

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) and 213 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) and 213

Citation: Re Neo Exchange Inc. , 2022 ABASC 126

Date: 20220805

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
Aequitas Innovations Inc. (**Aequitas**) and Neo Exchange Inc.
(**Neo Exchange**, and together with Aequitas, the **Filers**)

Decision

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filers dated February 23, 2022 under the securities legislation of the Jurisdictions (the **Legislation**) for a variation and restatement of the decision effective March 1, 2015 (the **Exemptive Decision**) exempting the Filers from the requirement to be recognized as a stock exchange, an exchange, or a self regulatory organization, to reflect changes to the ownership of Aequitas and 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 (**AMF** or the **Principal Exempting Regulator**) is the principal regulator for this application; and
- (b) This 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* (or, in Québec, *Regulation 14-101 respecting Definitions*) have the same meaning if used in this decision, unless otherwise defined.

In this decision,

“NEO 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;

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

“Rule” means a rule, policy, or other similar instrument of Neo Exchange, including but not limited to, trading policies and listing manual.

Background

The *Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems* among ASC, AMF, BCSC, Manitoba Securities Commission, Ontario Securities Commission (**OSC**) and 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 and May 27, 2022 (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 (**Cboe Canada**) purchased all of the issued and outstanding share capital of Aequitas.

Under the MOU, the OSC is designated lead regulator for the Filers.

Representations

This decision is based on the following representations of the Filers:

- Aequitas and Neo Exchange will carry on exchange activities in Canada;
- At the time of granting this decision, Aequitas remains the sole shareholder of Neo Exchange;
- Neo Exchange has offices in Toronto, Ontario and does not have offices in any of the Jurisdictions;

- Neo Exchange 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;
- Neo Exchange will offer a wide range of services, in French and in English, to NEO Issuers and NEO Members;
- The Filers are 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

- (a) The Filers will ensure fair, meaningful and diverse representation on the governing body and any committees of that body, including:
 - (i) appropriate representation of independent directors;
 - (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the Neo Exchange, including regional interests.

2. CONTINUING RECOGNITION

The Filers 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

Neo Exchange 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 Neo Exchange 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 Neo Exchange; 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 Neo Exchange.

5. ADDITIONAL INFORMATION

- (a) The Filers shall file with the Principal Exempting Regulator any related information concerning Neo Exchange that is required pursuant to National Instrument 21-101 *Marketplace Operation* (or, in Québec, *Regulation 21-101 respecting Marketplace Operations*).
- (b) Neo Exchange 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 NEO Issuer or NEO Member during the period. This summary must include the following information:
 - A. the name of the NEO Issuer or NEO 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 Neo Exchange 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 NEO Issuer's listed securities.

6. ACTIVITIES

- (a) Neo Exchange will communicate and offer a wide range of services in English and in French to NEO Issuers and NEO Members, including listing, continued listing and follow-up services, as well as membership services, of a quality equivalent to those offered in Ontario.
- (b) Neo Exchange must publish concurrently in English and in French each document issued to the public at large or generally to any NEO Member or NEO Issuer and must provide the document to the Principal Exempting Regulator immediately upon publication, including forms, releases, notices and other documents issued to NEO Members, NEO Issuers or to the public.
- (c) The French version of the Web site of Neo Exchange 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, Neo Exchange 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 Neo Exchange or its Canadian affiliated entities, relating to NEO Members, NEO Issuers, the Filers' shareholders, the market operations of Neo Exchange, and compliance with this decision, including but not limited to, member lists, products, trading information and 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) The Filers shall protect the confidentiality of the information provided to them in connection with their operations, in accordance with applicable laws in the Jurisdictions.

If the Filers fail to comply with one or more of the conditions set forth in this decision applicable to them, the Decision Makers may review or revoke this decision.

This decision will become effective as of August 5th, 2022.

“Signed by”

Hugo Lacroix,
Superintendent, Securities Markets
Autorité des marchés financiers

SCHEDULE A

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