

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – varying relief from the requirement to be recognized as an exchange – exchange recognized in another jurisdiction and relief conditional on continuing oversight in that jurisdiction — sections 62(1), 213 and 214 of the *Securities Act*, R.S.A., 2000, c.S-4.

Applicable Legislative Provisions

Securities Act, R.S.A., 2000, c.S-4, sections 62(1), 213 and 214

Citation: Re CBOE Canada Inc., 2023 ABASC 171

Date: 20231213

In the Matter of the
Securities Legislation of
Québec, Alberta, British Columbia Manitoba, New Brunswick, Newfoundland and
Labrador, Northwest Territories, Nova Scotia Nunavut
Prince Edward Island Saskatchewan and Yukon
(the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of Cboe Canada Inc. (Cboe Canada)
(the **Filer**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from Neo Exchange Inc. (Neo Exchange), on its own behalf and on behalf of Aequitas Innovations Inc. (Aequitas), dated October 18, 2023 (the Application) under the securities legislation of the Jurisdictions (the Legislation) for a variation and restatement of the decision effective August 5, 2022 (the Exemptive Decision) providing an exemption from the requirement to be recognized as a stock exchange, an exchange, or a self-regulatory organization, to reflect the amalgamation of Neo Exchange, Aequitas and TriAct Canada Marketplace LP into Cboe Canada, and changes to the Recognition Order (as defined below), the whole as set out in Schedule A (the Exemptive Relief Sought).

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

- (a) The Autorité des marchés financiers (the AMF or the Principal Exempting Regulator) is the principal regulator for the Application; and

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

On October 19, 2023, the Principal Exempting Regulator published in its Bulletin [(2023) vol. 20, n° 41, B.A.M.F., section 7.3.1] a notice and request for comment in respect of the Application. The comment period ended on November 20, 2023, and the Principal Exempting Regulator did not receive any comment.

Interpretation

Terms defined in National Instrument 14-101 – *Definitions* (or, in Québec, *Regulation 14- 101 respecting Definitions*) have the same meaning if used in this decision, unless otherwise defined.

In this decision,

“Cboe Canada Issuer” means an issuer with one or more classes of securities listed in accordance with and subject to the requirements set out in the Rules;

“Cboe Canada Member” means a member approved by Cboe Canada to access the “Exchange Systems” (as such term is defined in the Rules), provided such access has not been terminated;

“Rules” means the rules, policies, or other similar instruments of Cboe Canada, including but not limited to, the Cboe Canada Trading Policies and the Cboe Canada Listing Manual.

Facts and Representations

The *Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems* among the Alberta Securities Commission, the AMF, the British Columbia Securities Commission, the Manitoba Securities Commission, the Ontario Securities Commission (the OSC), and the Financial and Consumer Affairs Authority of Saskatchewan came into effect on January 1, 2010 (the MOU). On June 19, 2020, the Financial and Consumer Services Commission (New Brunswick) signed the MOU, and it became effective for it on September 1, 2020.

On November 17, 2014, the OSC issued an order dated November 13, 2014 and effective as of March 1, 2015, recognizing each of Aequitas and Aequitas Neo Exchange Inc. as an exchange, subject to the terms and conditions set out therein. The OSC order was varied on February 27, 2015 and September 29, 2015, and varied and restated on February 8, 2019, August 31, 2020, May 27, 2022, May 12, 2023, and December 1, 2023 (the Recognition Order).

On January 15, 2019, the name Aequitas Neo Exchange Inc. was changed to Neo Exchange Inc.

On June 1, 2022, Cboe Canada Holdings, ULC purchased all of the issued and outstanding share capital of Aequitas.

On January 1, 2024 (the Effective Date), subject to all relevant regulatory approvals, Aequitas, Neo Exchange, and TriAct Canada Marketplace LP will be amalgamated into Cboe Canada.

Under the MOU, the OSC is designated lead regulator for Cboe Canada.

This decision is based on the following representations, which will be deemed to be made by Cboe Canada as of the Effective Date :

- Cboe Canada will carry on exchange activities in Canada;
- Cboe Canada has offices in Toronto, Ontario and does not have offices in any of the Jurisdictions;
- Cboe Canada agrees to be subject to the oversight program established by the OSC from time to time in accordance with the provisions set forth in the MOU and to comply with the terms and conditions of the Recognition Order;
- Cboe Canada will offer a wide range of services, in French and in English, to Cboe Canada Issuers and Cboe Canada Members;
- Cboe Canada is neither in default of the Legislation in any Jurisdiction nor of the securities legislation of Ontario.

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 provided that:

1. CORPORATE GOVERNANCE

Cboe Canada will ensure fair, meaningful and diverse representation on the governing body and any committees of that body, including:

- (a) appropriate representation of independent directors;
- (b) a proper balance among the interests of the different persons or companies using the services and facilities of Cboe Canada, including regional interests.

2. CONTINUING RECOGNITION

Cboe Canada will continue to be recognized as an exchange by the OSC and to comply with the terms and conditions of the Recognition Order.

3. OVERSIGHT OF THE EXCHANGE

Cboe Canada will be subject to the oversight program established by the OSC from time to time in accordance with the provisions of the MOU.

4. REVIEW AND APPROVAL OF RULES

- (a) The review and approval of the Rules will be subject to the following procedure:

- (i) all proposed amendments to the Rules filed with the OSC by Cboe Canada will be concurrently filed with the Principal Exempting Regulator;
 - (ii) all proposed amendments to the Rules that are made public for comments will be concurrently made public in English and in French by Cboe Canada; and
 - (iii) the final versions of the Rules will be filed with the Principal Exempting Regulator and be approved by the OSC in English and in French.
- (b) The Rules will be available in English and in French on the website of Cboe Canada.

5. ADDITIONAL INFORMATION

- (a) Cboe Canada shall file with the Principal Exempting Regulator any related information concerning Cboe Canada that is required pursuant to National Instrument 21-101 *Marketplace Operation* (or, in Québec, *Regulation 21-101 respecting Marketplace Operations*).
- (b) Cboe Canada shall concurrently file with the Principal Exempting Regulator copies of these documents filed with the OSC:
 - (i) on a quarterly basis, reports summarizing all exemptions or waivers granted pursuant to the Rules to any Cboe Canada Issuer or Cboe Canada Member during the period. This summary must include the following information:
 - A. the name of the Cboe Canada Issuer or Cboe Canada Member;
 - B. the type of exemption or waiver granted during the period;
 - C. the date of the exemption or waiver; and
 - D. a description of Cboe Canada staff's reasons for the decision to grant the exemption or waiver.
 - (ii) on a quarterly basis, reports containing the following information:
 - A. details, as required under the Recognition Order, as amended, about any listing applications that were conditionally approved;
 - B. the name of any issuer whose listing application was rejected and the reasons for rejection; and
 - C. the name of any issuer whose listing application was withdrawn or abandoned and, if known, the reasons why the application was withdrawn or abandoned.

- (iii) press releases setting out the reasons for the suspension of trading or delisting of a Cboe Canada Issuer's listed securities.

6. **ACTIVITIES**

- (a) Cboe Canada will communicate and offer a wide range of services in English and in French to Cboe Canada Issuers and Cboe Canada Members, including listing, continued listing, and follow-up services, as well as membership services, of a quality equivalent to those offered in Ontario.
- (b) Cboe Canada must publish concurrently in English and in French each document issued to the public at large or generally to any Cboe Canada Member or Cboe Canada Issuer and must provide the document to the Principal Exempting Regulator immediately upon publication, including forms, releases, notices, and other documents issued to Cboe Canada Members, Cboe Canada Issuers, or to the public.
- (c) The French version of the website of Cboe Canada must be updated at the same time as the English version and must be comprised solely of French documents.

7. **ACCESS TO INFORMATION**

- (a) Subject to the terms of the MOU, Cboe Canada will promptly provide the Decision Makers when requested either directly or through the OSC, as the case may be, any information in the custody or control of Cboe Canada or its Canadian affiliated entities, relating to Cboe Canada Members, Cboe Canada Issuers, Cboe Canada shareholder(s), the market operations of Cboe Canada, and compliance with this decision, including but not limited to, member lists, products, trading information, and (if applicable) disciplinary decisions, the whole in accordance with the provisions set out in the Legislation, privacy legislation, as well as in any other laws pertaining to the collection, use, and disclosure of information and the protection of personal information applicable in the Jurisdictions.
- (b) Cboe Canada shall protect the confidentiality of the information provided to it in connection with its operations, in accordance with applicable laws in the Jurisdictions.

If Cboe Canada fails to comply with one or more of the conditions set forth in this decision applicable to Cboe Canada, the Decision Makers may review or revoke this decision.

This decision will come into effect on the Effective Date.

“original signed by”
Hugo Lacroix,
Superintendent, Securities Markets
Autorité des marchés financiers

SCHEDULE A

Decision Makers	Sections in Legislation: Exemptive Relief Sought Exempting provisions
Alberta Securities Commission	Section 62(1) Section 213
Autorité des marchés financiers	Title VI, section 169 Section 263
British Columbia Securities Commission	Section 25 Section 33(1)
Manitoba Securities Commission	Part XIV, section 139(1) Section 20(1)
Financial and Consumer Services Commission (New Brunswick)	Section 36 Section 195.4
Northwest Territories Superintendent of Securities	Section 70 Section 16(1)
Nova Scotia Securities Commission	Section 30J Section 151A
Nunavut Superintendent of Securities	Part 7, section 70 Part 2, section 16(1)
Prince Edward Island Registrar of Securities	Part 7, section 70 Section 16(1)
Financial and Consumer Affairs Authority of Saskatchewan	Section 21.1 Section 160(1)
Newfoundland and Labrador Superintendent of Securities	(a) Part VIII, section 24(1) (b) Sections 138.19 and 142.1
Yukon Superintendent of Securities	Part 7, Division 1, section 70 Part 2, Division 2, section 16(1)