



August 26, 2014

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

Dear Sir/Madam:

Re: Application for Recognition of Aequitas Innovations Inc. and Aequitas Neo Exchange Inc. (collectively “Aequitas”) as an Exchange - OSC Notice and Request for Comment (“Request for Comment”)

The Canadian Coalition for Good Governance (“CCGG”) has reviewed the Request for Comment and we thank you for the opportunity to provide our comments.

CCGG’s members are Canadian institutional investors that together manage over \$2.5 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices in Canadian public companies in order to best align the interests of boards and management with those of their shareholders. We also seek to improve Canada’s regulatory framework to strengthen the efficiency and effectiveness of the Canadian capital markets.

A list of our members is attached to this submission.¹

GENERAL COMMENTS

CCGG has publicly expressed the view in the past that it is inappropriate for an exchange to market itself by offering issuers less onerous governance requirements than competing exchanges or by reducing shareholders’ rights, in order to avoid a “race to the bottom” in these areas. We are very pleased to see that, as reflected in the Aequitas’ proposed listing requirements (Proposed Listing Requirements)

^{1 1} Please note that those CCGG members who own either TSX Group or Aequitas did not participate in the preparation or approval of this submission to avoid any appearance of a conflict of interest.

contained in its application for recognition as an exchange (the Application), Aequitas has not taken this 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, Canada's leading exchange (the TSX Listing Requirements). CCGG is of the view that 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.

We believe that it can be a competitive advantage for an exchange to lead the way in best governance listing requirements and that Aequitas is likely to reap the benefits of this advantage if the Application is approved.

There are, however, additional corporate governance measures that we would like to see added to the Proposed Listing Requirements given that the Application provides an exceptional opportunity to promote improved governance standards in Canada and protect shareholder rights among listed companies, and hence encourage a "race to the top". The following sections include our comments on the positive aspects of the Proposed Listing Requirements as well as suggestions for additional requirements that CCGG believes would be beneficial from a shareholders' perspective and ultimately for listing issuers and Aequitas.

It is not part of CCGG's mandate to comment on the merits of having an additional exchange in Canada so our comments are restricted to governance related matters only.

SPECIFIC COMMENTS

Majority Voting

CCGG strongly supports 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'. This requirement will help to ensure that listed companies have meaningful majority voting in place.

Concept of 'Unrelated Directors' and Majority Board Independence

By introducing the concept of 'Unrelated Directors' to the Proposed Listing Requirements and providing a robust definition of that term that relies in part on the definition of 'independence' in National Instrument 52-110 *Audit Committees*, the Proposed Listing Requirements acknowledge the centrality of an independent board to a healthy corporation and beyond that to a well-functioning capital market.

The definition of 'Unrelated Directors' captures the idea that a director's independence may be potentially compromised by an extended tenure on the board by excluding anyone from being an 'Unrelated Director' if that person has been on the board for 10 years or longer. Importantly, though, the Proposed Listing Requirement does not preclude long time board members from continuing to serve on the board and the corresponding benefits to the issuer of the director's experience and knowledge. CCGG is of the view that the best way to refresh boards is through a strong and effective board evaluation process rather than imposing director term limits, and the definition acknowledges the potential consequences of long term board service without depriving boards of the experience and knowledge that can come with that service.

The Proposed Listing Requirements stipulate that listed issuers should have a board with a minimum of two Unrelated Directors, or 1/3 if the board has six or more members. CCGG is of the view, however, that the Proposed Listing Requirements should go further and stipulate that listed issuers should have a board with a majority of Unrelated Directors. A majority independence requirement is not onerous and should not wait, as the Commentary to the Proposed Listing Requirements suggests, until the listed issuer has “sufficient financial resources to monitor and consider adopting additional corporate governance best practices.” As stated in the Proposed Listing Requirements, listing is a privilege and not a right and having sufficient resources to establish and maintain a majority independent board should be table stakes especially when companies of the size that the Proposed Listing Requirements are targeting are involved.² Further, the Application states that all issuers listed on Aequitas are required to comply with securities laws applicable to “non-venture issuers”,³ suggesting that the governance standards suitable to more established companies should apply. In that regard, National Policy 58-201 *Corporate Governance Guidelines* stipulates that a majority of directors of reporting issuers should be independent.

Majority Independent Committees

The Proposed Listing Requirements highlight the importance of the independence of key board committees for the proper functioning of the board. By stipulating that listed companies must have Compensation Committees and 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 Directors⁴), they bring this matter the prominence it warrants.

By enumerating the primary responsibilities of the members of the Compensation Committee and the Nomination and Corporate Governance Committee, the Proposed Listing Requirements also clarify and emphasize the importance of those responsibilities.

Again, however, CCGG is of the view that the Proposed Listing Requirements should go further and stipulate that these key committees should be wholly independent, as recommended in National Policy 58-201 and as set forth in Guideline 8 in CCGG’s Building High Performance Boards publication.

Separation of Chair and CEO

The chair is accountable to shareholders and the CEO is accountable to the board. Combining the two positions creates inherent conflicts of interest and obscures accountability. A chair cannot effectively oversee senior management when he or she is the CEO and a member of the management team. Accordingly, the two positions should be separated. As a transition, companies may consider appointing an independent lead director for a short period of time.

In Camera Board Meetings

CCGG supports the recommendation in the Commentary that Unrelated Directors should hold regularly scheduled *in camera* sessions but suggests that this recommendation be amended to state that *in*

² The original listing requirements call for a minimum stock price of \$2, a public float with a market value of at least \$15 million, a market value of at least \$50 million and a 2 year operating history, among other factors.

³ The Application, page 34

⁴ However, it’s not clear how a board with only two Unrelated Directors, the minimum required under the Proposed Listing Requirement, and no Compensation or Nominating and Corporate Governance Committee could fulfill this requirement.

camera sessions should be held ‘at every board meeting’ or at least ‘at every regularly scheduled board meeting’, given that even *in camera* sessions held only annually could be viewed as ‘regularly scheduled’.

Board Diversity

Section 10.05 of the Proposed Listing Requirements sets out factors a Nominating and Corporate Governance Committee should consider when identifying appropriate board nominees. CCGG welcomes the recognition of the importance of this responsibility by including it as a listing requirement. In CCGG’s view the Section provides an excellent opportunity to address the importance of board diversity by incorporating diversity as another factor along with competencies, skills and sufficiency of time and resources to be considered by the Committee when determining board composition.

Shareholder rights plans

CCGG supports the following provisions related to shareholder rights plans contained in the Proposed Listing Requirements that would prohibit listed companies from adopting a rights plan:

- With a triggering threshold that is less than 20% of the shares outstanding
- Grandfathering existing shareholders without the approval of shareholders other than those who would be subject to the grandfathering clause

CCGG suggests that the Proposed Listing Requirements go further, however, by including a requirement that any rights plan of an issuer listed on the exchange 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. This extension will minimize the potentially coercive aspect of rights plans.

Coattails

CCGG commends the Proposed Listing Requirements for enhancing the coattail protection afforded to holders of subordinate voting shares. The TSX Listing Requirements provide that no coattail is necessary if less than 50% of the superior shares outstanding (other than those held by the offeror and affiliated parties) are deposited pursuant to a takeover bid offer. Under the Proposed Listing Requirements, however, a coattail must include a provision that the same offer be extended to holders of subordinate voting shares not only at the same offer price but for the same proportion of shares as the acquirer offers to take up for the superior voting shares.

We encourage Aequitas to go further and amend the Proposed Listing Requirements to require a standardized form of coattail provision rather than leave the form of coattail to the discretion of Aequitas to approve, as we suggested in CCGG’s Dual Class Share Policy with respect to the TSX listing requirements.⁵

Listing of Non-Voting Shares

While CCGG’s Dual Class Share Policy expresses a strong preference for a single class of shares over a dual class share structure which has different voting rights attached to different classes of shares, the CCGG policy does condone the latter provided that certain conditions are met, such as the existence of a sunset provision attached to the superior voting shares. CCGG believes, however, that the use of non-voting common shares is not consistent with the most basic principles of shareholder democracy.

⁵ http://www.ccg.ca/site/ccgg/assets/pdf/dual_class_share_policy.pdf

Accordingly, CCGG recommends that the Proposed Listing Requirements be amended to preclude the listing of non-voting common shares.

Further, we suggest that, consistent with our Dual Class Share Policy, certain conditions be attached to superior voting shares before a company with dual class shares can be listed. In addition to the requirement for a coattail that the Proposed Listing Requirements already have or a standardized form of coattail, CCGG advises that dual class share provisions of a listed company include:

- a sunset clause on the superior voting shares
- a restriction on the number of directors which holders of superior voting shares are permitted to elect that is proportional to the number of votes held but capped at two-thirds of the votes
- a maximum voting ratio of superior voting shares to subordinate voting shares of 4 to 1
- a prohibition on holders of superior voting shares entering into derivative transactions with respect to those shares

Securities Offerings

CCGG welcomes the clarity that the Proposed Listing Requirements provide with respect to when shareholder approval is required in connection with prospectus offerings. Under the Proposed Listing Requirements the same rules apply to prospectus offerings as apply to private placements: the need for shareholder approval is related to a defined threshold of 25% and certain percentage discounts to market price and is not left to a discretionary interpretation of “materially affects control of the listed issuer” (the latter being the standard under TSX Listing Requirements with respect to prospectuses).

The Proposed Listing Requirements permit share issuances of up to 25% of the outstanding shares at a discount of up to 20% of market value without shareholder approval. CCGG queries whether this discount is too large. Under TSX Listing Requirements the amount of permissible discount is a sliding scale based on share price so, for example, if an issuer’s share price is \$2 or more the maximum permitted discount is 15%.

CCGG supports the provision in the Proposed Listing Requirements that extends the time period from six months to twelve months during which issuances to insiders through private placements or acquisitions are aggregated for purposes of requiring shareholder approval. Twelve months reflects a more realistic notion of the relevant time frame for assessing insider ownership levels.

Prohibition on Vote Buying

CCGG believes that the Proposed Listing Requirements should be amended to include a prohibition on issuers paying intermediaries only if they obtain votes in favour of management’s recommended director nominees during a contested director election.

Say on Pay and Executive Compensation

CCGG believes that it would be appropriate for the Proposed Listing Requirements to be amended to include a provision that listed issuers hold an annual shareholder advisory vote on executive compensation (‘say on pay’). Some type of say on pay vote has become mandatory in many countries in the last few years (e.g. U.S., U.K. and Australia) and also has emerged as a best practice in Canada over the past several years. Thus a requirement that every listed issuer hold an advisory annual say on pay vote would help to bring Canada more in line with governance practices in these countries and also level the playing field among Canadian issuers. We recognize that requiring a say on pay vote as a condition of listing arguably may put Aequitas at a competitive disadvantage to exchanges that do not have such a listing requirement. On the other hand it could be a competitive advantage in attracting shareholders to

those companies listed on Aequitas that are subject to the requirement, an advantage both to those companies and ultimately to Aequitas.

Anti-hedging policy

CCGG believes that the Proposed Listing Requirements should be amended to include a prohibition on directors and officers hedging or monetizing their exposure to the company's shares.

In summary, we support the enhanced governance listing standards found in Aequitas's Proposed Listing Requirements and encourage the inclusion of certain additional measures which CCGG believes will not only help to further protect investors' interests but to provide Aequitas and its listed issuers with a competitive edge in attracting capital over other stock exchanges and their listed issuers.

Thank you for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Stephen Erlichman, at 416. 847.0524 or serlichman@ccgg.ca or our Director of Policy Development, Catherine McCall, at 416.868.3582 or cmccall@ccgg.ca.

Yours very truly,



Donald F. Reed
Vice Chair of the Board
Canadian Coalition for Good Governance

CCGG MEMBERS

Alberta Investment Management Corporation (AIMCo)
Alberta Teachers' Retirement Fund Board
Aurion Capital Management Inc.
BlackRock Asset Management Canada Limited
BMO Asset Management Inc.
BNY Mellon Asset Management Canada Limited
British Columbia Investment Management Corporation (bcIMC)
Burgundy Asset Management Ltd.
Canada Pension Plan Investment Board (CPPIB)
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Northwest & Ethical Investments L.P. (NEI Investments)
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TD Asset Management Inc.
Teachers' Retirement Allowances Fund
UBC Investment Management Trust Inc.
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