

ALBERTA SECURITIES COMMISSION

**RECOGNITION ORDER
EXCHANGE**

Natural Gas Exchange Inc.

Background

1. Natural Gas Exchange Inc. (**NGX**) has applied to the Alberta Securities Commission (the **Commission**), pursuant to the *Securities Act* (Alberta), R.S.A. 2000, c. S-4 (the **Act**), for the following:
 - (a) recognition as an exchange for the trading of Contracts (as defined below);
 - (b) an exemption of NGX's form of exchange contracts;
 - (c) a registration exemption for the contracting parties (the **Contracting Parties**) who enter into NGX's standard form trading agreement with NGX (the **Contracting Party's Agreement**) (the **Registration Relief**); and
 - (d) revocation of the Current Decision (as defined below) in Alberta.
2. NGX has concurrently applied to the Commission for recognition as a clearing agency as it also provides clearing and settlement services to Contracting Parties.

Interpretation

3. Unless otherwise defined, terms used in this order have the same meaning as in the Act or in National Instrument 14-101 *Definitions*.

Representations

4. NGX represents as follows:
 - (a) NGX operates an electronic trading system (the **Trading System**) based in Calgary, Alberta, for the trading of natural gas, electricity and related contracts (the **Contracts**).
 - (b) NGX has operated the Trading System since 1993 in accordance with the terms and conditions of a series of exemptive relief orders granted by the Commission and other Canadian securities regulatory authorities, the most recent of which is MRRS decision #1662761 dated December 1, 2004 (the **Current Decision**).

- (c) Access to the Trading System in respect of exchange contracts is restricted to Contracting Parties, each of which:
 - (i) has entered into a Contracting Party's Agreement; and
 - (ii) has, or has a majority of its voting shares owned by one or more entities each of which has, a net worth exceeding \$5 000 000 or total assets exceeding \$25 000 000 (the **NGX Sophistication Thresholds**).
- (d) The Contracting Parties use the Trading System only as principals.

Undertakings

5. NGX undertakes:

- (a) to comply with applicable securities legislation;
- (b) to operate the Trading System in accordance with the operating principles set out in Appendix A to this order (the **Operating Principles**);
- (c) to report to the Commission in accordance with the reporting requirements set out in Appendix B to this order (the **Reporting Requirements**);
- (d) not to enter into any contract, agreement or arrangement that may limit its ability to comply with applicable securities legislation or this order;
- (e) to take reasonable steps to ensure that each officer or director of NGX is a fit and proper person for that role and that the past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity;
- (f) to have appropriate conflict of interest provisions for all directors, officers and employees;
- (g) to notify the Commission at least 10 business days in advance of entering into any agreement to outsource key Trading System functions;
- (h) to notify the Commission at least 10 business days in advance of any significant change in the operation of the Trading System;
- (i) to notify the Commission at least 10 business days in advance of any change in the beneficial ownership of NGX;
- (j) to use its best efforts to provide the information required in paragraphs 5(g) to (i) above earlier than specified, when possible;
- (k) to seek the Commission's prior approval of any significant changes to the NGX Sophistication Thresholds;

- (l) to seek the Commission's acceptance of, or an exemption for, any new or revised Contract that differs significantly from the exchange contracts that have already been exempted by the Commission;
- (m) to notify the Commission immediately upon NGX becoming aware that any of its representations in this order are no longer true and accurate or that it becomes unable to fulfil any of its undertakings set out in this order; and
- (n) to comply with any request from the Executive Director of the Commission for electronic or any other form of access to the Trading System to assist the Commission in its oversight of NGX as an exchange.

Decision

- 6. Based on the above representations and undertakings the Commission, being satisfied that it would not be prejudicial to the public interest, recognizes NGX as an exchange pursuant to section 62 of the Act, exempts NGX from section 106(b), which requires the Commission's acceptance of the form of NGX's Current Contracts as exchange contracts, pursuant to section 213 and grants the Registration Relief pursuant to section 144(1) of the Act, provided that:
 - (a) subject to paragraph 5(m) above, the representations made by NGX remain true and accurate; and
 - (b) NGX fulfils the undertakings given above.
- 7. Pursuant to section 214 of the Act, the Current Decision is revoked in Alberta.

"original signed by"

Glenda A. Campbell, QC
Alberta Securities Commission

"original signed by"

Stephen R. Murison
Alberta Securities Commission

APPENDIX A

Operating Principles

1. ***Financial Resources*** - The exchange shall maintain adequate financial, operational and managerial resources to operate the Trading System and support its trade execution functions.
2. ***Operational Information Relating to Trading System and Contracts*** - The exchange shall provide disclosure to its participants of information about contract terms and conditions, trading conventions, mechanisms and practices, trading volume and other information relevant to participants.
3. ***Market Oversight*** - The exchange shall establish appropriate minimum standards for participants and programs for on-going monitoring of the financial status or credit-worthiness of participants; monitor trading to ensure an orderly market; maintain authority to collect or capture and retrieve all necessary information; and to intervene as necessary to ensure an orderly market.
4. ***Rule Enforcement*** - The exchange shall maintain adequate arrangements and resources for the effective monitoring and enforcement of its rules and for resolution of disputes and shall have the capacity to detect, investigate and enforce those rules (including the authority and ability to discipline, limit, suspend or terminate a participant's activities for violations of system rules).
5. ***System Safeguards*** - The exchange shall establish and maintain a program of oversight and risk analysis to ensure systems function properly and have adequate capacity and security, including emergency procedures and a plan for disaster recovery to ensure daily processing of transactions; and a program of periodic objective system testing and risk review to assess the adequacy and effectiveness of the Trading System's internal control systems, including a risk review of every new service and significant enhancement to existing services.
6. ***Record keeping*** - The exchange shall maintain records of all activities related to the Trading System's business in a form and manner acceptable to the Commission for a period of five years and provide an undertaking to make books and records available for inspection by Commission representatives on request.
7. ***Risk management*** - The exchange shall identify and manage the risks associated with exchange operations through the use of appropriate tools and procedures such as risk analysis tools and procedures.
8. ***Governance and Conflicts of Interest*** - Establish and enforce rules to minimize conflict of interest in the exchange's decision-making process and appropriate limitations on the use or disclosure of significant non-public information gained through the performance of official duties by board members, committee members or exchange employees or gained through an ownership interest in the exchange.

APPENDIX B

Reporting Requirements

In addition to fulfilling any reporting requirements in applicable securities legislation, the exchange will report as follows to the Commission:

Immediate Reporting

1. NGX will report immediately upon occurrence or upon becoming aware of the existence of:
 - (a) any event or circumstance or situation that renders, or is likely to render, NGX unable to comply with applicable securities legislation or this order;
 - (b) any default by NGX that affects its financial resources or its ability to meet its obligations as an exchange, including the particulars of the default and the resolution proposed. NGX shall also provide the Commission with information regarding the impact of the default on the adequacy of NGX's financial resources;
 - (c) any order, sanction or directive received from, or imposed by, a regulatory or government body;
 - (d) any investigations of NGX by a regulatory or government body;
 - (e) any criminal or quasi-criminal charges brought against NGX, any of its subsidiaries, or any of the officers or directors of NGX or its subsidiaries; and
 - (f) any civil suits brought against NGX, any of its subsidiaries, or any of the officers or directors of NGX or its subsidiaries, that would likely have a significant impact on NGX's business.

Key Event Reporting

2. NGX will report no later than 2 business days of the date of occurrence:
 - (a) the appointment or resignation of one or more directors of NGX's board of directors,
 - (b) a change to the senior management team;
 - (c) any significant changes to the Contracting Party's Agreement.

In the event that a default by a Contracting Party under the Contracting Party's Agreement is not resolved within 2 business days, NGX will report:

- (a) such default including particulars of the default, the parties involved in the default, and the method of resolution proposed.

Quarterly Reporting

3. NGX will provide, within 60 days of the end of each fiscal quarter:
 - (a) an up-to-date list of Contracting Parties; and
 - (b) interim financial statements.

Annual Reporting

4. NGX will provide, within 90 days of the end of each fiscal year:
 - (a) audited financial statements; and
 - (b) a self-assessment of the accomplishments and the challenges faced during the year which will include, but is not limited to:
 - (i) a summary of NGX's business activity for the year;
 - (ii) a report of NGX's market share throughout the year;
 - (iii) a summary of new products introduced and expansion plans that were implemented during the year;
 - (iv) a report detailing the testing undertaken to ensure the adequacy of system safeguards, including, but not limited to, risk management methodologies, emergency procedures and disaster recovery plans, business continuity and proper functionality of backup facilities;
 - (v) a summary of staffing changes at NGX during the year; and
 - (vi) any additional information that NGX considers important.

Other

5. The Executive Director may direct the form of the reporting required and may, pursuant to applicable securities legislation, require further information from NGX.