a general obligation to maintain orderly markets that crosses all trading books and that monitoring is critical to ensure that benefits and obligations are balanced.

***OSC Staff Comments***

***We agree that DMMs should not have obligations specific to a non-transparent marketplace, as this could effectively confirm to market participants that market makers are present and actively providing liquidity in this marketplace. This, in turn, is inconsistent with the nature of a dark market, where no guarantee of liquidity is provided, as one of the trade-offs of trading "in the dark".***

***Staff are of the view, however, that benefits for DMMs are not justified in a market where they have no performance obligations, such as the Dark Book. We have reviewed the revised Trading Policies and are satisfied that they reflect the removal of the MMVA in the Dark Book.***

***2. Market makers' commitment (MMC)* - comment was requested about whether the MMC feature provides too great an incentive to the market maker at the expense of the existing orders in the book.**

Comments

- Benefits of MMC include that it would: enhance market quality by providing more liquidity [Barclays, BBS Securities, Maison]; provide defense against sharp price fluctuations [D. Allan, Barclays, Jitneytrade, True North]; dampen volatility [BMO NB, CI, Davis Rea, RBC CM, Virtu]; provide an incentive to commit liquidity [BMO NB, CI, Davis Rea, Maison, RBC GAM]

- Incentive is justified given the contribution to market quality [Barclays] and the risks to DMMs in discharging their obligations [NBF]; also, DMM will only have priority over orders that would not have traded but for out-of-the-ordinary price fluctuations [D. Allan, Scotiabank]

- There are parallels with US CCS Program, which has proven to be effective and balanced [CI, Barclays, BBS Securities, True North]

- Not enough information or examples to assess MMC; if intended to facilitate specified outcomes it should be in the form of an obligation, requiring minimum size, etc.; Aequitas should be required to monitor usage to ensure outcomes [TMX]

- Suggestions: bypass orders should be able to bypass MMC orders [BMO NB] and volumes should be limited to level set for MMVA [CFA]

- Aequitas should be provided leeway to refine the functionality over time [Davis Rea]

Aequitas Response

The purpose of the MMC is to provide the DMMs with a capability to dampen price volatility in times of market stress by committing additional hidden liquidity to the book. It is also important to clarify that this functionality will only be available for our own listed securities. The comments indicate general support for this functionality so long as we ensure that it is monitored. Such monitoring is planned as we are aware of the importance of accountability in ensuring that the DMM Program is successful. We have also updated the Trading Policies to provide further clarity around the MMC.

Some detailed comments and suggestions on the MMC program were submitted, and those are set out in the chart attached as Appendix B along with our responses.

***OSC Staff Comments***

***Staff acknowledge the responses and thank all the commenters. We have no further concerns with this functionality.***

***Listings and Cross-Listings of Investment Products*** **- comment was requested on the listing requirements for Investment Products.**

Comments

- Generally supportive of implementing protocols and standards with respect to notification to the Commission of listing or cross-listing applications for investment products [D. Allan, BBS Securities, BMO NB, CI, CFA, Davis Rea, Jitneytrade, OMERS, Perennial, RBC CM, RBC GAM, Scotiabank, TD, WDL]
- Same standards should be applied to other exchanges [D. Allan, CI, GLC].
- The process should strike a balance such that it (a) is streamlined in such a way so as to not unreasonably impede the ability to bring products to market [BBS Securities, CFA, Davis Rea, RBC CM]; and (b) allows marketplaces to customize their approach to comply with process standards set forth by the regulator [RBC CM]

Aequitas Response

Aequitas agrees that there should be a protocol respecting cross-listings of novel products where no prospectus has been filed with the Canadian regulators. We have revised the commentary in Section 2.01 of the Listing Manual to require that an issuer applying for a listing without filing a prospectus make a submission regarding whether or not the product is novel. Aequitas will review the submission and discuss the listing application with the securities regulator. While we believe that each exchange should address any regulatory concerns that arise in this context, the approach does not have to be identical but it should be subject to oversight by the securities regulators.

***4. Emerging Markets Issuers – Gatekeeper Concerns*** **- feedback was requested on the elements that should be included in Aequitas Neo Exchange's requirements or procedures for EM Issuers.**

Comments

- Supportive of Staff's efforts to improve standards of quality for emerging market issuers seeking listings on Canadian exchanges [RBC GAM, Scotiabank, TD]
- OSC Staff Notice 51-719 is a suitable roadmap to develop policies for EM Issuers [GLC], and EM Issuer policies should be consistent with the OSC Staff Notice [CI, Davis Rea]
- There should be corporate governance requirements for EM Issuers; the boards and officers of EM Issuers need to include those with expertise in both Canadian legal standards and local (to the EM Issuer) requirements [CFA]
- Aequitas should have discretion to develop its own policies [D. Allan, BBS Securities, CI, Davis Rea, Maison, RBC CM], in part to promote competition in the listings space [Maison]
- Listing requirements should generally be consistent across marketplaces [BMO NB, CFA Scotiabank, TMX]
- Aequitas's targeted response to listing emerging market issuers should be made available for public comment [TMX]
- Encourage Aequitas to consider aligning its policies with other exchanges [BMO NB]; exchanges should coordinate their policies [OMERS]
- Until Aequitas implements its own policies, it should not be allowed to list EM Issuers [CFA, RBC CM]
- EM standards are important for investor protection [CFA]
- EM Issuers should be required to meet the same accounting and audit criteria as non-EM Issuers on an on-going basis [CFA]

- EM Issuers need to be able to provide local records and books to Canadian auditors on an ongoing basis [CFA]

- Requirements that the Canadian management and directors of emerging market issuers have the means to test the information being provided to them from their foreign operations would be an important fraud prevention tool [RBC GAM]

- It is important that financial reviews and expert report be provided by institutions registered in Canada and subject to Canadian oversight [BBS Securities]

- Enhanced due diligence should be undertaken when considering the listing of EMIR Issuers to address the inherent risks associated with them [BMO NB]

Aequitas Response

We agree with commenters that emerging markets issuers can raise additional risk based on the quality of disclosure and other factors and that, as a result, additional requirements are appropriate. It has been demonstrated in the past. We will be working on an approach that addresses the potential risks and, in doing so, will consider the comments received. We do not think that the approach for all exchanges must be identical, provided each addresses the risks. If the regulators believe there are specific requirements that should always be in place then they should address this through the rulemaking process. When finalized, our approach will be published for comment and regulatory approval.

***OSC Staff Comments***

***We are satisfied with Aequitas's agreement not to accept applications to list securities of emerging market issuers until it has adopted listing requirements or procedures applicable to these issuers. We thank the commenters for their suggestions of elements that should be included in Aequitas's requirements or procedures for the listing of emerging market issuers.***

***5. Application of the Order Protection Rule* - feedback was requested on (a) application of OPR to the Neo Book and (b) application of OPR to new marketplaces.**

Comments on the proposed OPR amendments

- Applaud CSA's sensitivity to concerns regard costs associated with current OPR framework [Barclays, ITG] and costs associated with accessing and integrating with Aequitas trading platform [TMX]

- OPR threshold, if applied to new marketplaces, would stifle competition and entrench incumbent exchanges and ATSs [Barclays, True North]; would preclude competition for the majority of passive agency flows due to the proposed new client priority rules [ITG, True North]; only new marketplaces that cater to HFTs would be able to emerge and gain market share [ITG, True North]

- Markets should first achieve some level of success or offer some unique and compelling value proposition instead of adding fragmentation for slightly different versions of rebate driven pricing models, and this is what is motivating OPR Amendments [ITG]

- Support proposed OPR threshold [TMX]

- Proposed OPR Amendments would do nothing to control costs associated with larger marketplaces' implementation of costly and controversial changes to their data and trading platforms; for example, the implementation of Quantum XA by the TMX [ITG], and do not do enough with respect to the high cost of market data [True North]

- The costs of connecting to a new marketplace are not that large [True North]

- The Proposed OPR amendments would not solve the challenge of fragmentation [RBC CM, True North]

- OPR should be rescinded altogether, relying on best execution, and then new and incumbent exchanges would compete based on the merits of their structure alone [Raymond James]; ultimately, best execution will dictate where orders are routed despite any OPR changes [OMERS]

Comments on the application of OPR to the Neo Book

- Support for applying OPR for a variety of reasons, including that latency randomization deserves a chance and this would be an excellent test [KOR Group]; applying a speed bump and higher fees to LSTs creates a level playing field, helps ensure fair trading practices and counters existing HFT advantages without unduly harming HFTs [D. Allan, Barclays, BBS Securities, CI, Davis Rea, GLC, IGM, KOR Group, Maison]; speed bump and higher fees do not substantially impact access [CSTA, PSP]; latency and fee differences already exist in the market today [BMO NB]; no public interest objective would be served by allowing trade-throughs by LSTs [Wildeboer]; per the OSC, the treatment does not violate fair access rules [CFA, CI, A. Fell, IGM, WDL, Wildeboer]; and to oppose the application of OPR in the Neo Book is to condone HFT [D. Allan]

- Not appropriate to require LSTs to route orders to a marketplace that does not treat their orders the same as all others [Chi-X, NBF, Scotiabank, TD, Virtu]; acknowledgement of irony in having HFTs forced to trade at a speed disadvantage with higher fees [Scotiabank]

- Option of not routing active retail and institutional orders to the Neo Book due to perceived advantages given to passive HFTs [TD]

- If not applicable to Neo Book, then Staff should also consider not applying OPR to other displayed books where dealers are forced to route orders while a class of participants has a systematic advantage [BBS Securities]

- The decision to support or connect to a trading book where not all participants are treated equally should be left with customers and not be driven through a regulatory mandate [Chi-X]

- OPR should either apply to all participants in the Neo Book or should not apply to Neo at all [TMX]

Comments on the application of OPR to new marketplaces

- Existing rules should apply; it would be premature to apply non-approved regulatory changes to Aequitas; early application would violate due process [D. Allan, Barclays, BBS Securities, Perennial, BMO NB, CFA, CI, CSTA, Davis Rea, A. Fell, GLC, IGM, ITG, KOR Group, Maison, NBF, OMERS, Perennial, PSP, Raymond James, RBC CM, RBC GAM, True North, Virtu, WDL, Wildeboer)

- Outcome (timing and content) of amendments is not certain [BMO NB, CFA, CI, KOR Group, RBC CM, Wildeboer]

- Application was made under the current framework and it would be unfair to impose a new standard [Barclays, GLC, Scotiabank, Wildeboer]; Aequitas is innovative and has a unique value proposition – should be protected [Barclays, Maison, Virtu, Wildeboer]; if the OPR Amendments are eventually implemented, Aequitas will need to conform, just like all other marketplaces [CFA, GLC, IGM]

- There are complexities arising from implementing on an interim basis [ITG, Wildeboer]

- It would be anti-competitive and against the stated goal of fostering competition and innovation [BBS Securities, CI, IGM, ITG, Wildeboer]; under proposed UMIR 5.3 Client Priority rule changes, Aequitas would be deemed an inferior marketplace for agency order flow versus all other lit venues currently in operation [ITG]

- Costs and complexities that derive from the establishment of a marketplace are exaggerated [D. Allan] and justified given the goals of Aequitas [D. Allan, Maison]

- Current rules should apply, but a moratorium should be imposed on connectivity and data fees until the 5% threshold is met [BMO NB]

- Aequitas should be distinguished from other new marketplace applications to avoid other venues attempting to submit applications to obtain protected status prior to implementation of the amendments; however, if Aequitas' launch and implementation of the OPR Amendments are close in time, then Aequitas should be unprotected [Scotiabank]

- Changes in OPR should be finalized prior to the approval of any new marketplaces [CIBC WM, CSTA, TMX]

- Given the complexity and related costs to dealers, Aequitas' launch should be delayed until after the implementation of the OPR Amendments [TD, TMX], or the amendments should be applied to Aequitas on an interim basis [TD]; counterproductive for participants to connect if the requirement to do so is reversed shortly thereafter [TD, TMX]

- Although applying the Proposed Amendments to Aequitas would not be appropriate because it would be inconsistent with due process and would cause complexities in implementation, the OPR review should be completed prior to approving Aequitas [TMX]

Aequitas Response

Most commenters that responded on this issue were supportive of the application of OPR to the Neo Book. We do not believe the application of OPR to LSTs in the Neo Book is different, in any meaningful way, from the application of OPR to non-HFTs in any of the existing displayed markets in Canada. LSTs are simply put on similar footing to other traders and have a similar opportunity to access quotes. It is common in today's equity markets, with OPR applying to all displayed venues, for long term investors to not have certainty of fills and to be charged higher prices than others trading the same securities. We feel these are reasons to look at structural issues and pricing; they are not reasons on which to base a determination of whether to apply OPR to a marketplace. As noted by many commenters our speed bump does not impact fair access and, hence, it is appropriate that the Neo Book is awarded protection. Although we acknowledge that the circumstances must be evaluated based on the principles (and we reiterate that the only thing we will be doing is slowing down IOC orders from those with a speed advantage to level the playing field), we also note that from a practical perspective, sophisticated trading firms have consistently demonstrated that they can pick and choose the marketplaces on which they trade, regardless of OPR.

The vast majority of commenters did not believe that the proposed OPR amendments should be imposed on Aequitas prior to their finalization and needless to say, we share this view. Based on discussions with many industry participants it is clear that there is a general view that the outcome and the timing are not certain. It would not be fair to tie the launch of any new marketplace to the outcome of a complex CSA initiative and it would set a precedent that could have significant consequences.. In light of all of this we can only assume that commenters suggesting that our launch be delayed until completion of the OPR amendments are unaware of the uncertainty or see an opportunity to cause a delay, or both.

***OSC Staff Comments***

***Staff agree that the Neo Book is differentiating different types of market participants by applying speed bumps and higher fees to the LSTs. As we indicated in the Notice, it is our view that the different treatment of LST orders in the Neo Book does not unreasonably prohibit, condition or limit access to the Neo Book. Staff agree that OPR should apply to the Neo Book despite this difference in treatment. In addition, we agree that OPR, in its current form, should apply to new marketplaces while the policy is being reviewed.***

## Trading-related comments

The main focus for most of the commenters who provided detailed responses was on trading-related aspects of Aequitas. Significant comment was received regarding market making, segmentation and complexity, which are addressed below. There were also a number of related comments on the proposed market structure. Due to the volume of detailed comments, the remaining comments about these specific topics and those relating to market structure generally, can be found in chart form in Appendix B with our responses.

Comments on market making

- Agreement with approach to/alignment of obligations/risks of market makers against benefits [D. Allan, Barclays, BBS Securities, Brookfield, CI, Clarkson, A. Crosthwait, A. Fell, ITG, Jitneytrade, Maison, M. McKenzie, PSP, RBC CM, True North, WDL]

- Level of transparency in the application is appropriate [RBC CM, True North]; regulators should require more transparency from other exchanges as well [True North]

- DMM program resulted from extensive consultation with user committee [PSP]

- A key risk for market makers is the ability to unwind trades given the presence of HFT and the benefits only apply if the market maker is quoting at the best price [BBS Securities]

- It is difficult to comment on whether obligations and benefits are balanced for DMMs without full disclosure of all the details [CFA, Chi-X, CSTA, NBF, RBC GAM, TD]

- More information is needed about: the MMVA allocation methodology and determination of the threshold [CIBC WM, CSTA, TMX]; how securities will be allocated to DMMs [CIBC WM, CSTA]; performance assessment, including frequency and degree of public disclosure and sanctions for non-performance of DMMs [CFA, CSTA, Scotiabank]; which securities will have a DMM [CSTA]; the performance bonus and issuer support program [Chi-X]

- It is difficult to know whether the 15% MMVA metric is at the right level or what the proper level of compensation should be/whether the effect will be a net benefit; such experimentation in incentives is healthy [KOR Group]

- The MMVA may result in the ability to disproportionately influence the market for a period of time and crowd out other investors [CCL, CIBC WM, TD, TMX]

- Aequitas will be incentivized to monitor its market making program to ensure that the rewards are appropriately balanced with the obligations [ITG, KOR Group, PSP]; the governance structure will help to ensure balance [Brookfield, CSTA, Davis Rea, Perennial, RBC CM]

- It will be important for the Commission to ensure that Aequitas monitors the effectiveness of the market making program [A. Fell, KOR Group, OMERS]

Aequitas Response

Despite suggestions to the contrary, we believe that the description of the types of obligations and benefits provided in our application put commenters in a position to make a reasonable assessment. While we intend to disclose all details on an ongoing basis, we believed it was premature to do so at the time of publication which was too far in advance of our launch. Additional information would not only have been unusual in the context of similar market quality functions (details that have not traditionally been disclosed by other exchanges in Canada regarding market maker obligations), but we also felt it would distract from the consideration of the DMM program in its entirety. More importantly, regardless of the level of detail provided, as acknowledged in a few of the comments, it is not possible to make any conclusive projections of whether the obligations and benefits are balanced because actual trading data is necessary, for the reasons set out below.

There are two facets to the obligations imposed on a DMM: 1) quoting obligations per security to provide a continuous two-sided market defined by specific metrics re: size, spread, and presence at the NBBO, and 2) responsibility for a broad range of securities with proportionately the same number of liquid and illiquid securities. So in terms of obligations, any given DMM will have hundreds of assigned securities for which it will have to provide continuous two-sided markets. Also, for each security, it will also have to make markets in both the Lit Book and Neo Book simultaneously.

To balance these obligations we have proposed to give a DMM priority on its orders in its assigned securities up to 15% of the daily traded volume. In addition to the actual size obligations imposed on the DMM, it will have to commit visible liquidity to the Lit Book and Neo Book at the price level where the security is trading in order to take advantage of this benefit.

The DMM program has been developed with significant input from our advisory committee that includes buy-side, dealers and market makers, from whom we received feedback that 15% is a good starting point. It should be noted that on NYSE, for example, the DMM will get 33 1/3 % of all incoming orders. We have taken a unique approach that does not involve order fragmentation, but there are several other precedent setting examples in the US equity and options markets where different forms of pro-rata trading for market makers have been adopted. It is key to our proposal to understand that from the DMMs' perspective they will be exposed to position risk in illiquid securities and will be weighing the benefits in relation to their whole assignment.

As noted above, it has always been our intention to operate the DMM program transparently, including publishing DMM performance statistics as well as a Code of Conduct for DMMs. Ultimately, if the data shows that the obligations and benefits are not balanced, it is in our interest to ensure that we adjust the obligations and/or benefits. This will be reinforced by our governance model whereby a majority of our owners are buy-side institutions and issuers. We will also be reporting on DMM obligations vs. benefits to the Commission under the terms and conditions of the Recognition Order. As a general principle we support transparency and monitoring and are encouraged by the OSC's request for data, much of which we intend to make public, and we hope that other marketplaces will follow suit.

***OSC Staff Comments***

***As we indicated above, staff are of the view that benefits for DMMs in the Dark Book are not justified. The Trading Policies have been revised accordingly. Regarding the market making program as a whole, it is difficult to assess, in the absence of trading data, whether the benefits and obligations are commensurate and whether they are set at the right level. We will monitor the market making program of the Aequitas Neo Exchange and, as noted above, have amended the recognition order to require the exchange to provide certain statistics and analysis. At that time, we believe that sufficient data will be available to enable us to make an assessment of the proportionality of the benefits and obligations.***

A number of very detailed comments and suggestions on the DMM program were submitted, and those not covered here are set out in the chart attached as Appendix B along with our responses.

Comments on segmentation and associated issues re: the speed bump and the LST definition

- The approach to segmentation represents a significant regulatory change and may set a precedent for segmentation in the future [CSTA, OMERS, Scotiabank, TMX]
- Latency randomization could have a positive impact by reducing gaming around time priority [CIBC WM]; the concept deserves a chance in the equities markets, and Aequitas provides an excellent opportunity to test this idea [KOR Group]
- The speed bump should/could be applied to all incoming orders similar to what has been done by IEX [KOR Group, Scotiabank]
- There are concerns about subjectivity and appropriateness involved in the monitoring and enforcement of LST definition [CFA, CCL, Chi-X, CIBC WM, A. Croswait, TMX] and about the effectiveness and potential for abuse of the definition [Chi-X, Scotiabank, TMX]
- The Aequitas argument for applying this speed bump to LSTs is compelling, in its vision of creating a level playing field, and potentially eliminating one of the primary motivations for the increasingly destabilizing "latency race to zero" [KOR Group]

Aequitas Response

*Segmentation*. In response to the issues raised regarding order flow segmentation and claims that this aspect of our solutions could adversely impact market quality and market integrity, we stress that we do not agree that the functionality relating to LSTs is properly characterized as segmentation, nor should it raise any fair access or other market integrity concerns. Other than in the Dark Book, where we will provide for a limited form of segmentation that mirrors functionality already present in the market, we are simply reducing the importance of time, giving those market participants who do not have a speed advantage the opportunity to compete on a more even playing field. Our solutions are designed with a primary focus on the investor and issuer, and through targeted measures are seeking to curb predatory HFT strategies, which only cause excessive intermediation. Although it may appear that we are adding to fragmentation by introducing another marketplace, we believe that our functionality has the potential to actually reduce trade fragmentation which will ultimately benefit dealers, investors and issuers.

Order flow differentiation is present in our markets in many forms. Since different market participants are driven by different objectives, marketplaces compete for flow through fees and features. Although we might be the first marketplace to put in place market structure solutions based on a speed-categorization of participants, examples of fees and features that cause order fragmentation and potential information leakage are widespread. For example, inverted fee structures attract certain types of active flow from dealers seeking rebates, the participation model for registered traders allows them to interact more often with retail, broker attribution pre- and post-trade contains information about who is buying and who is selling, etc. Although we recognize that our exchange, just like any other marketplace, will attract certain types of flow and patterns will emerge over time, we believe that many of our solutions will actually protect the information from being derived and abused. It is not possible to predict which order will trade next in our books due to our matching priorities and the DMM model. The market-by-price display in the Neo Book will limit pre-trade information about who is active in the book.

We are committed to building an exchange that provides significant benefits for investors and issuers, and we will be developing quantitative metrics to help demonstrate our value and to further refine our models.

*Speed bump.* We do not believe in a one-size-fits-all approach and applying a speed bump to everyone defeats the purpose of leveling the playing field, as those with a speed advantage will still have an advantage. We are, instead, trying to ensure that those who trade through a member's infrastructure are placed on an even footing with those who use co-location facilities when it comes to trading on opportunities they see in the market. Our solutions to curb predatory HFT strategies should not be compared with the IEX model in the US as their speed bump serves a different purpose: IEX is a dark pool and they have implemented a 350 microsecond delay on all incoming and outgoing messages in order to ensure that their NBBO is accurate the time they match the trades.

*Definition of LST.* Our objective in creating the LST definition was to separate those who have a speed advantage from those who do not. As a core component of our determination of who is LST, we have always viewed co-location as a key factor. In response to comments, we have changed the definition: it has been simplified to capture proprietary trading that is using co-location facilities. The revised definition is narrower and easier to comply with. In either case, our monitoring would be able to identify use of speed-based strategies in our books. Even with simplistic metrics like order-to-trade ratios, message rates and active trading patterns (e.g. how quickly after a price change does an active trade occur) it will be very hard for a participant to avoid being detected. However, we believe the revised definition makes the monitoring process and compliance with the definition even more straightforward.

***OSC Staff Comments***

***Access to the Neo Book***

***Staff agree that the Neo Book, through the application of speed bumps, would differentiate the access of marketplace participants on the same marketplace. As we indicated in the Notice, we have reviewed the model in light of the comments received and in light of the fair access provisions in National Instrument 21-101 Marketplace Operation. We continue to be of the view that, while the access to the Neo Book is different for the types of marketplace participants, no group of participants is unreasonably restricted or limited from accessing this book.***

***Definition of LST***

***We noted the comments received regarding the proposed definition of LST. We agree that the original definition was broad and could have included Trader IDs that were not necessarily associated with speed-based trading strategies. We also agree with the commenters that noted that it would have been difficult for Aequitas Neo Exchange to effectively monitor the appropriateness of the categorization of LST and Neo Traders. We are of the view that the revised definition adequately addresses the comments received. We have reviewed the process for monitoring the categorization as LST or Neo Traders by Aequitas Neo Exchange and are satisfied that it is adequate.***

Additional comments were submitted, and they are set out in the chart attached as Appendix B along with our responses.

Comments on complexity of the Aequitas model

- Concerns re: complexity and fragmentation [BMO NB, CCL, Chi-X, Scotia, TD, TMX]
- Recognize the need for two lit marketplaces given the reality of the maker/taker model in order to attract both active and passive investors [BMO NB]
- Support for the proposed market structure/new tools, i.e. latency randomization, preferencing changes, size-time priority, market-by-price in the Neo Book, etc. [BBS Securities, BMO NB, CIBC WM, CSTA, ITG, KOR Group]
- Complexity benefits HFT / more sophisticated traders [Chi-X, TD, TMX]
- Greater complexity requires greater education [Chi-X]
- Overly complex model will lead to high implementation costs [CIBC WM, TD, TMX]
- Aequitas structure strikes a balance between predatory strategies and other electronic trading strategies that can be extremely beneficial to the markets [BBS Securities]

Aequitas Response

As a basic principle applied to all industries, technology creates efficiencies but it also creates complexity by creating new alternatives and ways to do things. Creating new offerings or solutions can cause two issues: additional technological integration efforts and the need to learn how to best leverage the diversity of choice being offered at a business level.

*Technological integration.*

From a technical point of view, we are using industry standard protocols and have simplified access to our services to the extent possible. Although we have multiple books, all are accessible through a single FIX connection, and all market data is distributed on a single multicast feed. Therefore, deciding which book to send an order is as simple as setting the book identifier on the FIX order entry message. Furthermore, most of the market structure solutions that make our proposal unique are handled inside the exchange engine and therefore are unobtrusive to the market participant. The matching priority in the Lit Book is a good example of this whereby the priority rules are simply determined by the Trader ID through which the order was sent, and is not a characteristic of the order itself. In our follow up discussions with industry participants, many have noted that their concerns over technological integration complexity are largely driven by recent experiences with new venues and systems. We have taken an approach that, to every extent possible, strives to minimize the impact on vendors and dealers.

*Diversity of Choice.*

The business complexity, when considered carefully, is not the multiple books, but rather the fact that we are putting in place a solution that would operate very differently from other Canadian marketplaces. We are deviating from the current status quo in an attempt to create a solution that will benefit the end investor and issuer as well as align dealers and clients' interests. It is true that market participants will have to figure out is how to tune their smart order routers and how to optimize their trading strategies to best take advantage of our solutions. While this will require the allocation of some resources within participants, it should be part of the ongoing review of the market environment and how to best achieve best execution for clients as changes occur in the capital markets. This process happens not only when new books are introduced but also when new order types or changes in the environment occur. We expect that ultimately the benefits of this type of complexity that arises from having more choices in execution will outweigh the costs.

Given the evolving nature of the markets, we also hope that the challenges of integration and new trading functionality are an expected part of doing business in an evolving environment that needs to address issues and identify solutions for market participants. All current marketplaces' models have complexity that caters to the HFT needs. Our model has complexity that caters to investor and issuer needs.

We believe that complexity can be found in numerous forms – in order types, functionality and, as noted above, in the way access is made available. The marketplace commenters that raised the issue of complexity have, similarly to most other existing marketplaces in Canada and the U.S., numerous types of orders and functionality and technology solutions. For example, in addition to the more standard order types, Chi-X Canada has: mid peg, post-only, Chi-X Canada sweep, primary peg, hidden, minimum quantity, pegged offset, x-berg, cancel/replace and sweep and cross orders. TMX Group has four venues trading equity securities with similar functionality that in most cases could be offered through one marketplace although, following our application, they have proposed to simplify this structure. We make these observations primarily to make the point that the markets have evolved and marketplaces have a range of products and services that cater to a variety of users, from sophisticated to unsophisticated. Not all users need to use or even understand all functionality, but it is there to provide tools and choice.

***OSC Staff Comments***

***Staff acknowledge the comments regarding market complexity and the concern that Aequitas Neo Exchange would contribute to it. We note that market complexity is the result of a number of factors, including market evolution, increased use of technology, the sophistication of market participants, the speed at which transactions occur and competition for liquidity and order flow.***

Please see our responses to the detailed comments that were submitted, in the chart attached as Appendix B.

***OSC Staff Comments***

***Staff have reviewed the detailed comments, the responses provided by Aequitas Neo Exchange and, where applicable, resulting revisions to the Trading Policies. We are satisfied with the answers provided by Aequitas Neo Exchange***

## Listings-related comments

Many comments on the listings-related aspects of the Aequitas application were in the form of suggestions and we thank commenters for taking the time to provide them. The summary of these comments and our responses are set out below.

Comments regarding Aequitas' Approach to Listing

- Supportive of approach, for many reasons, including: the simplified listing process [Sprott, Maison, WDL]; that it eliminates unnecessary exchange discretion [Sprott]; that competition in the listings space will put pressure on fees [Pacific Rubiales, True North, Maison]; the issuer-centric approach [Pacific Rubiales]; the resulting differentiation/competition between exchanges [M. McKenzie, True North, D. Allan, BBS Securities, Perennial, PSP]; that it promotes quality listings [PMAC, Brookfield, Maison, Perennial]; that the corporate governance requirements go above and beyond those of the TSX [RBC GAM, CCGG]; that having different requirements for different kinds of products is responsive to current market [D. Allan, BBS Securities, Maison]

- Concern that Aequitas does not propose to approve most transactions prior to completion, based on the view that the review of transactions assists in preventing certain issuers from avoiding application of an exchange's rules and fosters investor confidence in the market, and there is often no adequate remedy for the harm that may have occurred to the market and security holders [TMX]

Aequitas Response

Implied in the stated concern is the assumption that we will not review transactions because we do not approve them. We will review filings, which include all corporate actions such as additional offerings, take-over transactions, and acquisitions. Our review will, in fact, focus on our listing requirements and will include checks such as whether the applicable shareholder and board approvals have occurred. The review will generally be done before a transaction is finalized so that issues can be identified early in the process. Thus we do not believe there will be any investor confidence issues or that we will lack adequate remedies. It is also important to note that our approach is consistent with that taken by many exchanges in North America.

***OSC Staff Comments***

***As a senior Canadian exchange, Aequitas will play an important role in the regulation of its listed issuers. We believe that the "approval" model of listed-issuer regulation is not the only appropriate model of listed-issuer regulation in Canada. It is incumbent on Aequitas to implement a vigorous and meaningful review of filings by its listed issuers.***

Comments regarding listings standards

- Listing standards should be identical/consistent for classes of issuers and regulatory differences should not be permitted, and issuers should be subject to similar exchange oversight when undertaking certain transactions [BMO NB, TMX]

- Aequitas has not taken a "race to the bottom" tack and, in fact, has done the opposite and incorporated corporate governance requirements above and beyond those contained in the listing requirements of the TSX, and the OSC should protect the investing public by ensuring that exchanges not be permitted to compete on the basis of offering issuers less onerous governance requirements [CCGG]

Aequitas Response

There are currently different exchanges in Canada with different requirements (TSX, TSXV and CSE). Some may argue that this is only appropriate to ensure that requirements are tailored to different types of issuers, but there has been little impetus to update the listing function as the markets have evolved. Without competitive pressure, there is little to drive improvements.

We subscribe to the same view as CCGG that competition has in the case of governance led to higher standards. Exchanges are allowed to set listing standards in order to enable them to differentiate their offerings. These standards are subject to regulatory oversight and do not require that every exchange be identical.

***OSC Staff Comments***

***While we agree that it is not necessary for requirements to be identical for classes of issuers, we believe that issuers listed on a "senior" Canadian exchange should be subject to robust standards.***

Comment regarding IIV

- The IIV requirement is of concern, since many ETFs are not well-suited to such requirements given their unique, composite structure; also, IIV may not be meaningful and cause confusion for investors [PMAC]

Aequitas Response

We have reconsidered our approach based on the comment process and are removing the IIV requirement.

Research or Investor Relations listing standard

Aequitas is commended for incorporating investor relations requirements, but the following are concerns [CIRI]:

- The Qualified Analyst requirement is an unreasonable requirement given that the decision to initiate and maintain research coverage by an independent, third-party sell-side analyst is completely beyond the control of the issuer.
- The investor relations budget proposed is insufficient and should be increased in order to make the function meaningful.
- The Listing Manual includes "research" as one of the acceptable investor relations expenses. If "research" refers to company paid research, the commenter does not find this to be an appropriate investor relations expense given that such research may not be impartial. The commenter finds the term "research" too vague and feels that further clarification is required.
- The above two proposed listing requirements are required for only a one-year period, which is inconsistent with good investor relations. The establishment of a relationship between an issuer, existing shareholders and potential new investors is an ongoing and continuous process and should not be time-limited.
- Reporting structure and transparency of the function.

Aequitas Response

We believe there was a misunderstanding that the described research would always be required. The issuer can satisfy the requirement by indicating that there is coverage or that there is an investor relations budget that meets the requirement. We have revised the Listing Manual to increase the budget to $50,000 and to make this requirement an ongoing requirement. We do not intend to establish any requirements regarding reporting structure but will rely on CIRI as the industry association to promote best practices.

***OSC Staff Comments***

***We have no further concerns with these requirements.***

Governance

Aequitas has incorporated corporate governance requirements above and beyond those contained in the listing requirements of the TSX [CCGG]; Additional comments [CCGG]:

- The majority voting requirements found in the Proposed Listing Requirements which provide that resignations tendered by directors that have received less than a majority of the votes cast in favour must be accepted by the board absent 'exceptional circumstances'.

- Introducing the concept of 'Unrelated Directors' to the Proposed Listing Requirements because it acknowledges the centrality of an independent board to a healthy corporation and beyond that to a well-functioning capital market.

- The clarity that the Proposed Listing Requirements provide with respect to when shareholder approval is required in connection with prospectus offerings.

- The requirements for independent board membership are to be commended, however, that the Proposed Listing Requirements should go further and stipulate that listed issuers should have a board with a majority of Unrelated Directors.

- Supportive of the requirements for having Compensation, Nomination and Corporate Governance Committees that are composed of a majority of Unrelated Directors (or, alternatively, that the matters dealt with by those committees are approved by a majority of the board's Unrelated Directors).

- The Proposed Listing Requirements should go further and stipulate that these key committees should be wholly independent.

Aequitas Response

Aequitas has recognized the value of independent directors through its requirements; however, we believe that the quality of directors is the most important criterion and that independence is only one of the criteria for establishing an effective board. There may be issuers which, due to the nature of the business, would benefit more from industry experience or other criteria such as diversity. Therefore we have set a minimum number of independent directors to allow the issuer and its nominating committee to determine the right mix. Similarly, it may be useful that some subcommittees have expertise that makes 100% independence less appropriate.

***OSC Staff Comments***

***We have no further concerns with these requirements.***

Governance suggestions

The following changes were also suggested [CCGG]:

- separation of chair of the Board and CEO

- clarifying regular in camera sessions

- adding board diversity as a criteria to be considered by the Nomination Committee

- any rights plan of an issuer listed on the exchange should contain a shareholder approval mechanism whereby if a majority of the outstanding shares are tendered into a takeover bid then the bid must remain open for a further 10 days to allow remaining shareholders to tender

- certain conditions should be attached to superior voting shares before a company with dual class shares can be listed and whether this discount on share issuance is too large

- prohibiting issuers from paying intermediaries only if they obtain votes in favour of management's recommended director nominees during a contested director election

- requiring that every listed issuer hold an advisory annual "say on pay" vote to help to bring Canada more in line with governance practices in these countries and also level the playing field among Canadian issuers

Aequitas Response

We thank CCGG for providing these suggestions. We have revised the Listing Manual to reflect the following changes: clarifying *in camera* sessions, adding board diversity as criteria, prohibition on issuers paying intermediaries only if they obtain votes in favour of recommended nominees. We intend to set up an issuer-focused advisory committee and will review the remaining recommendations with that group to determine if additional changes are appropriate.

***OSC Staff Comments***

***We thank CCGG for their comments.***

TMX specific comments

- Concerned about general discretion (1.03), which is addressed above
- Has issues regarding management of listed issuers and review criteria (2.07); the basis for granting exemptions to foreign issuers (2.08); the timeframe for notice filing (should be specified rather than "immediate") (4.01 and 4.02); the process for handling financial hardship applications (10.10(2)); and time frames for suspensions and procedures for appeals (1.03(2) and 12.01).
- Sponsorship requirements should be added to S. 2.11
- Consideration should be given to the limited treatment of insiders (4.02); and lack of ability to intervene in regards to coattail provisions (10.19)

Aequitas Response

Many of the comments relate to operational policies which are generally not published because of their procedural nature but also because, for regulated entities, they are subject to oversight reviews by the regulators. Thus, the TMX does not publish its decision-making criteria nor has it published the results of those decisions. The application of the operational criteria and especially the exemption process are, however, subject to review by the regulators. Nonetheless we intend to have transparency around the exemption process and will make propose changes to the Listing Manual when we see common fact patterns giving rise to exemptions.

As to management of listed issuers (2.07), we clarify that our requirements are in fact the same as TSX in that we do require PIFs. The equivalent to sponsorship is covered in our requirements in S. 2.11(2)(b). As to coattail provisions we believe that issue is covered because you cannot list additional securities without a review.

***OSC Staff Comments***

***We have considered these comments and will review the operational procedures prior to implementation and the application of the procedures as part of our oversight.***

**Appendix A – List of Commenters**

- AGF Investments Inc. (Kevin McCreadie) [**AGF**]
- David G P Allan
- Barclays Capital Canada Inc. (Bruce Rothney) [**Barclays**]
- BBS Securities Inc. (Bardya Ziaian)
- BIOX Corporation (Chris Clinning)
- BMO Nesbitt Burns (James Ehresperger and Rizwan Awan) [**BMO NB**]
- M. Scott Bratt
- Brookfield Asset Management (Kelly Marshall) [**Brookfield**]
- Brownstone Asset Management (Mario Vachon) [**Brownstone**]
- Kelly Butt
- The Canadian Advocacy Council for Canadian CFA Institute Societies (Cecilia Wong) [**CFA**]
- Canadian Coalition for Good Governance (Donald F. Reed) [**CCGG**]
- Canadian Investor Relations Institute (Yvette Lokker) [**CIRI**]
- Canadian Security Traders Association, Inc. [**CSTA**]
- Vincent L. Chahley
- Adam J Chambers
- Chi-X Canada [**Chi-X**]
- CIBC World Markets Inc. (Thomas Kalafatis) [**CIBC WM**]
- CI Financial (David Pauli) [**CI**]
- Clarkson Centre for Board Effectiveness (Professor David R. Beatty) [**Clarkson**]
- Connor, Clark and Lunn (Jenny Drake) [**CCL**
- Cricket Media (Miles Gilburne)
- Ali Crosthwait
- Davis Rea Ltd. (John O'Connell)
- Excellon Resources Inc. (Brendan Cahill)
- Anthony S. Fell
- FlexITy Solutions Inc. (Peter Stavropoulos)
- GLC Asset Management Group Ltd. (Ron Hanson) [**GLC**]
- G. Alan Hutton
- IGM Financial Inc. (Murray J. Taylor) [**IGM**]
- ITG Canada Corp. (Doug Clark) [**ITG**]
- Surendra Jeyarajan
- Jitneytrade Inc. (Jean-Francois Sabourin) [**Jitneytrade]**
- Jones, Gable & Company Limited (DM Ross) [**Jones Gable**]
- John Kearney
- KOR Group LLC (David Lauer)
- W.D. Latimer and Co. (Stephen Fontaine) [**WDL**]
- D. Keith MacDonald
- Maison Placements Canada Inc. (John R. Ing) [**Maison**]
- McEwen Mining (Robert R. McEwen)
- Margaret McKenzie
- National Bank Financial (Patrick McEntyre, Etienne Dubuc, Nicholas Comtois) [**NBF**]
- Omers Capital Markets (Brent Robertson) [**OMERS**]
- Pacific Rubiales Energy (Peter Volk) [**Pacific Rubiales**]
- Perennial Asset Management Corp. (Murray Belzberg) [**Perennial]**
- Robert G. Peters
- Portfolio Management Association of Canada (Katie Walmsley, Scott Mahaffy) [**PMAC**]
- Prospectors & Developers Association of Canada [**PDAC**]
- Public Sector Pension Investment Board (Daniel Garant) [**PSP**]
- Raymond James Ltd (Andrew Foote)
- RBC Capital Markets (Stephen A. Bain) [**RBC CM**]
- RBC Global Asset Management (Daniel E. Chornous) [**RBC GAM**]
- RMP Energy Inc. (John W. Ferguson)
- Scotia Capital Inc. (Evan Young and Sean Kersey) [**Scotiabank**]
- Sprott Inc. (Eric Sprott)
- TD Securities (David Panko) [**TD**]
- TMX Group Limited (Kevan Cowan) [**TMX**]
- True North Vantage (Daniel Schlaepfer) [**True North**]
- Virtu Financial LLC (Chris Concannon) [**Virtu**]Wildeboer Dellelce LLP [**Wildeboer**]

**Appendix B – Summary of Detailed Comments and Responses**

If we have failed to note and provide a response to a specific concern, please reach out to us for further clarifications.

Detailed comments relating to the Designated Market Maker program

| Comment | Who | Response |
|---|---|---|
| Market makers play an important role for investors and issuers/for liquidity/in market stabilization and countering volatility | D. Allan, Clarkson/ Brookfield, M. McKenzie, True North/CIBC WM, KOR Group, Maison, Sprott, True North | We share this view. |
| Market makers are critical for newly listed securities | Brookfield, True North | We share this view. |
| Quoting depth and multiple price levels is an important service to the market | KOR Group | We share this view. |
| Implementation of market making systems leads to increases in liquidity; reductions in bid-ask spreads, transaction costs and price volatility; and improved daily turnover, as well as impacting investor confidence | Barclays/Sprott, True North | We believe the DMM Program is an important step in achieving these objectives. |
| Concerns that broker preferencing and MMVA will increase the difficulty of smaller dealers to trade | CSTA | We do not believe the MMVA will change the impact of broker preferencing on smaller dealers, nor that our model will negatively impact smaller dealers, but will analyze trade data and make adjustments to the model if necessary. |
| Concerns that the DMM program is only attainable for the technologically advanced participant and not the “traditional market maker”; concerns over conflicts when assigning securities to shareholders | TMX | In order to make markets in hundreds of securities a certain level of automation is required and that is no different for our marketplace. What is different is that our MMVA model ensures trade participation without having to compete on speed which makes the program attainable to those with a range of technology solutions beyond than those used by HFTs. Since we will be publishing our DMM list and the DMMs’ performance it would be difficult to preference our shareholders without drawing considerable attention – including from our (majority) non-dealer shareholders. Further, we will have conflicts policies that will govern our dealings with our shareholders |
| Concerns that the MMQ will allow DMMs to automatically avoid incoming orders that are not priced at the NBB and NBO making obligations inaccessible in practice | CSTA | The functionality is no different than that for any other pegged order types; the MMQ was simply a two-sided version. However, since the interest in this functionality has been low, given that most market making systems already manage this internally, we have decided to remove the functionality. |
| Suggestion that the MMVA and other benefits should only be available to DMMs if they fulfill their obligations | CSTA | We think this idea has merit and will incorporate it in our DMM program. If a DMM fails to meet the obligations for a particular security, the MMVA benefit will be removed the following day and only reinstated once the DMM has maintained the obligations for a full day again. |

| Comment | Who | Response |
|---|---|---|
| Suggestion that the obligations should be segmented for different periods of the day to manage the relative value of the benefits to trading at different point in the day | CSTA | We prefer to handle this though our DMM Code of Conduct and analyze trading data before we make any adjustments to the model. |
| Additional suggested improvements regarding which metrics should be emphasized; balancing benefits with size requirements; evaluating across securities of different classes to ensure benefits are available in liquid securities only if the DMM satisfies obligations in less liquids; whether average daily volume is the appropriate measure/consideration of depth obligations | CSTA/Virtu | We thank commenters for these suggestions and will consider them once we have trading data that will allow us to analyze the impact of the various metrics and measures. |
| The DMM program will kill the electronic intermediation that has developed through market forces and replace it with a form of intermediation that can only exist through protection by the marketplace; market makers will use priority rights to step ahead of natural orders | CCL | We strongly disagree with the first statement. The electronic intermediation that has developed through market forces is concentrated in the securities that need the least liquidity support. Our DMM program is designed to ensure that there is liquidity support across the entire spectrum of securities. Striking the right balance between obligations and benefits is critical to this and, as pointed out above, this is something that we will monitor closely (and that our governance model will make sure is adjusted, if necessary). Further, the markets for liquid securities are currently heavily intermediated and there is little support for the illiquids. A formal market making model is the only alternative that allows monitoring and adjustments to ensure that the balance is right. One of the issues in recent years has been that there has been little monitoring or adjustments to the existing market making model. |
| MMC should be considered a benefit for the DMM and as such they should have an obligation to use it if the intended purpose is to dampen price volatility | TMX | We disagree and feel it would be inappropriate to mandate the use of this feature for the DMM to provide additional capital on top of the obligations they already have to provide visible liquidity. This functionality is new to the Canadian market and to most market makers so we would like to monitor it before making any changes. |
| There should be a minimum size requirement for the MMC | TMX | Given how the MMC is designed we do not see the purpose of this. As the MMC only will come into play at a price level if there is sufficient volume to complete the incoming order it will always have to be of a certain size to be relevant. |
| It should be possible to bypass MMC | BMO NB | This is, in fact, how it will work. Bypass orders will not interact with MMC. The Trading Policies have been updated to clarify this. |
| The MMC should be limited to volumes not greater than the MMVA | CFA | We are a bit unclear about this comment as we don't see how the two would be related. For the sake of clarity: the MMC is not included in the MMVA calculation. |
| Allowing MMC inside the NBBO would allow DMMs to systematically trade with "small" incoming orders and avoid large orders | CSTA | We appreciate that the CSTA brought this to our attention as this was an unintended consequence of the MMC functionality. We will remove the ability to have MMC inside the NBBO, and the Trading Policies have been updated accordingly. |

Detailed comments relating to the issue of "segmentation"

| Comment | Who | Response |
|---|---|---|
| Price discovery, market integrity and market quality is negatively impacted by restricting or constraining access | Chi-X, CCL | We disagree with this broad statement as we do not restrict or constrain access for anyone, nor do the commenters provide any analysis as to why they claim our solutions would have this effect. Our market structure solutions are designed to improve the experience for investors and issuers and we intend to back that statement up with quantitative analysis. |
| Concerns about improving market quality by penalizing orders from HFT participants instead of using incentives | Chi-X, Scotiabank | Our solutions are designed to curb specific predatory strategies which we believe are detrimental to market quality. We are not penalizing HFT participants at large and believe that most non-predatory strategies will not be affected by the measures we are putting in place to level the playing field. This is the benefit a solution that is not a "one-size fits all". |
| Increased cost for dealers, vendors and marketplaces | Chi-X, CSTA, Scotiabank, TMX | As discussed in the complexity section below, our technical solution is very straightforward and would argue that the notion of complexity is overstated and probably exacerbated by recent experiences. |
| The Neo book has a stronger form of segmentation than inverted markets, but trades on the Neo book are priced at the NBBO with no price improvement and or rebate which creates an outsized structural advantage for passive HFTs | TD | Again, we disagree with the categorization of "segmentation", for the reasons set out above. With regards to comment that the Neo Book provides an outsized structural advantage to the passive HFT, we submit that this is an incorrect statement as it is not based on a view of our solutions as a whole. We are building a marketplace that rewards sizable liquidity provision and where those liquidity providers, regardless of the type of firm, have some protection from predatory strategies. We would hope that this would lead to all liquidity providers becoming more comfortable posting greater size, which in turn will be a direct benefit to the liquidity seeking investor. The average trade size of markets with inverted fee structures demonstrates that these lead to further trade fragmentation, which is a logical consequence of their intent to act as an order detection mechanism. The trade/size component in the Neo Book order matching model demonstrates we seek the opposite. |

**Detailed comments relating to market structure**

| Comment | Who | Response |
|---|---|---|
| More information required about speed bump and where it is applied | CIBC WM | The speed bump applies only to incoming IOC orders from LST participants. The speed bump is applied at the gateway level which means that the IOC order is only released into the matching engine after it exits the speed bump at which point it is treated like any other IOC order. |
| The speed bump should apply in all books | BMO NB, CSTA | The differentiated books are intended to encourage natural investors to post and take liquidity at prices they are comfortable with through the various mechanisms including priority and the speed bump. We don't want to hinder anyone in doing so. Further, liquidity providers forego the additional protection in the Lit Book but benefit from the rebate. Different books cater to different needs. |
| The passive preferencing of Neo Trader orders should apply in all books | BMO NB, CSTA | The two books serve different purposes and we do feel that introducing passive preferencing for Neo Trader orders in the Neo Book and Dark Book would conflict with the size-time priority, which is intended to reward those prepared to commit sizable liquidity to the book. We appreciate the suggestion, though, and will further analyze the suggestion when we have sufficient trade data. |

| Comment | Who | Response |
|---|---|---|
| The Lit Book should also only have market-by-price display | BMO NB, CSTA | The Lit Book was designed to be an alternative to other Canadian lit books with the difference that the natural investor gets passive matching priority over those with a speed advantage. To deviate too much from what is currently the norm in the Canadian market would not meet our objectives, but this is an idea we would entertain over the longer term. |
| Bypass orders should be introduced to allow participants to sweep visible books when putting up crosses through the quote | BMO NB | Bypass orders are supported in both the Lit Book and the Neo Book, but intentional crosses (bypass or not) have to be entered into the crossing facility where there is no cross interference. |
| Question regarding the need for two displayed books | BMO NB, CSTA, WDL, TD | We will be operating in an environment where maker-taker and taker-maker pricing is prevalent. We are concerned that some functionality/fee-based incentives cannot be effectively combined, so the two different books are being developed to serve different purposes. Even though we are proponents of removing maker-taker pricing altogether, in the current environment, in order to attract certain types of passive natural investor flow it is necessary to offer a book with maker-taker pricing. However, the Lit Book is not "just another maker-taker venue" as we are attempting to address one of the biggest issues with this pricing model: conflicts of interest between dealers and their clients. By offering a make-take trading book where natural investors have matching priority we increase the likelihood of investors trading passively in the book instead of having to cross the spread.<br><br>Further, the matching priorities for natural investors in the Lit Book and a speed bump for active LSTs in the Neo Book were created to work in combination to help curb predatory trading strategies and improve market quality. |
| Complexity benefits HFT / more sophisticated traders | Chi-X, TD, TMX | As discussed above in the section about complexity on page 10-11, our solutions have complexity that caters to investor and issuer needs; we disagree with this statement as it relates to our solutions. |
| More information about the size-time priority | Scotiabank | The Trading Policies have been revised to provide more clarity around how size-time priority works. |
| Suggestion that the Dark Book should allow for immediate mid-point matching | Scotiabank | We appreciate the suggestion and understand the need for reducing message traffic by avoiding having to ping for liquidity. We will discuss this with our user committees. |
| Placing broker preferencing ahead of Neo Trader and size-time forces investors to use dealers that control the largest market share | Chi-X | The impact on broker preferencing on execution quality is something we intend to analyze once we have sufficient data. We will discuss this with our user committees. However, it is an issue that the regulators have identified and it is a central feature of Canadian equity market trading. While it remains in place at most venues, it would be very challenging for a new marketplace to build volumes without including it as a feature as we have seen demonstrated to date. |
| Having the pegged orders work differently depending on security adds unnecessary level of complexity | Scotiabank | We appreciate the feedback and will take it into consideration. The decision to implement pegged orders this way was driven by the fact we do not believe the most liquid securities need visible pegged order support and that it would only contribute to unnecessary message traffic. We will discuss this with our user committees. |
| Fee reduction for active retail flow results in little benefit to the end investor unless the savings are passed on | Chi-X | We are not in a position to comment on the dealer's business model, but reduced fees for the dealer should in one way or another positively impact the end investor. |

| Comment | Who | Response |
|---|---|---|
| Derived orders are an effective tool for HFT to enable quote fading in the exchange engine | TD | We disagree with this comment and do not understand how the commenter draws this conclusion. We do not believe derived orders would be that interesting to HFTs as each order would be subject to the rules and fees of each particular book, which would conflict with most HFT strategies that incorporate the fee in their quoted price. We note, however, that we will not be proceeding with derived orders at this time. |
| The primary beneficiaries of the Aequitas design are the passive HFTs | TD, TMX | The beneficiaries of our model are those that provide sizable and sustainable liquidity, which does not in any way preclude HFTs. Reliable liquidity will in turn benefit the end investor. |
| Passive HFT strategies are not addressed by the proposal | TD, TMX | Our market structure is designed to address certain types of predatory HFT strategies which we believe are detrimental to market quality – and not all HFTs, nor all HFT strategies. This is done through a combination of passive preferencing of Neo Trader orders in the Lit Book and speed bumps and size-time matching in the Neo Book. Passive HFT strategies that are good for the market (like market making) are both rewarded and protected from certain predatory strategies. |
| Suggestion that there should be a possibility on an order basis to opt-out of being treated like a Neo Trader to avoid information leakage | CSTA | Although we don't agree that there should be a concern about information leakage, all of our market structure solutions that differentiate between Neo Trader and LST are based on the Trader ID that is sending the order. It is therefore possible in an order management system to implement the option of using a Trader ID classified as LST in order to accomplish this. |
| Suggestion that the contra selection in the dark book is abolished to avoid information leakage | CSTA | We would like to clarify the difference between an LST and a Neo Trader, because the commenter is making the assumption that all Neo Traders are either institutional or retail investors. Although a Trader ID classified as retail is strictly retail, all others are just "not LST". That is, it could be flow that is mixed with retail or proprietary flow that is not latency sensitive. From that perspective we would argue that our implementation is no different than the IntraSpread model with the exception that the only thing you know for sure is that your active counterpart is definitely not an LST. |
| Concerns about the fact that the Neo Book displays price improving orders at the NBBO | CSTA | In the Neo Book all price improving orders are visible orders with their volume displayed at the NBBO. We believe this is a valuable feature for the investor who is willing to show size and provide price improvement. Active order senders will see more liquidity and will have the opportunity to get price improvement. All trades occur at the price level at which they are posted. |
| Suggestion that Aequitas would have to file a separate proposal to trade large sized orders in common equities at the touch | CSTA | As noted by the commenter our proposal is within the regulatory framework. We, however, appreciate the feedback and will bring this specific issue to our user committees. |

Other comments

| Comment | Who | Response |
|---|---|---|
| Letters of general support | AGF, BIOX, M. S. Bratt, Brownstone, K. Butt, V. L. Chahley, A. J. Chambers, Cricket Media, Excellon Resources, FlexITy Solutions, G. A. Hutton, S. Jeyarajan, Jones, Gable & Co., J. F. Kearney, D.K. MacDonald, McEwen Mining, Pacific Rubiales Energy, R.G. Peters, PDAC, RMP Energy, Sprott | We thank these commenters for their support and are very pleased to acknowledge that stakeholders who usually have not participated in the debate, like issuers, have started to voice their concerns and opinions about the issues the Canadian equity markets are facing. |
| The OSC should be required to approve and oversee the deployment of the Consolidated Market View ("CMV") in order to ensure that all dealers are treated fairly | Chi-X | As pointed out by the commenter, this was not part of the application; however, we are happy to briefly address this. The CMV is a technology service intended to consolidate data from different sources. Requiring regulatory oversight of such a service would be equivalent to asking the OSC to oversee market data vendors. Furthermore, concerns about fairness are unfounded and based on certain incorrect assumptions which will be clarified once we have an opportunity to proceed with this initiative. As can be seen in our comment letter on the OPR proposal, one of the key issues we see that lie beneath several of the competitive barriers in our markets and what forms the cornerstone of any best execution policy is the lack of consolidated market data for all users at an economically acceptable price - and that is something we intend to address. |
| | | |

**IN THE MATTER OF**
**THE SECURITIES ACT,**
**R.S.O. 1990, CHAPTER S.5, AS AMENDED**
**(the "Act")**

**AND**

**IN THE MATTER OF**
**AEQUITAS INNOVATIONS INC.**
**AND**
**AEQUITAS NEO EXCHANGE INC.**

**AND**

**IN THE MATTER OF**
**BCE INC.**
**BARCLAYS CORPORATION LIMITED**
**BRILLIANT ORANGE HOLDINGS LTD.**
**CI INVESTMENTS INC.**
**IGM FINANCIAL INC.**
**ITG CANADA CORP.**
**OMERS OCM INVESTMENTS II INC.**
**PSP PUBLIC MARKETS INC.**
**AND**
**RBC DOMINION SECURITIES INC.**

**ORDER**
**(Sections 21 and 144 of the Act)**

**WHEREAS** Aequitas Innovations Inc. (Aequitas) and Aequitas Neo Exchange Inc. (Aequitas Neo Exchange) (the Applicants) have filed an application requesting recognition of Aequitas and Aequitas Neo Exchange as an exchange pursuant to section 21 of the Act (Application);

**AND WHEREAS** at the time of granting this order, Aequitas is the sole shareholder of Aequitas Neo Exchange and BCE Inc., Barclays Corporation Limited, Brilliant Orange Holdings Ltd., CI Investments Inc., IGM Financial Inc., ITG Canada Corp., OMERS OCM Investments II Inc., PSP Public Markets Inc. and RBC Dominion Securities Inc. are each shareholders in Aequitas;

**AND WHEREAS** near the time of the launch of Aequitas Neo Exchange, Aequitas will conduct a financing whereby additional voting shares will be issued to buy-side institutions, issuers and sell-side firms;

**AND WHEREAS** the Commission has received certain representations and undertakings from the Applicants in connection with the Application;

**AND WHEREAS** the Applicants represent that Aequitas and Aequitas Neo Exchange satisfy the criteria for recognition as an exchange in Schedule 1 of this order;

**AND WHEREAS** the Commission has determined that it is in the public interest to recognize each of Aequitas and Aequitas Neo Exchange as an exchange pursuant to section 21 of the Act;

**AND WHEREAS** Aequitas, Aequitas Neo Exchange and the founding shareholders (as defined in Schedule 2) have agreed to the applicable terms and conditions set out in Schedules 2 to 4 to the Order;

**AND WHEREAS** each of the launch shareholders that is also a significant shareholder (as defined in Schedule 2) will, upon acquisition of its shares, agree to the applicable terms and conditions set out in Schedule 4 to the Order and will execute and become a party to the Aequitas shareholders' agreement;

**IT IS ORDERED** that:

(a) pursuant to section 21 of the Act, Aequitas is recognized as an exchange, and

(b) pursuant to section 21 of the Act, Aequitas Neo Exchange is recognized as an exchange,

provided that the Applicants, the founding shareholders and the launch shareholders that are significant shareholders (as defined in Schedule 2) comply with the terms and conditions set out in Schedules 2, 3 and 4 to the Order, as applicable.

Dated this 13th day of November, 2014 and effective as at March 1, 2015.

"Howard I. Wetston" "Monica Kowal"

## SCHEDULE 1

## CRITERIA FOR RECOGNITION

### PART 1 COMPLIANCE WITH NI 21-101 AND NI 23-101

#### 1.1 Compliance with NI 21-101 and NI 23-101

The exchange complies with the requirements set out in National Instrument 21-101 *Marketplace Operation* (NI 21-101) and in National Instrument 23-101 *Trading Rules*, each as amended from time to time, which include requirements relating to:

(a) access;

(b) marketplace operations;

(c) exchange rules, policies and other similar instruments;

(d) order and trade transparency;

(e) transparency of marketplace operations;

(f) record keeping;

(g) marketplace systems and business continuity planning;

(h) confidentiality of information;

(i) outsourcing;

(j) clearing and settlement;

(k) fair and orderly markets;

(l) the management of conflicts of interest; and

(m) filing of financial statements.

### PART 2 GOVERNANCE

#### 2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange;

(b) that business and regulatory decisions are in keeping with the exchange's public interest mandate;

(c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:

  (i) appropriate representation of independent directors, and

  (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange;

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest; and

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

### 2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

## PART 3 ACCESS

### 3.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure participants are appropriately registered under Ontario securities laws, or exempted from these requirements.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

## PART 4 REGULATION OF PARTICIPANTS AND ISSUERS ON THE EXCHANGE

### 4.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of participants and issuers, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

## PART 5 RULES AND RULEMAKING

### 5.1 Rules and Rulemaking

(a) The exchange has rules, policies, and other similar instruments (Rules) that are designed to appropriately govern and regulate the operations and activities of participants and issuers.

(b) In addition to meeting the requirements of NI 21-101 relating to market operations and exchange rules, policies and other similar instruments as referred to in paragraphs 1.1(b) and (c) of this Schedule, respectively, the Rules are also designed to

(i) ensure a fair and orderly market; and

(ii) provide a framework for disciplinary and enforcement actions.

## PART 6 DUE PROCESS

### 6.1 Due Process

For any decision made by the exchange that affects a participant or issuer, or an applicant to be a participant or issuer, including a decision in relation to access, listing, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for and provides for appeals or reviews of its decisions.

## PART 7 CLEARING AND SETTLEMENT

### 7.1 Clearing and Settlement

The exchange has appropriate arrangements for the clearing and settlement of trades.

## PART 8 SYSTEMS AND TECHNOLOGY

### 8.1 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

## PART 9 FINANCIAL VIABILITY

### 9.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

## PART 10 FEES

### 10.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and are consistent with the requirements in Ontario securities laws, including those requirements listed in paragraphs 1.1(a) and (e) of this Schedule.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

## PART 11 INFORMATION SHARING AND REGULATORY COOPERATION

### 11.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

## SCHEDULE 2

## TERMS AND CONDITIONS APPLICABLE TO AEQUITAS NEO EXCHANGE

### 1. DEFINITIONS AND INTERPRETATION

(a) For the purposes of this Schedule:

"accounting principles" means accounting principles as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"Aequitas Neo Exchange dealer" means a dealer that is also a significant shareholder;

"Aequitas Neo Exchange marketplace participant" means a marketplace participant of Aequitas Neo Exchange;

"Aequitas Neo Exchange issuer" means a person or company whose securities are listed on Aequitas Neo Exchange;

"affiliated entity" has the meaning ascribed to it in section 1.3 of National Instrument 21-101 *Marketplace Operation*;

"associate" has the meaning ascribed to it in subsection 1(1) of the Act;

"Board" means the board of directors of Aequitas or Aequitas Neo Exchange, as the context requires;

"criteria for recognition" means all the criteria for recognition set out in Schedule 1 to the Order;

"Competitor" means a person whose consolidated business, operations or disclosed business plans are in competition, to a significant extent, with the listing functions, trading functions, market data services or other material lines of business of Aequitas Neo Exchange or its affiliated entities;

"dealer" means "investment dealer", as that term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements*;

"founding shareholder" means each of the BCE Inc., Barclays Corporation Limited, Brilliant Orange Holdings Ltd., CI Investments Inc., IGM Financial Inc., ITG Canada Corp., OMERS OCM Investments II Inc., PSP Public Markets Inc. and RBC Dominion Securities Inc.;

"IIROC" means the Investment Industry Regulatory Organization of Canada;

"launch shareholder" means a person or company that acquired any class of voting shares of Aequitas in a financing completed in connection with the launch of Aequitas Neo Exchange;

"marketplace" has the meaning ascribed to it in subsection 1(1) of the Act;

"marketplace participant" has the meaning ascribed to it in section 1.1 of NI 21-101;

"Nominating Committee" means the committee established by Aequitas Neo Exchange pursuant to section 6 of this Schedule or by Aequitas pursuant to section 27 of Schedule 3, as the context requires;

"officer" has the meaning ascribed to it in subsection 1(1) of the Act;

"Regulatory Oversight Committee" means the committee established by Aequitas Neo Exchange pursuant to section 7 of this Schedule;

"Rule" means a rule, policy, or other similar instrument of Aequitas Neo Exchange;

"shareholder" means a founding shareholder or a launch shareholder;

"significant shareholder" means a person or company that:

(i) is a founding shareholder;

(ii) is a launch shareholder whose nominee is on the Board of Aequitas or Aequitas Neo Exchange, for so long as the nominee of the launch shareholder remains on the Board of Aequitas or Aequitas Neo Exchange;

(iii) is a launch shareholder that has a partner, director or employee who is a director on the Board of Aequitas or Aequitas Neo Exchange, for so long as such partner, officer, director or employee remains a member on this board; or

(iv) beneficially owns or controls, directly or indirectly, more than 5% of any class or series of voting shares of Aequitas.

"unaudited consolidated financial statements" means financial statements that are prepared in the same manner as audited consolidated financial statements, except that they are not audited; and

"unaudited non-consolidated financial statements" means financial statements that are prepared in the same manner as audited consolidated financial statements, except that

(i) they are not audited; and

(ii) investments in subsidiary entities, jointly controlled entities and associates are accounted for as specified for separate financial statements in International Accounting Standard 27 Separate Financial Statements.

(b) For the purposes of this Schedule, an individual is independent if the individual is "independent" within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*, as amended from time to time, but is not independent if the individual:

(i) is a partner, officer, director or employee of an Aequitas Neo Exchange marketplace participant or an associate of that partner, officer or employee;

(ii) is a partner, officer, director or employee of an affiliated entity of an Aequitas Neo Exchange marketplace participant who is responsible for or is actively engaged in the day-to-day operations or activities of that Aequitas Neo Exchange marketplace participant;

(iii) is an officer or an employee of Aequitas or any of its affiliates;

(iv) is a partner, officer or employee of a founding shareholder or launch shareholder or any of its affiliated entities or an associate of that partner, officer or employee;

(v) is a director of a founding shareholder or launch shareholder or any of its affiliated entities or an associate of that director;

(vi) is a person who owns or controls, or is the officer or employee of a person or company that owns or controls, directly or indirectly, more than 5% of the shares of Aequitas;

(vii) is the director of a person or company that beneficially owns or controls, directly or indirectly, more than 5% of any class or series of voting shares of Aequitas;

(viii) is a director that was nominated, and as a result appointed or elected, by a founding shareholder or launch shareholder; or

(ix) has, or has had, any relationship with a founding shareholder or a launch shareholder or a person or company that owns or controls, directly or indirectly, more than 5% of the shares of Aequitas, that could, in the view of the Nomination Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment as a director of Aequitas or Aequitas Neo Exchange.

(c) For the purposes of paragraph (b), the Nominating Committee may waive the restrictions set out in subparagraphs (b)(v), (b)(vii) and (viii) provided that:

(i) the individual being considered does not have, and has not had, any relationship with a shareholder that could, in the view of the Nominating Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgement as a director of Aequitas Neo Exchange;

(ii) Aequitas Neo Exchange publicly discloses the use of the waiver with reasons why the particular candidate was selected;

(iii) Aequitas Neo Exchange provides advance notice to the Commission, at least 15 business days before the public disclosure in sub-paragraph (c)(ii) is made, and

(iv) the Commission does not object within 15 business days of its receipt of the notice provided under sub-paragraph (c)(iii) above.

**2. PUBLIC INTEREST RESPONSIBILITIES**

(a) Aequitas Neo Exchange shall conduct its business and operations in a manner that is consistent with the public interest.

(b) The mandate of the Board shall expressly include regulatory and public interest responsibilities of Aequitas Neo Exchange.

**3. SHARE OWNERSHIP RESTRICTIONS**

(a) Without the prior approval of the Commission, and subject to terms and conditions considered appropriate by the Commission, no person or company and no combination of persons or companies acting jointly or in concert shall beneficially own or exercise control or direction over:

(i) more than 10% of any class or series of voting shares of Aequitas Neo Exchange and, thereafter,

(ii) more than 50% of any class or series of voting shares of Aequitas Neo Exchange.

(b) The articles of Aequitas Neo Exchange shall contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares and the sale or redemption of voting shares held contrary to the restrictions and payment of net proceeds of the sale or redemption to the person entitled thereto.

**4. RECOGNITION CRITERIA**

Aequitas Neo Exchange shall continue to meet the criteria for recognition set out in Schedule 1 to the Order.

**5. FITNESS**

In order to ensure that Aequitas Neo Exchange operates with integrity and in the public interest, Aequitas Neo Exchange will take reasonable steps to ensure that each person or company that is a significant shareholder, as defined in this Schedule 2, is a fit and proper person and the past conduct of each person or company that is a significant shareholder affords reasonable grounds for belief that the business of Aequitas Neo Exchange will be conducted with integrity.

**6. BOARD OF DIRECTORS**

(a) Aequitas Neo Exchange shall ensure that at least 50% of its Board members are independent.

(b) The chair of the Board shall be independent.

(c) In the event that Aequitas Neo Exchange fails to meet the requirements of paragraphs (a) or (b) of this section, it shall immediately advise the Commission and take appropriate measures to promptly remedy such failure.

(d) Aequitas Neo Exchange shall ensure that its Board is subject to requirements that the quorum for the Board consists of a majority of the Board members, with at least 50% being independent.

**7. NOMINATING COMMITTEE**

Aequitas Neo Exchange shall maintain a Nominating Committee of the Board that, at a minimum:

(a) is made up of at least three directors, at least 50% of which shall be independent;

(b) confirms the status of a nominee to the Board as independent before the name of the individual is submitted to the shareholder(s) of Aequitas Neo Exchange as a nominee for election to the Board;

(c) confirms, on an annual basis, that the status of the directors that are independent has not changed;

(d) assesses and approves all nominees of management to the Board; and

(e) has a requirement that the quorum consist of at least 50% of independent directors.

**8. REGULATORY OVERSIGHT COMMITTEE**

(a) Aequitas Neo Exchange shall establish and maintain a Regulatory Oversight Committee that, at a minimum:

(i) is made up of at least three directors, a majority of which shall be independent;

(ii) reviews and decides, or makes recommendations to the Board, on proposed regulation and rules that must be submitted to the OSC for review and approval under Schedule 5 *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto* of this Order;

(iii) considers real or perceived conflicts of interest that may arise, including but not limited to the following contexts:

(A) ownership interests in Aequitas by any Aequitas Neo Exchange marketplace participant with representation on the Board of Aequitas or the Board of Aequitas Neo Exchange,

(B) increased concentration of ownership of Aequitas, and

(C) the profit-making objective and the public interest responsibilities of Aequitas Neo Exchange, including general oversight of the management of the regulatory and public interest responsibilities of Aequitas Neo Exchange.

(iv) oversees the establishment of mechanisms to avoid and appropriately manage conflicts of interest or potential conflicts of interest, perceived or real, including any policies and procedures that are developed by Aequitas Neo Exchange, including those that are required to be established pursuant to the Schedules of the Order;

(v) monitors the operation of mechanisms that deal with conflicts of interest, including oversight of reporting of issuer regulation activities and conflicts of interest by Aequitas Neo Exchange;

(vi) reviews regularly, and at least annually, the effectiveness of the policies and procedures regarding conflicts of interest;

(vii) annually prepares a written report examining the avoidance and management of conflicts of interest, the mechanisms used and the effectiveness of those mechanisms and provides the report to the Board promptly, and to the Commission within 30 days of providing it to its Board;

(viii) reports in writing directly to the Commission on any matter that the Regulatory Oversight Committee deems appropriate or that is required by the Commission without first requiring Board approval for such reporting.

(b) The mandate of the Regulatory Oversight Committee shall be publicly available on the website of Aequitas Neo Exchange.

(c) The Regulatory Oversight Committee shall provide to the Commission meeting materials provided to the Regulatory Oversight Committee members in conjunction with each meeting, within 30 days after any meeting it held, and will include a list of the matters considered and a detailed summary of the Regulatory Oversight Committee's considerations, how those matters were addressed and any other information required by the Commission.

(d) The Regulatory Oversight Committee shall provide such information as may be required by the Commission from time to time.

**9. CONFLICTS OF INTEREST AND CONFIDENTIALITY**

(a) Aequitas Neo Exchange shall establish, maintain and require compliance with policies and procedures that:

(i) identify and manage any conflicts of interest or potential conflicts of interest, real or perceived, arising from the operation of the marketplace or the services it provides including, but not limited to, the following:

(A) conflicts of interest or potential conflicts of interest that arise from the involvement of any partner, director, officer or employee of a significant shareholder in the management or oversight of the

exchange operations or regulation functions of Aequitas Neo Exchange and the services or products it provides;

(B) conflicts of interest or potential conflicts of interest that arise from any interactions between Aequitas Neo Exchange and a significant shareholder where Aequitas Neo Exchange may be exercising discretion that involves or affects the significant shareholder either directly or indirectly, and

(C) conflicts of interest or potential conflicts of interest that arise between the regulation functions and the business activities of Aequitas Neo Exchange, particularly with respect to conflicts of interest or potential conflicts of interest that arise between the Aequitas Neo Exchange issuer regulation functions and the business activities of Aequitas Neo Exchange; and

(ii) require that confidential information regarding marketplace operations, regulation functions, an Aequitas Neo Exchange marketplace participant or an Aequitas Neo Exchange issuer that is obtained by a partner, director, officer or employee of a significant shareholder through that individual's involvement in the management or oversight of marketplace operations or regulation functions of Aequitas Neo Exchange:

(A) be kept separate and confidential from the business or other operations of the significant shareholder, except with respect to information regarding marketplace operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of marketplace operations and the individual can and does exercise due care in his or her disclosure of the information, and

(B) not be used to provide an advantage to the significant shareholder or its affiliated entities.

(b) Aequitas Neo Exchange shall establish, maintain and require compliance with policies and procedures that identify and manage conflicts of interest or potential conflicts of interest arising from the listing of the shares of any significant shareholder or an affiliate of a significant shareholder on Aequitas Neo Exchange.

(c) Aequitas Neo Exchange shall establish, maintain and require compliance with policies and procedures that identify and manage conflicts of interest or potential conflicts of interest arising from the listing of the shares of any Competitor. These policies and procedures, including the process for an Aequitas Neo Exchange issuer to assert that it is a Competitor, shall be published on the website of Aequitas Neo Exchange. Aequitas Neo Exchange shall use its best efforts to ensure that IIROC at all times is provided with the current list of the Aequitas Neo Exchange issuers that are Competitors.

(d) Aequitas Neo Exchange shall require each shareholder that is a dealer and each affiliate of shareholder that is a dealer to disclose its relationship to Aequitas Neo Exchange to:

(i) clients whose orders might be, and clients whose orders have been, routed to Aequitas Neo Exchange; and

(ii) entities for which the dealer is acting or proposing to act as underwriter in connection with the issuance of securities to be listed on Aequitas Neo Exchange.

(e) Aequitas Neo Exchange shall regularly review compliance with the policies and procedures established in accordance with paragraphs 8(a), (b) , (c) and (d) and shall document each review, and any deficiencies, and how those deficiencies were remedied. A report detailing review(s) conducted shall be provided to the Commission on an annual basis.

(f) The policies established in accordance with paragraphs 8(a), (b) and (c) shall be made publicly available on the website of Aequitas Neo Exchange.

**10. ACCESS**

Aequitas Neo Exchange's requirements shall provide access to the facilities of Aequitas Neo Exchange only to properly registered investment dealers that are members of IIROC and satisfy reasonable access requirements established by Aequitas Neo Exchange.

**11. REGULATION OF AEQUITAS NEO EXCHANGE MARKETPLACE PARTICIPANTS AND AEQUITAS NEO EXCHANGE ISSUERS**

(a) Aequitas Neo Exchange shall establish, maintain and require compliance with policies and procedures that effectively monitor and enforce the Rules against Aequitas Neo Exchange marketplace participants and Aequitas Neo Exchange issuers, either directly or indirectly through a regulation services provider.

(b) Aequitas Neo Exchange has retained and shall continue to retain IIROC as a regulation services provider to provide, as agent for Aequitas Neo Exchange, certain regulation services that have been approved by the Commission. Aequitas Neo Exchange shall provide to the Commission, on an annual basis, a list outlining the regulation services performed by IIROC and the regulation functions performed by Aequitas Neo Exchange. Aequitas Neo Exchange shall obtain approval of the Commission before amending the listed services.

(c) Aequitas Neo Exchange shall perform all other regulation functions not performed by IIROC, and shall maintain adequate staffing, systems and other resources in support of those functions. Aequitas Neo Exchange shall obtain prior Commission approval before outsourcing such regulation functions to any party, including affiliated entities or associates of Aequitas Neo Exchange.

(d) Aequitas Neo Exchange shall at least annually assess the performance by IIROC of the regulation services it provides to Aequitas Neo Exchange and self-assess the performance by Aequitas Neo Exchange of any regulation functions not performed by IIROC, and provide a written report to its Board and the Regulatory Oversight Committee, together with any recommendations for improvements. Aequitas Neo Exchange shall provide the Commission with copies of such reports and advise the Commission of the views of its Board and the Regulatory Oversight Committee on the recommendations and any proposed actions arising therefrom within 30 days of the presentation of the report to the Board.

(e) Aequitas Neo Exchange shall notify the Commission of any violations of Ontario securities law of which it becomes aware in the ordinary course of its business or otherwise.

**12. RULES, RULEMAKING AND FORM 21-101F1**

Aequitas Neo Exchange shall comply with the process for review and approval of Rules and the information contained in Form 21-101F1 and the exhibits thereto, as set out in Schedule 5, as amended from time to time.

**13. DUE PROCESS**

(a) Aequitas Neo Exchange shall ensure that the requirements of Aequitas Neo Exchange relating to access to the trading and listing facilities of Aequitas Neo Exchange, the imposition of limitations or conditions on access, and denial of access are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of a record, the giving of reasons and the provisions of appeals.

(b) Aequitas Neo Exchange shall, within ninety days of the effective date of recognition of Aequitas Neo Exchange as an exchange pursuant to this Order, establish written procedural requirements governing the process for appeals or review of decisions referred to in section 6.1 of the criteria for recognition and file the procedures with the Commission for approval.

(c) For greater clarity, the procedural requirements referred to in paragraph (b) shall be considered to be Rules and therefore subject to the rule review process established in accordance with Schedule 5.

**14. FEES, FEE MODELS AND INCENTIVES**

(a) Aequitas Neo Exchange shall not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a particular marketplace participant or any other particular person or company, or

(ii) any discount, rebate, allowance, price concession or other similar arrangement for any service or product offered by Aequitas Neo Exchange that is conditional upon:

(A) the requirement to have Aequitas Neo Exchange be set as the default or first marketplace a marketplace participant routes to, or

(B) the router of Aequitas Neo Exchange being used as the marketplace participant's primary router.

(b) Except with the prior approval of the Commission, Aequitas Neo Exchange shall not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession or other similar arrangement on any services or products offered by Aequitas Neo Exchange that is conditional upon the purchase of any other service or product provided by Aequitas Neo Exchange or any affiliated entity, or

(ii) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies.

(c) Aequitas Neo Exchange shall obtain prior Commission approval before implementing any new, or amendments to, fees and fee models, including any new, or amendments to any, incentives relating to arrangements that provide for equity ownership in Aequitas for marketplace participants or their affiliated entities based on trading volumes of values on Aequitas Neo Exchange.

(d) Except with the prior approval of the Commission, Aequitas Neo Exchange shall not require another person or company to purchase or otherwise obtain products or services from Aequitas Neo Exchange or a significant shareholder as a condition of Aequitas Neo Exchange supplying or continuing to supply a product or service.

(e) If the Commission considers that it would be in the public interest, the Commission may require Aequitas Neo Exchange to submit for approval by the Commission a fee, fee model or incentive that has previously been filed with and/or approved by the Commission.

(f) Where the Commission decides not to approve the fee, fee model or incentive submitted under paragraph (e), any previous approval for the fee, fee model or incentive shall be revoked, if applicable, and Aequitas Neo Exchange shall no longer be permitted to offer the fee, fee model or incentive.

(g) Any fee, fee model or incentive, or amendment thereto, shall be filed in accordance with the Rule and Form 21-101F1 Filing Protocol attached as Schedule 5.

**15. ORDER ROUTING**

Aequitas Neo Exchange shall not support, encourage or incent, either through fee incentives or otherwise, Aequitas Neo Exchange marketplace participants to coordinate the routing of their orders to Aequitas Neo Exchange.

**16. FINANCIAL REPORTING**

(a) Within 90 days of its financial year end, Aequitas Neo Exchange shall deliver to the Commission audited consolidated financial statements and unaudited non-consolidated financial statements without notes for its latest financial year.

(b) Within 60 days of each quarter end, Aequitas Neo Exchange shall deliver to the Commission unaudited consolidated financial statements and unaudited non-consolidated financial statements without notes for its latest financial quarter.

(c) Aequitas Neo Exchange shall deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days from the commencement of each fiscal year.

**17. FINANCIAL VIABILITY MONITORING AND REPORTING**

(a) Aequitas Neo Exchange shall calculate the following financial ratios monthly:

(i) a current ratio, being the ratio of current assets to current liabilities;

(ii) a debt to cash flow ratio, being the ratio of total debt (including any line of credit draw downs, and the current and long-term portions of any loans, but excluding accounts payable, accrued expenses and other liabilities) to EBITDA (earnings before interest, taxes, stock-based compensation, depreciation and amortization) for the most recent 12 months; and

(iii) a financial leverage ratio, being the ratio of total assets to shareholders' equity,

in each case following the same accounting principles as those used for the unaudited non-consolidated financial statements of Aequitas Neo Exchange.

(b) Aequitas Neo Exchange shall report quarterly in writing to the Commission, along with the financial statements required to be delivered pursuant to this Schedule, the monthly calculations for the previous quarter of the financial ratios as required to be calculated under paragraph (a).

(c) If Aequitas Neo Exchange determines that it does not have, or anticipates that, in the next twelve months, it will not have:

(i) a current ratio of greater than or equal to 1.1/1,

(ii) a debt to cash flow ratio of less than or equal to 4.0/1, or

(iii) a financial leverage ratio of less than or equal to 4.0/1,

it will immediately notify Commission staff of the above ratio(s) that it is not maintaining, the reasons, along with an estimate of the length of time before the ratio(s) will be met.

(d) Upon receipt of a notification made by Aequitas Neo Exchange under paragraph (c), the Commission may, as determined appropriate, impose any of the terms and conditions set out in paragraph (e) below.

(e) If Aequitas Neo Exchange's current ratio, debt to cash flow ratio or financial leverage ratio falls below the levels outlined in subparagraphs 17(c)(i), 16(c)(ii) and 16(c)(iii) above for a period of more than three months, Aequitas Neo Exchange will:

(i) immediately deliver a letter advising the Commission staff of the reasons for the continued ratio deficiencies and the steps being taken to rectify the situation;

(ii) deliver to Commission staff, on a monthly basis, within 30 days of the end of each month:

(A) unaudited monthly financial statements and a status update on any pending capital raising transaction(s) including the amount, terms and name(s) of individuals/entities that have committed to providing funding and their commitment,

(B) a comparison of the monthly revenues and expenses incurred by Aequitas Neo Exchange against the projected monthly revenues and expenses included in Aequitas Neo Exchange's most recently updated budget for that fiscal year,

(C) for each revenue item whose actual amount was significantly lower than its projected amount, and for each expense item whose actual amount was significantly higher than its projected amount, the reasons for the variance, and

(D) a calculation of the current ratio, debt to cash flow ratio and financial leverage ratio for the month;

(iii) prior to making any type of payment to any director, officer, affiliated entity or shareholder that is in excess of the amount included in the most recent annual financial budget delivered to Commission staff, demonstrate to the satisfaction of the Commission staff that it will have sufficient financial resources to continue its operations after the payment; and

(iv) adhere to any additional terms and conditions imposed by the Commission or its staff, as determined appropriate,

until such time as Aequitas Neo Exchange has maintained each of its current ratio, debt to cash flow ratio and financial leverage ratio at the levels set out in subparagraphs 17(c)(i), 17(c)(ii) and 17(c)(iii) for a period of at least 6 consecutive months.

**18. ADDITIONAL INFORMATION**

(a) Aequitas Neo Exchange shall provide the Commission with:

(i) the information set out in Appendix A to this Schedule**,** as amended from time to time; and

(ii) any information required to be provided by Aequitas Neo Exchange to IIROC, including all order and trade information, as required by the Commission.

(b) Aequitas Neo Exchange shall comply with the reporting program set out in the *Automation Review Program for Market Infrastructure Entities in the Canadian Capital Markets*, as amended from time to time, and published on the Commission's website.

**19. COMPLIANCE**

Aequitas Neo Exchange shall carry out its activities as an exchange recognized under section 21 of the Act and in compliance with Ontario securities law.

**20. GOVERNANCE REVIEW**

(a) Aequitas Neo Exchange shall engage an independent consultant, or independent consultants acceptable to the Commission to prepare a written report assessing the governance structure of Aequitas Neo Exchange (Governance Review) as follows:

(i) within six months after Aequitas Neo Exchange meets or exceeds any of the trading thresholds referred to in subsection 6.7(1) of NI 21-101, or

(ii) at any other times required by the Commission.

(b) The written report shall be provided to the Board of Aequitas Neo Exchange promptly after the report's completion and then to the Commission within 30 days of providing it to the Boards.

(c) The scope of the Governance Review shall be approved by the Commission and shall include, at a minimum, the following:

(i) a review of the composition of the Board of Aequitas Neo Exchange, in particular whether its composition continues to meet the recognition criteria, including the requirement that there be fair, meaningful and diverse representation on the Board and any committees of the Board, including:

(A) appropriate representation of independent directors, and

(B) a proper balance among the interests of the different persons or companies using the services and facilities of Aequitas Neo Exchange;

(ii) a review of the impact of the composition requirements applicable to the Board of Aequitas Neo Exchange, including requirements imposed by all securities regulatory authorities, on their ability to meet the recognition criteria;

(iii) a review of the degree to which the governance structure of Aequitas Neo Exchange allows for appropriate input into the business and operations of Aequitas Neo Exchange by users of its services and facilities;

(iv) a review of how the Nominating Committee discharges its mandate and performs its role and functions; and

(v) a review of how the Regulatory Oversight Committee discharges its mandate and performs its role and functions, including how conflicts of interest and potential conflicts of interest are actually managed, whether they are managed effectively, if there are any identified deficiencies, what they were and how they were remedied and whether further measures are warranted.

**21. PROVISION OF INFORMATION**

(a) Aequitas Neo Exchange shall, and shall cause its affiliated entities, to promptly provide to the Commission, on request, any and all data, information and analyses in the custody or control of Aequitas Neo Exchange or any of its affiliated entities, without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:

(i) data, information and analyses relating to all of its or their businesses; and

(ii) data, information and analyses of third parties in its or their custody or control.

(b) Aequitas Neo Exchange shall share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, recognized or exempt clearing agencies, investor protection funds, and other appropriate regulatory bodies.

**22. COMPLIANCE WITH TERMS AND CONDITIONS**

(a) Aequitas Neo Exchange shall certify in writing to the Commission, in a certificate signed by its CEO and general counsel, within one year of the effective date of its recognition as an exchange pursuant to this Order and every year subsequent to that date, or at any times required by the Commission, that it is in compliance with the terms and conditions applicable to it in the Order and describe in detail:

(i) the steps taken to require compliance;

(ii) the controls in place to verify compliance;

(iii) the names and titles of employees who have oversight of compliance.

(b) If Aequitas Neo Exchange or any of its directors, officers or employees become aware of a breach or a possible breach of any of the terms and conditions applicable to the Aequitas Neo Exchange under the Schedules to the Order, such person shall, within two business days after becoming aware of the breach or possible breach, notify the Regulatory Oversight Committee of the breach or possible breach. The director, officer or employee of the recognized exchange shall provide to the Regulatory Oversight Committee details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.

(c) The Regulatory Oversight Committee shall, within two business days after being notified of the breach or possible breach, notify the Commission and confirm that the breach or possible breach is under investigation as required by section 22(d).

(d) The Regulatory Oversight Committee shall promptly cause to be conducted an investigation of the breach or possible breach reported under section 22(b). Once the Regulatory Oversight Committee has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to Aequitas Neo Exchange under the Schedules to the Order, the Regulatory Oversight Committee shall, within two business days of such determination, notify the Commission of its determination and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

## APPENDIX A

## Additional Reporting Obligations

**1. Ad Hoc**

(a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding or other similar agreement with any governmental or regulatory body, self-regulatory obligation, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, or (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, listing agreements, data subscription agreements, etc.).

(b) Any plans by Aequitas Neo Exchange to enter into new businesses (directly or indirectly, including joint ventures) or to cease existing businesses, promptly after the Board has made the decision to implement those plans.

(c) Immediate notification of:

(i) the appointment of any new director or officer of Aequitas Neo Exchange, including a description of the individual's employment history; and

(ii) the receipt of notice of resignation from, or the resignation of, a director or officer or the auditor of Aequitas Neo Exchange, including a statement of the reasons for the resignation.

(d) Any minutes of the meetings of Board and Board committees of Aequitas Neo Exchange, promptly after their approval.

(e) Immediate notification if Aequitas Neo Exchange:

(i) becomes the subject of any order, directive or similar action of a governmental or regulatory authority;

(ii) becomes aware that it is the subject of a criminal or regulatory investigation; or

(iii) becomes, or it is notified in writing that it will become, the subject of a material lawsuit.

(f) Any strategic plan for Aequitas Neo Exchange, within 30 days of approval by the Board.

(g) Any filings made by Aequitas Neo Exchange with a Canadian securities regulatory authority pursuant to a recognition order, exemption order or NI 21-101, filed concurrently.

(h) Copies of all notices, bulletins and similar forms of communication that Aequitas Neo Exchange sends to the Aequitas Neo Exchange marketplace participants or Aequitas Neo Exchange issuers.

(i) Prompt notification of any suspension or delisting of an Aequitas Neo Exchange issuer, including the reasons for the suspension or delisting.

(j) Prompt notification of any original listing application received from a significant shareholder or any of its affiliates.

(k) Prompt notification of any original listing application received from a Competitor.

(l) Prompt notification of any application for exemption or waiver from requirements received from a significant shareholder or any of its affiliates.

(m) Within 30 days from the one-year anniversary of the launch of Aequitas Neo Exchange, a review of market making activities, the scope of which shall be approved by the Commission, and analysis of the proportionality between the benefits and obligations of designated market makers, together with a summary of the actions taken to identify, address and resolve any instances of potential or actual non-compliance with performance benchmarks applicable to designated market makers.

**2. Quarterly Reporting**

(a) A list of the internal audit reports and risk management reports issued in the previous quarter that relate to the operations and business of Aequitas Neo Exchange, if such reports are produced.

(b) A quarterly report summarizing all exemptions or waivers granted during the period pursuant to the Rules to any Aequitas Neo Exchange marketplace participant or Aequitas Neo Exchange issuer, which shall include the following information:

(i) the name of the Aequitas Neo Exchange marketplace participant or Aequitas Neo Exchange issuer;

(ii) the type of exemption or waiver granted during the period;

(iii) the date of the exemption or waiver; and

(iv) a description of the recognized exchange's reason for the decision to grant the exemption or waiver.

(c) A quarterly report regarding original listing applications containing the following information:

(i) the name of any Aequitas Neo Exchange issuer whose original listing application was conditionally approved, the date of such approval, the type of listing, the category of listing and, if known, whether the issuer was denied an application to list its securities on another marketplace;

(ii) the name of any issuer whose original listing application was rejected and the reasons for rejection, by category of listing; and

(iii) the name of any issuer whose original listing application was withdrawn or abandoned and, if known, the reasons why the application was withdrawn or abandoned, by category of listing.

The information required by section 2(b)(i) above should disclose whether the issuer is an Emerging Market Issuer, whether the listing involved an agent, underwriter or Canadian Securities Regulatory Authority, and any additional requirements imposed by Aequitas Neo Exchange pursuant to sections 2.10 and 2.11 of the Aequitas Neo Exchange Listing Manual.

(d) A quarterly report summarizing all significant incidents of non-compliance by Aequitas Neo Exchange issuers identified by Aequitas Neo Exchange during the period, together with a summary of the actions taken to address and resolve the incidents of non-compliance.

(e) A quarterly report listing all the Competitors listed on Aequitas Neo Exchange.

(f) A quarterly report summarizing instances where conflicts of interest or potential conflicts of interest with respect to Competitors have been identified by Aequitas Neo Exchange and how such conflicts were addressed.

(g) A quarterly report, the scope of which shall be approved by the Commission, relating to compliance with the use of certain designations by marketplace participants, including the results of reviews of marketplace participants' use of such designations and a description of the actions taken to address and resolve instances of non-compliance.

(h) A quarterly report, the scope of which shall be approved by the Commission, providing statistics and analysis relating to the occurrence of trade-throughs caused by the introduction of the speed bump on the Neo Book of Aequitas Neo Exchange.

(i) Upon request, Aequitas Neo Exchange will provide to the Commission copies of any information that was provided to Aequitas and any shareholders.

**3. Annual Reporting**

At least annually, or more frequently if required by the Commission, an assessment of the risks, including business risks, facing Aequitas Neo Exchange and the plan for addressing such risks.

## SCHEDULE 3

## TERMS AND CONDITIONS APPLICABLE TO AEQUITAS

### 23. DEFINITIONS AND INTERPRETATION

Terms used in this Schedule have the same meanings and interpretation as in section 1 of Schedule 2. In addition:

### 24. PUBLIC INTEREST RESPONSIBILITIES

(a) Aequitas shall conduct its business and operations in a manner that is consistent with the public interest.

(b) The mandate of the Board shall expressly include Aequitas' regulatory and public interest responsibilities.

### 25. SHARE OWNERSHIP RESTRICTIONS

(a) Without the prior approval of the Commission, and subject to terms and conditions considered appropriate by the Commission, no person or company and no combination of persons or companies acting jointly or in concert shall beneficially own or exercise control or direction over:

(i) more than 10% of any class or series of voting shares of Aequitas and, thereafter,

(ii) more than 50% of any class or series of voting shares of Aequitas.

(b) The articles of Aequitas shall contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares and the sale or redemption of voting shares held contrary to the restrictions and payment of net proceeds of the sale or redemption to the person entitled thereto.

### 26. RECOGNITION CRITERIA

Aequitas shall continue to meet the criteria for recognition set out in Schedule 1 to the Order.

### 27. FITNESS

In order to ensure that Aequitas and its affiliates operate with integrity and in the public interest, Aequitas will take reasonable steps to ensure that each person or company that is a significant shareholder, as defined in Schedule 2, is a fit and proper person and the past conduct of each person or company that is a significant shareholder affords reasonable grounds for belief that the business of Aequitas Neo Exchange will be conducted with integrity.

### 28. BOARD OF DIRECTORS

(a) Aequitas shall ensure that at least one third of its Board members are independent.

(b) In the event that Aequitas fails to meet the requirements of paragraph (a) of this section, it shall immediately advise the Commission and take appropriate measures to remedy such failure.

(c) Aequitas shall ensure that the Board is subject to requirements that the quorum for the Board consists of a majority of the Board members, with at least two directors being independent.

### 29. NOMINATING COMMITTEE

Aequitas shall maintain a Nominating Committee that, at a minimum:

(a) is made up of at least three directors, at least 50% of which shall be independent;

(b) confirms the status of a nominee to the Board as independent before the name of the individual is submitted to shareholders as a nominee for election to the Board;

(c) confirms, on an annual basis, that the status of the directors that are independent has not changed;

(d) assesses and approves all nominees of management to the Board; and

(e) has a requirement that the quorum consist of at least 50% of independent directors.

**30. CONFLICTS AND CONFIDENTIALITY PROCEDURES**

(a) Aequitas shall establish, maintain and require compliance with policies and procedures that:

(i) identify and manage any conflicts of interest or potential conflicts of interest, perceived or real, arising from its ownership interest in Aequitas Neo Exchange, and

(ii) require that confidential information regarding marketplace operations, regulation functions, an Aequitas Neo Exchange marketplace participant or an Aequitas Neo Exchange issuer that is obtained by a partner, director, officer or employee of a significant shareholder through that individual's involvement in the management or oversight of the marketplace operations or regulation functions of Aequitas Neo Exchange:

(A) be kept separate and confidential from the business or other operations of the significant shareholder, except with respect to information regarding marketplace operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of marketplace operations and the individual can and does exercise due care in his or her disclosure of the information, and

(B) not be used to provide an advantage to the significant shareholder or its affiliated entities.

(b) Aequitas shall cause Aequitas Neo Exchange to mandate that each Aequitas Neo Exchange dealer and affiliate of an Aequitas Neo Exchange dealer disclose its relationship with Aequitas Neo Exchange to:

(i) clients whose orders might be, and clients whose orders have been, routed to Aequitas Neo Exchange, and

(ii) entities for which the Aequitas Neo Exchange dealer or the affiliate of the Aequitas Neo Exchange dealer is acting or proposing to act as underwriter in connection with the issuance of securities to be listed on Aequitas Neo Exchange.

(c) Aequitas shall regularly review compliance with the policies and procedures established in accordance with sections 30(a) and (b), and shall document each review and any deficiencies and how those deficiencies were remedied. A report detailing the review(s) conducted shall be provided to the Commission on an annual basis.

(d) The policies established in accordance with paragraph sections 30(a) and (b) shall be made publicly available on the website of Aequitas or Aequitas Neo Exchange.

**31. ALLOCATION OF RESOURCES**

(a) Aequitas shall, for so long as Aequitas Neo Exchange carries on business as an exchange, allocate sufficient financial and other resources to Aequitas Neo Exchange to ensure that Aequitas Neo Exchange can carry out its functions in a manner that is consistent with the public interest and in compliance with Ontario securities law.

(b) Aequitas shall notify the Commission immediately upon being aware that it is or will be unable to allocate sufficient financial and other resources, as required under paragraph (a), to Aequitas Neo Exchange.

**32. FEES, FEE MODELS AND INCENTIVES**

(a) Aequitas shall ensure that its affiliated entities, including Aequitas Neo Exchange, do not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a particular marketplace participant or any other particular person or company, or

(ii) any discount, rebate, allowance, price concession or other similar arrangement for any service or product offered by the affiliated entity, including Aequitas Neo Exchange, that is conditional upon:

(A) the requirement to have Aequitas Neo Exchange be set as the default or first marketplace a marketplace participant routes to; or

(B) the router of Aequitas Neo Exchange being used as the marketplace participant's primary router.

(b) Aequitas shall ensure that its affiliated entities, including Aequitas Neo Exchange, do not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession or other similar arrangement on any services or products offered by the affiliated entity, including Aequitas Neo Exchange, that is conditional upon the purchase of any other service or product provided by the affiliated entity; or

(ii) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies,

unless prior approval has been granted by the Commission.

(c) Aequitas shall ensure that Aequitas Neo Exchange obtains prior Commission approval before implementing any new, or amendments to, fees and fee models, including any new, or amendments to any, incentives relating to arrangements that provide for equity ownership in Aequitas for marketplace participants or their affiliated entities based on trading volumes of values on Aequitas Neo Exchange.

(d) Aequitas shall ensure that Aequitas Neo Exchange does not require a person or company to purchase or otherwise obtain products or services from Aequitas Neo Exchange or from a significant shareholder as a condition of Aequitas Neo Exchange supplying or continuing to supply a product or service unless prior approval has been granted by the Commission.

(e) Aequitas shall ensure that any affiliated entity does not require another person or company to obtain products or services from Aequitas Neo Exchange as a condition of the affiliated entity supplying or continuing to supply a product or service.

**33. ORDER ROUTING**

Aequitas shall not support, encourage or incent, either through fee incentives or otherwise, Aequitas Neo Exchange marketplace participants to coordinate the routing of their order to Aequitas Neo Exchange.

**34. FINANCIAL REPORTING**

(a) Within 90 days of its financial year end, Aequitas shall deliver to the Commission audited consolidated financial statements and unaudited non-consolidated financial statements without notes for its latest financial year.

(b) Within 60 days of each quarter end, Aequitas shall deliver to the Commission unaudited consolidated financial statements and unaudited non-consolidated financial statements without notes for its latest financial quarter.

(c) Aequitas shall deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days from the commencement of each fiscal year.

**35. PRIOR COMMISSION APPROVAL**

Aequitas shall obtain prior Commission approval of any changes to any agreement between Aequitas and its shareholders.

**36. REPORTING REQUIREMENTS**

Aequitas shall provide the Commission with the information set out in Appendix A to this Schedule, as amended from time to time.

**37. GOVERNANCE REVIEW**

(a) Aequitas shall engage an independent consultant, or independent consultants, acceptable to the Commission to prepare a written report assessing the governance structure of Aequitas (Aequitas Governance Review) as follows:

(i) within six months after Aequitas Neo Exchange meets or exceeds any of the trading thresholds referred to in subsection 6.7(1) of NI 21-101, or

(ii) at any other times required by the Commission.

(b) The written report shall be provided to the Board of Aequitas promptly after the report's completion and then to the Commission within 30 days of providing it to the Board.

(c) The scope of the Aequitas Governance Review shall be approved by the Commission and shall include, at a minimum, the following:

(i) a review of the composition of the Board of Aequitas, in particular whether its composition continues to meet the recognition criteria, including the requirement that there be fair, meaningful and diverse representation on the Board and any committees of the Board, including:

(A) appropriate representation of independent directors, and

(B) a proper balance among the interests of the different persons or companies using the services and facilities of Aequitas;

(ii) a review of the impact of the composition requirements applicable to the Board of Aequitas, including requirements imposed by all securities regulatory authorities, on their ability to meet the recognition criteria;

(iii) a review of the degree to which the governance structure of Aequitas allows for appropriate input into the business and operations of Aequitas by users of its services and facilities; and

(iv) a review of how the Nominating and Governance Committee discharges its mandate and performs its role and functions.

**38. PROVISION OF INFORMATION**

(a) Aequitas shall, and shall cause its affiliated entities to promptly provide to the Commission, on request, any and all data, information and analyses in the custody or control or Aequitas or any of its affiliated entities, without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:

(i) data, information and analyses relating to all of its or their businesses; and

(ii) data, information and analyses of third parties in its or their custody or control.

(b) Aequitas shall share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, recognized or exempt clearing agencies, investor protection funds, and other appropriate regulatory bodies.

**39. COMPLIANCE WITH TERMS AND CONDITIONS**

(a) Aequitas shall certify in writing to the Commission, in a certificate signed by its CEO and general counsel, within one year of the effective date of its recognition as an exchange pursuant to this Order and every year subsequent to that date, or at any times required by the Commission, that it is in compliance with the terms and conditions applicable to it in the Order and describe in detail:

(i) the steps taken to require compliance;

(ii) the controls in place to verify compliance; and

(iii) the names and titles of employees who have oversight of compliance.

(b) If Aequitas or any of its directors, officers or employees become aware of a breach or a possible breach of any of the terms and conditions applicable to Aequitas under the Schedules to the Order, such person shall, within two business days after becoming aware of the breach or possible breach, notify the Board or committee designated by the Board and approved by the Commission of the breach or possible breach. The director, officer or employee of the recognized exchange shall provide to the Board or committee designated by the Board details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.

(c) The Board or committee designated by the Board shall, within two business days after being notified of the breach or possible breach, notify the Commission and confirm that the breach or possible breach is under investigation as required by section 39(d).

(d) The Board or committee designated by the Board shall promptly cause to be conducted an investigation of the breach or possible breach reported under section 39(b). Once the Board or committee designated by the Board has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to Aequitas under the Schedules to the Order, the Board or committee designated by the Board shall, within two business days of such determination, notify the Commission of its determination and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

**APPENDIX A**

**Additional Reporting Obligations**

**1. Ad Hoc**

(a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding or other similar agreement with any governmental or regulatory body, self-regulatory obligation, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, listing agreements, data subscription agreements, etc.), or (v) relates to a business line other than exchange services.

(b) Any plans by Aequitas or its affiliated entities to enter into new businesses (directly or indirectly, including joint ventures) or to cease existing businesses, promptly after the Board has made the decision to implement those plans.

(c) Immediate notification of:

(i) the appointment of any new director or officer of Aequitas, including a description of the individual's employment history; and

(ii) the receipt of notice of resignation from, or the resignation of, a director or officer or the auditor of Aequitas, including a statement of the reasons for the resignation.

(d) Any minutes of the meetings of Board and Board committees of Aequitas, promptly after their approval.

(e) Immediate notification if Aequitas:

(i) becomes the subject of any order, directive or similar action of a governmental or regulatory authority;

(ii) becomes aware that it is the subject of a criminal or regulatory investigation; or

(iii) becomes, or it is notified in writing that it will become, the subject of a material lawsuit.

(f) Immediate notification if any shareholder or any affiliate of a shareholder of Aequitas becomes, or it is notified in writing that it will become, the subject of a criminal, administrative or regulatory proceeding.

(g) Any strategic plan for Aequitas and its affiliated entities, within 30 days of approval by the Board.

(h) Any filings made by Aequitas with a Canadian securities regulatory authority pursuant to a recognition order, exemption order or NI 21-101, filed concurrently.

(i) Upon request, Aequitas will provide to the Commission copies of any information that was provided to its shareholders.

**2. Quarterly Reporting**

A list of the internal audit reports and risk management reports issued in the previous quarter that relate to the operations and business of Aequitas and its affiliated entities, if such reports are produced.

**3. Annual Reporting**

At least annually, or more frequently if required by the Commission, an assessment of the risks, including business risks, facing Aequitas and its affiliated entities and the plan for addressing such risks.

## SCHEDULE 4

## TERMS AND CONDITIONS APPLICABLE TO SIGNFICANT SHAREHOLDERS

### 40. DEFINITIONS AND INTERPRETATION

Terms used in this Schedule have the same meanings and interpretation as in section 1 of Schedule 2.

### 41. CONFLICTS OF INTEREST AND CONFIDENTIALITY

(a) Each significant shareholder shall establish, maintain and require compliance with policies and procedures that:

(i) identify and manage any conflicts of interest or potential conflicts of interest, real or perceived, arising from the involvement of a nominee by a significant shareholder to the Board of Aequitas or Aequitas Neo Exchange in the management or oversight of the marketplace operations or regulation functions of Aequitas Neo Exchange, and

(iii) require that confidential information regarding marketplace operations or regulation functions, or regarding an Aequitas Neo Exchange marketplace participant or an Aequitas Neo Exchange issuer that is obtained by such nominee on the Board of Aequitas Neo Exchange or Aequitas:

(A) be kept separate and confidential from the business or other operations of the significant shareholder, except with respect to information regarding marketplace operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of exchange operations and the individual can and does exercise due care in his or her disclosure of the information, and

(B) not be used to provide an advantage to the significant shareholder or its affiliated entities.

(b) Each significant shareholder shall establish, maintain and require compliance, or ensure that its affiliates that are dealers establish, maintain or require compliance with policies and procedures that identify and manage any conflicts of interest or potential conflicts of interest, real or perceived, arising from its ownership interest in Aequitas, and indirectly in Aequitas Neo Exchange, including, but not limited to, conflicts of interest or potential conflicts of interest that arise from any interactions between either of Aequitas Neo Exchange and the significant shareholder, or between Aequitas Neo Exchange and the affiliate of the significant shareholder that is a dealer where Aequitas Neo Exchange may be exercising discretion in the application of its Rules that involves or affects the significant shareholder either directly and indirectly.

(c) Each significant shareholder shall regularly review compliance with the policies and procedures established in accordance with paragraphs (a) and (b), as applicable, and shall document each review of compliance.

### 42. ROUTING AND OTHER OPERATIONAL DECISIONS

(a) Each significant shareholder shall not enter into, and shall not cause any of its affiliates that are dealers to enter into, any arrangements, undertakings, commitments, understandings or agreements with Aequitas, Aequitas Neo Exchange, any othershareholder or any other marketplace participant with respect to coordination of the routing of orders between the significant shareholder or any of its affiliated entities and any other entity, including the coordination of the routing of orders to Aequitas Neo Exchange, except with respect to activities that are permitted by the requirements of Aequitas Neo Exchange or IIROC.

(b) For greater certainty, paragraph (a) is not intended to prohibit any temporary agreements or coordination between any significant shareholder or affiliate of a significant shareholder that is a dealer and any other shareholder or affiliate of a shareholder that is a dealer or any other person in the event of any failure, malfunction or material delay of the systems or equipment of a marketplace if and to the extent reasonably necessary to protect the integrity and liquidity of capital markets, provided that prior notice of the temporary agreement or coordination is provided to the Commission.

(c) Each significant shareholder shall not, and shall not cause any of its affiliated entities to, offer or pay any benefit, financial or otherwise to:

(i) its traders that would incent such traders to direct their orders to Aequitas Neo Exchange in preference to any other marketplace; or

(ii) its employees involved in and responsible for underwriting activities that would incent such employees to recommend to issuers or prospective issuers for whom the significant shareholder or affiliated entity is acting or proposing to act as underwriter to list securities on Aequitas Neo Exchange in preference to any other marketplace.

(d) Each significant shareholder that is not a dealer shall provide a written directive to its traders that they shall not cause routing decisions to be made based on the significant shareholder's ownership interest in Aequitas.

(e) Each Aequitas Neo Exchange dealer and each of its affiliates that is a marketplace participant shall establish, maintain and require compliance with a written directive requiring its traders to base routing decisions on the best execution and order protection obligations, where applicable, without regard to any ownership interest in Aequitas. The written policy shall provide that where best execution and order protection obligations are satisfied and an order or orders are being routed on the basis of other factors, the dealer's routing decisions, including the use of algorithms, or those of its affiliated entities that are marketplace participants, shall not take into account any financial benefit that would accrue to the dealer by virtue of its equity ownership in Aequitas.

(f) Each Aequitas Neo Exchange dealer and each of its affiliates that is a marketplace participant shall establish, maintain and require compliance with a written directive requiring its employees involved in and responsible for underwriting activities to base any listing recommendations on what would be most advantageous for the issuer or prospective issuer, without regard to any ownership interest of the dealer, or of those affiliated entities that are marketplace participants on Aequitas Neo Exchange.

**43. DISCLOSURE TO CLIENTS**

(a) Each Aequitas Neo Exchange dealer shall or shall ensure that any of its affiliated entities that is an Aequitas Neo Exchange marketplace participant shall disclose its relationship with Aequitas and its affiliated entities to:

(i) clients whose orders might be, and clients whose orders have been, routed to Aequitas Neo Exchange; and

(ii) entities for whom the Aequitas Neo Exchange marketplace participant is acting or proposing to act as an underwriter in connection with the issuance of securities to be listed on Aequitas Neo Exchange.

(b) Each significant shareholder that is not a dealer shall ensure that any of its affiliated entities that is an Aequitas Neo Exchange marketplace participant shall disclose its relationship with Aequitas and its affiliated entities to:

(i) clients whose orders might be, and clients whose orders have been, routed to Aequitas Neo Exchange; and

(ii) entities for whom the Aequitas Neo Exchange marketplace participant is acting or proposing to act as an underwriter in connection with the issuance of securities to be listed on Aequitas Neo Exchange.

**44. CONDITIONAL PROVISION OF PRODUCTS OR SERVICES**

(a) An Aequitas Neo Exchange dealer shall not require another person or company to obtain products or services from Aequitas Neo Exchange or any of its affiliated entities as a condition of the Aequitas Neo Exchange dealer supplying or continuing to supply a product or service.

(b) A significant shareholder shall not cause its dealer affiliate to require another person or company to obtain products or services from Aequitas Neo Exchange or any of its affiliated entities as a condition of the significant shareholder supplying or continuing to supply a product or service.

**45. NOTIFICATION OF NEW DEALER AFFILIATES**

Each significant shareholder shall promptly notify the Commission if it creates or acquires an affiliate that is a dealer.

**46. CERTIFICATIONS**

(a) Each significant shareholder shall certify in writing to the Commission, in a certificate signed by its CEO and either its general counsel or chief compliance officer, within ten days of the date that is one year from the effective date of the recognition of Aequitas and Aequitas Neo Exchange as exchanges pursuant to this Order and every year subsequent to that date, or at other times required by the Commission that, based on their knowledge, having exercised reasonable diligence, the significant shareholder is in compliance with the terms and conditions applicable to it in this Schedule and describe the steps taken to require compliance.

(b) Each significant shareholder shall certify in writing to the Commission, in a certificate signed by its CEO and either its general counsel or chief compliance officer, within ten days of the date that is one year from the effective date of the recognition of Aequitas and Aequitas Neo Exchange as exchanges pursuant to this Order and every year subsequent to that date, or at other times required by the Commission, that, based on their knowledge, having exercised reasonable diligence:

(i) the significant shareholder is not acting jointly or in concert with any other significant shareholder, or any affiliated entity or associated thereof, with respect to any voting shares of Aequitas;

(ii) despite subparagraph (b)(i), the shareholders may act jointly or in concert with any other shareholders under arrangements to nominate a director to the board of Aequitas or Aequitas Neo Exchange;

(iii) the significant shareholder has no agreement, commitment or understanding, written or otherwise, with any other significant shareholder, or any affiliated entity or associate thereof, with respect to the acquisition or disposition of voting shares of Aequitas, the exercise of any voting rights attached to any voting shares of Aequitas or the coordination of decisions or voting by its nominee director of Aequitas (if any) with the decisions or voting by the nominee of any other significant shareholder, other than what is included in the Aequitas shareholders' agreement; and

(iv) since the last certification, the significant shareholder has not acted jointly or in concert with any other significant shareholder, or any affiliated entity or associate thereof, with respect to (i) any voting shares of Aequitas, including with respect to the acquisition or disposition of any voting shares of Aequitas or the exercise of any voting rights attached to any voting shares of Aequitas, or (ii) coordination of decisions or voting by its nominee director of Aequitas (if any) with the decisions or voting by the nominee director of any other significant shareholder, other than what is included in the Aequitas shareholders' agreement as approved by the Commission.

**47. COMPLIANCE WITH TERMS AND CONDITIONS**

(a) If the significant shareholder or its partners, officers, directors or employees (or, in the case of a significant shareholder that is not a dealer, its relevant officers, directors or employees that are subject to policies and procedures implemented by that shareholder for the purpose of complying with the applicable terms and conditions of this Schedule) becomes aware that there has been a breach or possible breach of any of the terms and conditions applicable to it under this schedule of the Order, such person shall, promptly after becoming aware of the breach or possible breach, notify the Designated Recipient (as defined below) of such shareholder of the breach or possible breach. The partner, director, officer or employee of the significant shareholder shall provide to the Designated Recipient details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.

(b) "Designated Recipient" means the person or body that the significant shareholder designates as having the responsibilities described in this section, which may be its Board, audit committee, governance committee (or chairperson of any of the foregoing), General Counsel, Chief Compliance Officer, an ombudsperson specifically designated by the shareholder to review compliance with corporate policies under the shareholder's established whistle-blowing procedures, or, with the period approval of the Commission, such other person or committee designated by the significant shareholder.

(c) The Designated Recipient shall promptly cause an investigation to be conducted of the breach or possible breach reported under paragraph (a) and shall promptly provide a report to the Commission and to Aequitas Neo Exchange after concluding such investigation if the Designated Recipient determines that a breach has occurred or that there is an impending breach. Any such report to the Commission by the Designated Recipient shall include details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

**48. EXPIRY OF TERMS AND CONDITIONS**

The obligations of a significant shareholder to comply with the terms and conditions of this Schedule expire on the later of:

(a) the date on which, for a consecutive six month period, the significant shareholder owns less than 50% of the number of voting shares of Aequitas that it had beneficially owned or exercised control or direction over at the launch of the recognized exchange, and

(b) the date on which the nominee or partner, officer, director or employee of the significant shareholder has ceased to be a director on the board of Aequitas or Aequitas Neo Exchange.

**49. WAIVER**

One or more of the terms and conditions in this Schedule 4 applicable to a launch shareholder whose nominee is appointed to the Board may be waived where:

(a) the launch shareholder has filed with the Commission a written request to waive one or more of the terms and conditions in this Schedule 4, including an explanation on the term or terms that should be waived and the rationale for the request;

(b) the nominee of the launch shareholder would, except for subparagraph 1(b)(viii) of Schedule 2, qualify as an independent director;

(c) the Commission does not object within 15 days of receipt of the written request provided under paragraph (a) above; and

(d) Aequitas or Aequitas Neo Exchange publicly discloses the use of the waiver with reasons why the particular candidate was selected after the end of the 15 day period referred to in paragraph (c) above.

## SCHEDULE 5

## PROCESS FOR THE REVIEW AND APPROVAL OF RULES AND THE INFORMATION CONTAINED IN FORM 21-101F1 AND THE EXHIBITS THERETO

### 1. Purpose

This Protocol sets out the procedures a recognized exchange (Exchange) must follow for any Rule or Change, both as defined in section 2 below, and describes the procedures for their review by Commission Staff (Staff) and approval by the Commission or the Director.

### 2. Definitions

For the purposes of this Protocol:

(a) *Change* means a Fee Change, a Housekeeping Change or a Significant Change.

(b) *Fee Change* means any new fee or fee model of the Exchange and any amendment to a fee or fee model.

(c) *Housekeeping Change* means an amendment to the information in Form 21-101F1 that

(i) does not have an impact on the Exchange's market structure, members, issuers, investors or the capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(d) *Housekeeping Rule* means a new Rule or an amendment to a Rule that

(i) does not have an impact on the Exchange's market structure, members, issuers, investors or the capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(e) *Public Interest Rule* means a Rule or an amendment to a Rule that is not a Housekeeping Rule.

(f) *Rule* includes a rule, policy and other similar instrument of the Exchange.

(g) *Significant Change* means an amendment to the information in Form 21-101F1 other than

(i) a Housekeeping Change,

(ii) a Fee Change, or

(iii) a Rule,

and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101 CP.

(h) *Significant Change subject to Public Comment* means a Significant Change that

(i) is listed in paragraphs 6.1(4)(a), (b), (c) or (d) of Companion Policy 21-101 CP, or

(ii) in Staff's view, has an impact on the Exchange's market structure or members, or on issuers, investors or the capital markets or otherwise raises public interest concerns and should be subject to public comment.

### 3. Scope

(a) The Exchange and Staff will follow the process for review and approval set out in this Protocol for all Changes, new Rules and Rule amendments.

**4. Board Approval**

(a) The Exchange's board of directors, or a duly authorized committee of the board, must approve all Rules prior to their submission under this Protocol.

**5. Waiving or Varying the Protocol**

(a) The Exchange may file a written request with Staff to waive or vary any part of this Protocol. The request must provide reasons why granting the waiver is appropriate in the circumstances.

(b) Staff will use their best efforts to provide to the Exchange within five business days of receipt of its request either:

(i) written notice that Staff object to granting the waiver or variation; or

(ii) written notice that the waiver or variation has been granted by Staff.

**6. Materials to be Filed and Timelines**

(a) Prior to the implementation of a Fee Change, Public Interest Rule or Significant Change, the Exchange will file with Staff the following materials:

(i) a cover letter that, together with the notice for publication filed under paragraph 6(a)(ii), if applicable, fully describes:

(A) the proposed Fee Change, Public Interest Rule or Significant Change;

(B) the expected date of implementation of the proposed Fee Change, Public Interest Rule or Significant Change;

(C) the rationale for the proposal and any relevant supporting analysis;

(D) the expected impact of the proposed Fee Change, Public Interest Rule or Significant Change on the market structure, members and, if applicable, on investors, issuers and the capital markets;

(E) whether a proposed Public Interest Rule or Significant Change would increase or decrease systemic risk in the Canadian financial system and how any increase would be mitigated, if applicable;

(F) a discussion of the expected impact of the Fee Change, Public Interest Rule or Significant Change on the Exchange's compliance with Ontario securities law and in particular on requirements for fair access and maintenance of fair and orderly markets;

(G) details of any consultations undertaken in formulating the Fee Change, Public Interest Rule or Significant Change, including the internal governance process followed to approve the Rule or Change;

(H) if the Public Interest Rule or Significant Change will require members and service vendors to modify their own systems after implementation of the Rule or Change, a reasonable estimate of the amount of time needed to perform the necessary work, or an explanation as to why a reasonable estimate was not provided;

(I) a discussion of any alternatives considered; and

(J) if applicable, whether the proposed Fee Change, Significant Change or Public Interest Rule would introduce a fee model, feature or Rule that currently exists in other markets or jurisdictions;

(ii) for a proposed Public Interest Rule or Significant Change subject to Public Comment, a notice for publication that includes the information required under paragraph 6(a)(i) above, except that the following may be excluded from the notice:

(A) supporting analysis required under subparagraph 6(a)(i)(C) above that, if included in the notice, would result in the public disclosure of intimate financial, commercial or technical information;

(B) the information on systemic risk required under subparagraph 6(a)(i)(E) above;

(C) the information on the internal governance processes followed required under subparagraph 6(a)(i)(G) above;

(D) the reasonable estimate of time needed for members and service vendors to modify their own systems, or the explanation as to why a reasonable estimate was not provided, required under subparagraph 6(a)(i)(H), so long as the notice for publication contains a statement that the Exchange did not or could not make a reasonable estimate; and

(E) the discussion of alternatives required under subparagraph 6(a)(i)(I) above.

(iii) for a proposed Public Interest Rule, the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules, and if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) for a proposed Fee Change or Significant Change, blacklined and clean copies of Form 21-101F1 showing the proposed Change.

(b) The Exchange will file the materials set out in subsection 6(a)

(i) at least 45 days prior to the expected implementation date of a proposed Public Interest Rule or Significant Change; and

(ii) at least seven business days prior to the expected implementation date of a proposed Fee Change.

(c) For a Housekeeping Rule, the Exchange will file with Staff the following materials:

(i) a cover letter that fully describes the Rule and indicates that it was classified as a Housekeeping Rule and provides an analysis of the rationale for the classification, and the date or proposed date of implementation of the Rule;

(ii) the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules;

(iii) if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) a notice for publication on the OSC website and in the OSC Bulletin that contains the information in paragraph (ii) above as well as the implementation date for the Rule, and indicates that the Rule has been classified as a Housekeeping Rule and was not published for comment.

(d) For a Housekeeping Change, the Exchange will file with Staff the following materials:

(i) a cover letter that indicates that the Change was classified as a Housekeeping Change and provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and

(ii) blacklined and clean copies of Form 21-101F1 showing the Change.

(e) The Exchange will file the materials set out in subsection 6(d) by the earlier of

(i) the Exchange's close of business on the 10th calendar day after the end of the month in which the Housekeeping Change was implemented; and

(ii) the date on which the Exchange publicly announces a Housekeeping Change, if applicable.

**7. Review by Staff of notice and materials to be published for comment**

(a) Within 5 business days of the receipt of the notice and materials filed by the Exchange relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with subsection 6(a), Staff will review the notice and materials to ensure that they contain an adequate level of detail, analysis and discussion to elicit meaningful public comment, and will promptly notify the Exchange of any deficiency requiring a re-filing of the notice and materials.

(b) Where the notice and materials are considered by Staff to be deficient, the Exchange will amend and resubmit the notice and materials accordingly, and the date of resubmission will serve as the filing date for the purposes of this Protocol.

(c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 8.

**8. Publication of a Public Interest Rule or Significant Change Subject to Public Comment**

(a) As soon as practicable after the receipt of the notice and materials filed by the Exchange relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with subsection 6(a), Staff will publish in the OSC Bulletin and on the OSC website the notice prepared by the Exchange, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the Exchange within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.

(b) If public comments are received

(i) the Exchange will forward copies of the comments promptly to Staff; and

(ii) the Exchange will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

**9. Review and Approval Process for Proposed Fee Changes, Public Interest Rules and Significant Changes**

(a) Staff will use their best efforts to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change within

(i) 45 days from the date of filing of a proposed Public Interest Rule or Significant Change; and

(ii) seven business days from the date of filing of a proposed Fee Change.

(b) Staff will notify the Exchange if they anticipate that their review of the proposed Fee Change, Public Interest Rule or Significant Change will exceed the timelines in subsection 9(a).

(c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change, Staff will use best efforts to provide the Exchange with a comment letter promptly by the end of the public comment period for a Public Interest Rule or Significant Change subject to Public Comment, and promptly after the receipt of the materials filed under section 6 for all other Changes.

(d) The Exchange will respond to any comments received from Staff in writing.

(e) Unless Staff agree to an extension of time, if the Exchange fails to respond to Staff's comments within 120 days after the receipt of Staff's comment letter, the Exchange will be deemed to have withdrawn the proposed Fee Change, Public Interest Rule or Significant Change. If the Exchange wishes to proceed with the Fee Change, Public Interest Rule or Significant Change after it has been deemed withdrawn, the Exchange will have to be re-submit it for review and approval in accordance with this Protocol.

(f) Upon completion of Staff's review of a Fee Change, Public Interest Rule or Significant Change, Staff will submit the Change or Rule to the Director or, in the circumstances described in subsection 9(g), to the Commission, for a decision within the following timelines:

(i) for a Public Interest Rule or a Significant Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the Exchange;

(ii) for any other Significant Change, the later of 45 days from the date of filing of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange; or

(iii) for a Fee Change, the later of seven business days from the date of filing of the change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange.

(g) A Fee Change, Public Interest Rule or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection 9(f),

(i) if the proposed Fee Change, Public Interest Rule or Significant Change is complex or introduces a novel feature to the Exchange or the capital markets;

(ii) if comments received through the public comment process raise significant public interest concerns; or

(iii) in any other situation where, in Staff's view, Commission approval is appropriate.

(h) Staff will promptly notify the Exchange of the decision.

(i) If a Public Interest Rule or Significant Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and on the OSC website promptly after the approval:

(i) a notice indicating that the proposed Rule or Change is approved;

(ii) the summary of public comments and responses prepared by the Exchange, if applicable; and

(iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the Exchange and a blacklined copy of the revised Rule or Change highlighting the revisions made.

**10. Review Criteria for a Fee Change, Public Interest Rule and Significant Change**

(a) Staff will review a proposed Fee Change, Public Interest Rule or Significant Change in order to assess whether it is in the public interest for the Director or the Commission to approve the Rule or Change. In making this determination, Staff will have regard to the mandate of the Commission as set out section 1.1 of the *Securities Act* (Ontario). The factors that Staff will consider in making their determination also include whether:

(i) the Rule or Change would impact the Exchange's compliance with Ontario securities law;

(ii) the Exchange followed its established internal governance practices in approving the proposed Rule or Change;

(iii) the Exchange followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose and effect of the Rule or Change; and

(iv) the Exchange adequately addressed any comments received.

**11. Effective Date of a Fee Change, Public Interest Rule or Significant Change**

(a) A Fee Change, Public Interest Rule or Significant Change will be effective on the later of:

(i) the date that the Exchange is notified that the Change or Rule is approved;

(ii) if applicable, the date of publication of the notice of approval on the OSC website; and

(iii) the date designated by the Exchange.

**12. Significant Revisions and Republication**

(a) If, subsequent to its publication for comment, the Exchange revises a Public Interest Rule or a Significant Change subject to Public Comment in a manner that results in a material change to the proposed substance or effect of the Rule or Change, Staff will, in consultation with the Exchange, determine whether or not the revised Rule or Change should be published for an additional 30-day comment period.

(b) If a Public Interest Rule or Significant Change subject to Public Comment is republished under subsection 12(a), the request for comments will include a blacklined version marked to the originally published version, a summary of comments and responses prepared by the Exchange, and an explanation of the revisions and the supporting rationale for the revisions.

**13. Withdrawal of a Fee Change, Public Interest Rule or Significant Change**

(a) If the Exchange withdraws a Fee Change, Public Interest Rule or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.

(b) If the notice of withdrawal relates to a Public Interest Rule or Significant Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and OSC website as soon as practicable.

(c) If a Public Interest Rule or Significant Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 9(e), Staff will prepare and publish a notice informing market participants that the Exchange did not proceed with the Rule or Change.

**14. Effective Date of a Housekeeping Rule or Housekeeping Change**

(a) Subject to subsections 14(c) and 14(d), a Housekeeping Rule will be effective on the later of

(i) the date of the publication of the notice to be published on the OSC website in accordance with subsection 14(e), and

(ii) the date designated by the Exchange.

(b) Subject to subsections 14(c) and 14(d), a Housekeeping Change will be effective on the date designated by the Exchange.

(c) Staff will review the materials filed by the Exchange for a Housekeeping Change or Housekeeping Rule to assess the appropriateness of the categorization of the Rule or Change as housekeeping within five business days from the date that the Exchange filed the documents in accordance with subsections 6(c) and 6(d). The Exchange will be notified in writing if there is disagreement with respect to the categorization of the Rule or Change as housekeeping.

(d) If Staff disagree with the categorization of the Rule or Change as housekeeping, the Exchange will immediately repeal the Change, if applicable, file the proposed Rule as a Public Interest Rule or the proposed Change as a Significant Change, and follow the review and approval processes described in this Protocol as applying to a Public Interest Rule or Significant Change, including those processes applicable to a Significant Change subject to Public Comment if applicable.

(e) If Staff do not disagree with the categorization of the Rule, Staff will publish a notice to that effect in the OSC Bulletin and on the OSC website as soon as is practicable.

**15. Immediate Implementation of a Public Interest Rule or Significant Change**

(a) The Exchange may need to make a Public Interest Rule or Significant Change effective immediately where the Exchange determines that there is an urgent need to implement the Rule or Change to maintain fair and orderly markets, or because of a substantial and imminent risk of material harm to the Exchange, its members, other market participants, issuers or investors.

(b) When the Exchange determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible but in any event at least five business days prior to the proposed implementation of the Public Interest Rule or Significant Change. The written notice will include the expected effective date of the Public Interest Rule or Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must also be included as part of the written notice.

(c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the Exchange, in writing, of the disagreement no later than the end of the third business day following filing of the notice under subsection 15(b). If the disagreement is not resolved, the Exchange will file the Public Interest Rule or Significant Change in accordance with the timelines in section 6.

**16. Review of a Public Interest Rule or Significant Change Implemented Immediately**

A Public Interest Rule or Significant Change that has been implemented immediately in accordance with section 15 will be published, if applicable, and reviewed and approved by the Director or by the Commission in accordance with the procedures set out in section 9, with necessary modifications. If the Director or the Commission does not approve the Public Interest Rule or Significant Change, the Exchange will immediately repeal the Rule or Change and inform its members of the decision.

**17. Application of Section 21 of the *Securities Act* (Ontario)**

The Commission's powers under subsection 21(5) of the *Securities Act* (Ontario) are not constrained in any way, notwithstanding a Rule or Change having been approved under this Protocol.

### 13.2.2 TriAct Canada Marketplace LP – Notice of Approval of Proposed Change

**TRIACT CANADA MARKETPLACE LP**

**NOTICE OF APPROVAL OF PROPOSED CHANGE**

On November 11, 2014, the Ontario Securities Commission (OSC) approved amendments proposed by TriAct Canada Marketplace LP (TriAct) to Form 21-101F2. TriAct proposed the following changes to the MATCH Now trading system:

1. TriAct Canada Odd Lot Trading Facility: the trading of odd lots at the Canadian Best Bid Offer

2. Expanding the list of securities that can trade at the National Best Bid Offer when both the active and passive orders are greater than 50 Standard Trading Units or $100,000 in value

3. Trade all securities listed on Canadian Securities Exchange and add debentures, notes, USD settled securities that are listed on TSX and TSX Venture Exchanges

4. Event Driven Matching: a continuous matching option when liquidity orders are booked, prior to moving into the call auction cycle

In accordance with the OSC's "Process for the Review and Approval of the Information Contained in Form 21-101F2 and Exhibits Thereto", a notice outlining and requesting feedback on these proposed changes was published in the OSC Bulletin on August 28, 2014 at (2014), 37 OSCB 7927. One comment letter was received and the summary of comments and TriAct's response is published in Appendix A to this notice.

TriAct will publish a notice indicating the date of implementation of the approved changes.

## APPENDIX A

## SUMMARY OF COMMENT AND RESPONSE
## PREPARED BY TRIACT CANADA MARKETPLACE LP

List of Comments:

Trading Issues Committee of the Canadian Securities Traders Association Inc. (CSTA) only comment on the second proposed change

| Summary of Comments Received | TriAct Response |
|---|---|
| Commenter believes that expanding the list of securities that can trade at the Canadian Best Bid Offer (CBBO) on MATCH Now to all common equities could have a potentially damaging effect on the lit market. | In the request for comments, TriAct proposed to introduce a limited subset of inter-listed securities for a six-month pilot. The purpose of the pilot is to show that this change will not have a negative impact on Canadian Capital Markets and Investors. TriAct does acknowledge that expanding this change to lower priced or illiquid securities could have some unintended consequences and will only consider expanding to all symbols if it can be demonstrated that this change benefits investors without a negative impact on the price discovery process. TriAct will use feedback generated by the initial six-month pilot study to determine which symbols should be included on a go forward basis. |
| The “large” trade definition (50 board lot or $100,000 value threshold) represents far too low a barrier for orders to trade at the CBBO on MATCH Now (a fully dark marketplace). CSTA proposes that another formula be used for low priced securities such as a sliding scale or requiring the value to be at least $100,000, disregarding the share amount. | The “large” definition proposed by TriAct is the same threshold used by UMIR. All marketplaces that include dark orders use this threshold. TriAct also believes that it is better to use a threshold well understood by the trading community for the six-month pilot study. In the pilot study, TriAct will focus on the most active inter-listed securities where the vast majority of them would exceed the value constraint instead of the share constraint. TriAct has not ruled out setting value constraints for stocks under $20 but that will require a new 21-101F2 filing with a review and comment process. If TriAct were to adopt value constraints, the trading community would have to be educated on the filing. This would also be a marked difference from the single threshold used by UMIR. This would introduce complexity to the market and on a clients’ infrastructure thus potentially detracting from the appeal of keeping large block trading in Canada. As such, TriAct will move cautiously if value constraints prove necessary. |
| Suggest that the concept of a “large” order in UMIR Rule 6.6, Provision of Price Improvement by a Dark Order, be reviewed to ensure that the spirit of the rule is being preserved and is promoting visible passive liquidity in low-priced securities, | If the current threshold for “large” orders needs to be changed due to market integrity issues, then IIROC and the CSA should do so with the appropriate industry consultation and analytics. |

## 13.3 Clearing Agencies

### 13.3.1 OSC Staff Notice of Request for Comment – CDS Clearing and Depository Services Inc. (CDS®) – Material Amendments to CDS Procedures – Amendments Related to the Extenders of Credit and Settlement Agents Category Credit Rings

The Ontario Securities Commission is publishing for public comment the proposed CDS procedure amendments related to the Extenders of Credit and Settlement Agents category credit rings. These amendments are required by CDS to observe the CPSS-IOSCO Principles for Financial Market Infrastructures "PFMI" as soon as possible. The comment period ends on December 19, 2014.

A copy of the CDS notice is published on our website at http://www.osc.gov.on.ca.

### 13.3.2 OSC Staff Notice of Request for Comment – CDS Clearing and Depository Services Inc. (CDS®) – Material Amendments to CDS Rules – Amendments Related to the Extenders of Credit and Settlement Agents Category Credit Rings

The Ontario Securities Commission is publishing for public comment the proposed CDS rule amendments related to the Extenders of Credit and Settlement Agents category credit rings. These amendments are required by CDS to observe the CPSS-IOSCO Principles for Financial Market Infrastructures "PFMI" as soon as possible. The comment period ends on December 19, 2014.

A copy of the CDS notice is published on our website at http://www.osc.gov.on.ca.

### 13.3.3 OSC Staff Notice of Request for Comment – CDS Clearing and Depository Services Inc. (CDS®) – Material Amendments to CDS Procedures – Amendments Related to the Mitigation of Procyclical Effects on Calculations of Equity Haircuts and the CNS Participant Fund Collateral Requirements

The Ontario Securities Commission is publishing for public comment the proposed CDS procedure amendments related to the mitigation of procyclical effects on calculations of equity haircuts and the CNS Participant fund collateral requirements. These amendments are required by CDS to observe the CPSS-IOSCO Principles for Financial Market Infrastructures "PFMI" as soon as possible. The comment period ends on December 19, 2014.

A copy of the CDS notice is published on our website at http://www.osc.gov.on.ca.

### 13.3.4 OSC Staff Notice of Request for Comment – CDS Clearing and Depository Services Inc. (CDS®) – Material Amendments to CDS Rules – Amendments Related to the Introduction of a CNS Participant Default Fund

The Ontario Securities Commission is publishing for public comment the proposed CDS rule amendments related to the introduction of a CNS participant default fund. These amendments are required by CDS to observe the CPSS-IOSCO Principles for Financial Market Infrastructures "PFMI" as soon as possible. The comment period ends on December 19, 2014.

A copy of the CDS notice is published on our website at http://www.osc.gov.on.ca.

### 13.3.5 OSC Staff Notice of Request for Comment – CDS Clearing and Depository Services Inc. (CDS®) – Material Amendments to CDS Procedures – Amendments Related to the Introduction of a CNS Participant Default Fund

The Ontario Securities Commission is publishing for public comment the proposed CDS procedure amendments related to the introduction of a CNS Participant default fund. These amendments are required by CDS to observe the CPSS-IOSCO Principles for Financial Market Infrastructures "PFMI" as soon as possible. The comment period ends on December 19, 2014.

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