

CSA Notice and Request for Comment Proposed Amendments to Certain Regulations and Policies Related to the Recognition of Aequitas Neo Exchange Inc.

December 11, 2014

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90 day comment period proposed amendments (the **Proposed Amendments**) to:

- *Regulation 41-101 respecting General Prospectus Requirements* (**Regulation 41-101**);
- *Regulation 44-101 respecting Short Form Prospectus Distributions* (**Regulation 44-101**);
- *Regulation 45-106 respecting Prospectus and Registration Exemptions* (**Regulation 45-106**);
- *National Policy 46-201: Escrow for Initial Public Offerings* (**National Policy 46-201**);
- *Regulation 51-102 respecting Continuous Disclosure Obligations* (**Regulation 51-102**);
- *Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets* (**Regulation 51-105**);
- *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings* (**Regulation 52-109**);
- *Regulation 52-110 respecting Audit Committees* (**Regulation 52-110**);
- *Regulation 58-101 respecting Disclosure of Corporate Governance Practices* (**Regulation 58-101**);
- *Regulation 61-101 respecting Protection of Minority Security Holders in Special Transactions* (**Regulation 61-101**);
- *Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**Regulation 71-102**);

- *Regulation 81-101 respecting Mutual Fund Prospectus Disclosure (Regulation 81-101).*

The text of the Proposed Amendments is published with this notice and will also be available on websites of CSA jurisdictions, including:

www.bcsc.bc.ca
www.albertasecurities.com
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca
www.osc.gov.on.ca
www.lautorite.qc.ca
www.fcnb.ca
www.gov.pe.ca/securities
nssc.novascotia.ca
www.gov.nl.ca/gs
www.justice.gov.nt.ca/SecuritiesRegistry
www.community.gov.yk.ca
www.justice.gov.nu.ca

Substance and Purpose

The Proposed Amendments are intended to address the differences in treatment of certain reporting issuers under current securities legislation that have arisen or will arise as a result of references to specific exchanges under current securities legislation and the recognition of Aequitas Neo Exchange Inc. (Aequitas Neo Exchange) as an exchange pursuant to section 21 of the *Securities Act* (Ontario) and the exemption from the requirement to be recognized in other jurisdictions, namely British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut. The Proposed Amendments aim to ensure that securities legislation applies consistently to issuers listed on Aequitas Neo Exchange and issuers listed on other senior recognized exchanges. Investors will benefit directly from the Proposed Amendments as issuers listed on Aequitas Neo Exchange will be subject to the same regulatory requirements as issuers listed on other senior recognized exchanges and the industry will benefit from a harmonized regulatory regime.

Background

By order dated November 13, 2014, the Ontario Securities Commission (**OSC**) approved the recognition of Aequitas Innovations Inc. (**Aequitas**) and Aequitas Neo Exchange as an exchange pursuant to section 21 of the *Securities Act* (Ontario), subject to certain terms and conditions (the **Recognition Order**). The Recognition Order will be effective as of March 1, 2015. Aequitas Neo Exchange operates an electronic, automated exchange to trade securities of qualified senior issuers listed on Aequitas Neo Exchange as well as those listed on other recognized exchanges. Aequitas is the sole parent

company of Aequitas Neo Exchange, and was recognized as an exchange for the purpose of complying with the terms and conditions set out in the recognition order published by the OSC. The securities regulatory authorities in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut have exempted or are in the process of exempting Aequitas and Aequitas Neo Exchange from the requirement to be recognized as a stock exchange, exchange or self-regulatory organization, with such exemption being subject to certain conditions, including that: (i) Aequitas and Aequitas Neo Exchange will continue to be recognized as an exchange by the OSC and to comply with the terms and conditions of the Recognition Order; and (ii) Aequitas Neo Exchange will be subject to the oversight program established by the OSC from time to time in accordance with the provisions of the *Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems* which took effect on January 1st, 2010 among the Alberta Securities Commission, Autorité des marchés financiers, British Columbia Securities Commission, Manitoba Securities Commission, the OSC and Saskatchewan Financial Services Commission.

Currently, certain definitions, requirements or exemptions in securities legislation do not apply to Aequitas Neo Exchange. The recognition of Aequitas Neo Exchange has several implications for issuers which the Proposed Amendments will address. For example, without the Proposed Amendments, issuers listing on Aequitas Neo Exchange will be “venture issuers”, notwithstanding that such issuers are more appropriately classified as issuers that are not venture issuers under applicable Canadian securities law. Secondly, without the Proposed Amendments, issuers listing solely on Aequitas Neo Exchange will not be qualified to file a prospectus in the form of a short form prospectus, as Aequitas Neo Exchange is not included in the definition of “short form eligible exchange” under Regulation 44-101. The Proposed Amendments must be made to ensure that securities legislation applies equally to issuers listed on other recognized senior exchanges and issuers listing on Aequitas Neo Exchange.

Summary of the Proposed Amendments

The Proposed Amendments include:

- referencing Aequitas Neo Exchange in the definitions of “venture issuer”, “IPO venture issuer”, “personal information form”, “listed issuer”, “short form eligible exchange” and “OTC issuer” and adding a definition for “Aequitas personal information form” in the applicable regulations listed above,
- changing certain provisions contained in National Policy 46-201 for the purpose of describing certain issuers listing on Aequitas Neo Exchange as being either exempt issuers or established issuers (as such terms are described in National Policy 46-201),

- amending Regulation 61-101 to include Aequitas Neo Exchange in the list of specified markets identified in certain sections, and
- amending Regulation 71-102 to update and expand the list of Canadian exchanges (including Aequitas Neo Exchange) in certain sections.

Existing Security Holder Prospectus Exemptions

The securities regulatory authorities in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Yukon, Northwest Territories and Nunavut have adopted a prospectus exemption that, subject to certain conditions, allows issuers listed on specified exchanges to raise money by distributing securities to their existing security holders (the “Existing Security Holder Prospectus Exemption”). The list of specified exchanges in the definition of “listed security” in the Existing Security Holder Prospectus Exemption does not contemplate Aequitas Neo Exchange. On November 27, 2014, the OSC published in final an exemption that is substantially similar to the Existing Security Holder Prospectus Exemption, which includes reference to Aequitas Neo Exchange in the list of specified exchanges under the definition of “listed security” contained therein. CSA staff recommend that issuers listed on Aequitas Neo Exchange be able to use the Existing Security Holder Prospectus Exemption and accordingly intend to seek approval to amend the relevant rules or revise the blanket orders as necessary to ensure that the Existing Security Holder Prospectus Exemption is consistent with the Proposed Amendments.

Interim Measures

As discussed above, until the Proposed Amendments are effective, issuers listed on Aequitas Neo Exchange will be “venture issuers” under securities legislation, even though such issuers are more appropriately classified as non-venture issuers. During this period certain interim measures will be taken. Firstly, issuers intending to list on Aequitas Neo Exchange will provide an undertaking that they will comply with Canadian securities legislation as applicable to non-venture issuers. Secondly, other than in Ontario, CSA jurisdictions will issue blanket orders relieving issuers listed on Aequitas Neo Exchange from the requirements pertaining to venture issuers. In Ontario, issuers will gain such relief by application.

Designation Orders

Subsection 4.8(2) of *Regulation 62-104 respecting Take-over Bids and Issuer Bids* (Regulation 62-104) and subsection 101.2(1) of the *Securities Act* (Ontario) provide an exemption from certain issuer bid requirements for issuer bids that are made through the facilities of a designated exchange. CSA jurisdictions have issued or are in the process of issuing orders designating Aequitas Neo Exchange to be a designated exchange for the purpose of Regulation 62-104 or the *Securities Act* (Ontario), as applicable.

Anticipated Costs and Benefits

We expect the Proposed Amendments to contribute to the maintenance of a harmonized regulatory regime by treating issuers listed on Aequitas Neo Exchange in the same manner as those listed on other recognized senior exchanges. We do not expect any costs to be associated with the Proposed Amendments because issuers listed on Aequitas Neo Exchange will already be complying with the same requirements as issuers listed on other senior recognized exchanges as a result of the interim measures discussed above.

Alternatives Considered

No alternatives to the Proposed Amendments were considered.

Unpublished Materials

In developing the Proposed Amendments, we have not relied on any significant unpublished study, report, or other written materials.

Local Notices

Annex M is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Request for Comments

Please submit your comments in writing on or before March 11, 2015. If you are sending your comments by e-mail, please also send an electronic file containing the submissions (in Microsoft Word format).

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority (Saskatchewan)
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward
Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories

Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA.

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Montréal (Québec) H4Z 1G3
Fax : 514 864-6381
consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario, M5H 3S8
Fax: 416 593-2318
comments@osc.gov.on.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

The Proposed Amendments are published with this Notice:

Questions

Please refer your questions to any of the following:

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REGULATION TO AMEND REGULATION 41-101 RESPECTING GENERAL PROSPECTUS REQUIREMENTS

Securities Act
(chapter V-1.1, s. 331.1, par. (34))

1. Section 1.1 of Regulation 41-101 respecting General Prospectus Requirements is amended:

(1) by inserting, in paragraph (c) of the definition of the expression “IPO venture issuer” and after subparagraph (i), the following:

“(i.1) Aequitas Neo Exchange Inc.”;

(2) by replacing the definition of the expression “personal information form” with the following:

““personal information form” means one of the following:

(a) a completed Schedule 1 of Appendix A;

(b) a completed TSX/TSXV personal information form submitted by an individual to the Toronto Stock Exchange or to the TSX Venture Exchange to which is attached a completed certificate and consent in the form set out in Schedule 1 — Part B of Appendix A;

(c) a completed Aequitas personal information form submitted by an individual to Aequitas Neo Exchange Inc., to which is attached a completed certificate and consent in the form set out in Schedule 1 – Part B of Appendix A;”;

(3) by inserting, after the definition of the expression “acquisition of related businesses”, the following:

““Aequitas personal information form” means a personal information form for an individual pursuant to Aequitas Neo Exchange Inc. Form 3, as amended from time to time;”.

2. Form 41-101F1 of the Regulation is amended :

(1) by inserting, in paragraph (4) of Item 1.9 and after the words “on the Toronto Stock Exchange,”, the words “Aequitas Neo Exchange Inc.”;

(2) by inserting, in Item 20.11 and after the words “on the Toronto Stock Exchange,”, the words “Aequitas Neo Exchange Inc.”.

3. This Regulation comes into force on *(indicate here the date of coming into force of this Regulation)*.

REGULATION TO AMEND REGULATION 44-101 RESPECTING SHORT FORM PROSPECTUS DISTRIBUTIONS

Securities Act
(chapter V-1.1, s. 331.1, par. (34))

1. Section 1.1 of Regulation 44-101 respecting Short Form Prospectus Distributions is amended by replacing the definition of the expression “short form eligible exchange” with the following:

““short form eligible exchange” means each of the Toronto Stock Exchange, Tier 1 and Tier 2 of the TSX Venture Exchange, Aequitas Neo Exchange Inc., and the Canadian Securities Exchange;””.

2. This Regulation comes into force on (*indicate here the date of coming into force of this Regulation*).

REGULATION TO AMEND REGULATION 45-106 RESPECTING PROSPECTUS AND REGISTRATION EXEMPTIONS

Securities Act
(chapter V-1.1, s. 331.1, par. (34))

1. Section 2.22 of Regulation 45-106 respecting Prospectus and Registration Exemptions is amended by inserting, in paragraph (a) of the definition of the expression “listed issuer” and after subparagraph (ii), the following:

“(ii.1) Aequitas Neo Exchange Inc.”.

2. This Regulation comes into force on *(indicate here the date of coming into force of this Regulation)*.

REGULATION TO AMEND NATIONAL POLICY 46-201 : ESCROW FOR INITIAL PUBLIC OFFERINGS

Securities Act
(chapter V-1.1, s. 331.1, par. (6))

1. Section 3.2 of National Policy 46-201: Escrow for Initial Public Offerings is amended by inserting, after paragraph (a), the following, with the necessary changes:

“(a.i) has securities listed on Aequitas Neo Exchange Inc. and is a Closed End Fund, Exchange Traded Fund or Exchange Traded Product (as defined in the Aequitas Neo Exchange Inc. Listing Manual as amended from time to time); or”.

2. Section 3.3 of the National Policy is amended by replacing paragraph (2) with the following:

“(2) An **established issuer** is an issuer that, after its IPO:

(a) has securities listed on the TSX and is not classified by the TSX as an exempt issuer;

(b) has securities listed on the TSX Venture and is a TSX Venture Tier 1 issuer; or

(c) has securities listed on Aequitas Neo Exchange Inc. and is not an exempt issuer.”.

3. Section 4.4 of the National Policy is amended by replacing subparagraph (a) of paragraph (1) with the following:

“(a) lists its securities on the TSX or Aequitas Neo Exchange Inc.;”.

4. Form 46-201F1 of the National Policy is amended by replacing paragraph (a) of Item 3.1 with the following:

“(a) lists its securities on the Toronto Stock Exchange Inc. or Aequitas Neo Exchange Inc.;”.

5. This Regulation comes into force on *(indicate here the date of coming into force of this Regulation)*.

REGULATION TO AMEND REGULATION 51-102 RESPECTING CONTINUOUS DISCLOSURE OBLIGATIONS

Securities Act
(chapter V-1.1, s. 331.1, par. (34))

1. Section 1.1 of Regulation 51-102 respecting Continuous Disclosure Obligations is amended by inserting, in the definition of the expression “venture issuer” and after the words “Toronto Stock Exchange,”, the words “Aequitas Neo Exchange Inc.,”.
2. This Regulation comes into force on *(indicate here the date of coming into force of this Regulation)*.

REGULATION TO AMEND REGULATION 51-105 RESPECTING ISSUERS QUOTED IN THE U.S. OVER-THE-COUNTER MARKETS

Securities Act
(chapter V-1.1, s. 331.1, par. (34))

1. Section 1 of Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets is amended by inserting, in paragraph (b) of the definition of the expression “OTC issuer” and after subparagraph (vii), the following:

“(viii) Aequitas Neo Exchange Inc.”.

2. This Regulation comes into force on *(indicate here the date of coming into force of this Regulation)*.

**REGULATION TO AMEND REGULATION 52-109 RESPECTING
CERTIFICATION OF DISCLOSURE IN ISSUERS' ANNUAL AND INTERIM
FILINGS**

Securities Act
(chapter V-1.1, s. 331.1, par. (34))

- 1.** Section 1.1 of Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings is amended by inserting, in the definition of the expression "venture issuer" and after the words "Toronto Stock Exchange," the words "Aequitas Neo Exchange Inc.,".
- 2.** This Regulation comes into force on *(indicate here the date of coming into force of this Regulation)*.

REGULATION TO AMEND REGULATION 52-110 RESPECTING AUDIT COMMITTEES

Securities Act
(chapter V-1.1, s. 331.1, par. (34))

- 1.** Section 1.1 of Regulation 52-110 respecting Audit Committees is amended by inserting, in the definition of the expression “venture issuer” and after the words “Toronto Stock Exchange,”, the words “Aequitas Neo Exchange Inc.,”.
- 2.** This Regulation comes into force on *(indicate here the date of coming into force of this Regulation)*.

REGULATION TO AMEND REGULATION 58-101 RESPECTING DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES

Securities Act

(chapter V-1.1, s. 331.1, par. (11), (20) and (34))

1. Section 1.1 of Regulation 58-101 respecting Disclosure of Corporate Governance Practices is amended by inserting, in the definition of the expression “venture issuer” and after the words “Toronto Stock Exchange,”, the words “Aequitas Neo Exchange Inc.,”.

2. Section 1.3 of the Regulation is amended by replacing paragraph (c) with the following:

“(c) an exchangeable security issuer or credit support issuer that is exempt under sections 13.3 and 13.4 of Regulation 51-102 respecting Continuous Disclosure Obligations, as applicable; and”.

3. This Regulation comes into force on *(indicate here the date of coming into force of this Regulation)*.

REGULATION TO AMEND REGULATION 61-101 RESPECTING PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

Securities Act
(chapter V-1.1, s. 331.1, par. (11))

1. Section 4.4 of Regulation 61-101 respecting Protection of Minority Security Holders in Special Transactions is amended by inserting, in subparagraph (a) of paragraph (1) and after the words “Toronto Stock Exchange,”, the words “Aequitas Neo Exchange Inc.,”.
2. Section 5.5 of the Regulation is amended by inserting, in paragraph (b) and after the words “Toronto Stock Exchange,”, the words “Aequitas Neo Exchange Inc.,”.
3. Section 5.7 of the Regulation is amended by inserting, in subparagraph (i) of subparagraph (b) of paragraph (1) and after the words “Toronto Stock Exchange,”, the words “Aequitas Neo Exchange Inc.,”.
4. This Regulation comes into force on *(indicate here the date of coming into force of this Regulation)*.

REGULATION TO AMEND REGULATION 71-102 RESPECTING CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS

Securities Act
(chapter V-1.1, s. 331.1, par. (11) and (34))

1. Section 1.1 of Regulation 71-102 respecting Continuous Disclosure and Other Exemptions relating to Foreign Issuers is amended by replacing the definition of the expression “marketplace” with the following:

““marketplace” has the same meaning as in Regulation 21-101 respecting Marketplace Operation;”.

2. Section 4.7 of the Regulation is amended by replacing subparagraph (a) of paragraph (2) with the following:

“(a) the aggregate published trading volume of the class on the TSX, Aequitas Neo Exchange Inc., the Canadian Securities Exchange and the TSX Venture Exchange exceeded the aggregate published trading volume of the class on all U.S. markets

(i) for the 12 calendar month period before commencement of the proxy solicitation, if there is no other proxy solicitation for securities of the same class in progress, or

(ii) for the 12 calendar month period before commencement of the first proxy solicitation, if another proxy solicitation for securities of the same class is already in progress;”.

3. Section 5.8 of the Regulation is amended by replacing subparagraph (a) of paragraph (2) with the following:

“(a) the aggregate published trading volume of the class on the TSX, Aequitas Neo Exchange Inc., the Canadian Securities Exchange and the TSX Venture Exchange exceeded the aggregate trading volume on securities marketplaces outside Canada

(i) for the 12 calendar months before commencement of the proxy solicitation, if there is no other proxy solicitation for securities of the same class in progress, or

(ii) for the 12 calendar month period before the commencement of the first proxy solicitation, if another proxy solicitation for securities of the same class is already in progress;”.

4. This Regulation comes into force on *(indicate here the date of coming into force of this Regulation)*.

REGULATION TO AMEND REGULATION 81-101 RESPECTING MUTUAL FUND PROSPECTUS DISCLOSURE

Securities Act
(chapter V-1.1, s. 331.1, par. (34))

1. Section 1.1 of Regulation 81-101 respecting Mutual Fund Prospectus Disclosure is amended:

(1) by replacing the definition of the expression “personal information form” with the following:

““personal information form” means one of the following:

(a) a completed Schedule 1 of Appendix A to Regulation 41-101 respecting General Prospectus Requirements;

(b) a completed TSX/TSXV personal information form submitted by an individual to the Toronto Stock Exchange or to the TSX Venture Exchange to which is attached a completed certificate and consent in the form set out in Schedule 1 — Part B of Appendix A to Regulation 41-101 respecting General Prospectus Requirements;

(c) a completed Aequitas personal information form submitted by an individual to Aequitas Neo Exchange Inc., to which is attached a completed certificate and consent in the form set out in Schedule 1 – Part B of Appendix A to Regulation 41-101 respecting General Prospectus Requirements;”;

(2) by inserting, before the definition of the expression “business day”, the following:

““Aequitas personal information form” means a personal information form for an individual pursuant to Aequitas Neo Exchange Inc. Form 3, as amended from time to time;”.

2. This Regulation comes into force on *(indicate here the date of coming into force of this Regulation)*.