

ALBERTA SECURITIES COMMISSION

RECOGNITION ORDER: DERIVATIVES EXCHANGE

Citation: Re Natural Gas Exchange Inc., 2017 ABASC 52

Date: 20170322

Natural Gas Exchange Inc.

Background

1. Natural Gas Exchange Inc. (**NGX**) is the subject of an Alberta Securities Commission (the **Commission**) order (*Re Natural Gas Exchange Inc.*, 2008 ABASC 584, as varied by further orders cited as *Re Natural Gas Exchange Inc.*, 2009 ABASC 163 and *Re Natural Gas Exchange Inc.*, 2012 ABASC 307, and as so varied referred to herein as the **Existing Recognition Order**) recognizing NGX as an exchange under section 62 of the *Securities Act* (Alberta) (the **Act**).
2. NGX has applied to the Commission under:
 - (a) section 144(1) of the Act for an exemption from the registration requirement in section 75(1) of the Act for exchange participants (**Contracting Parties**) that enter into a standard-form participation agreement (**Contracting Party's Agreement**) with NGX (the **Registration Relief**);
 - (b) section 15.1(1) of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) for an exemption from the requirements of NI 21-101; and
 - (c) section 213 of the Act for an exemption from the requirement in section 62 of the Act to be recognized as an exchange in relation to the trading of NGX products identified as "Forwards" (**Forwards**) in the Contracting Party's Agreement (the **Forward Exemption**).

Interpretation

3. Terms defined in the Act or in National Instrument 14-101 *Definitions* have the same meaning in this order unless otherwise defined herein.

Representations

4. NGX represents as follows:
 - (a) NGX is a subsidiary of TMX Group Limited (**TMX**) incorporated under the laws of Canada and is based in Calgary, Alberta.
 - (b) NGX makes natural gas, electricity, crude oil and related commodity contracts identified in the Contracting Party's Agreement as "Futures" and "Options" (**Contracts**) and Forwards available for trading on an electronic platform owned,

operated, leased, licensed or otherwise made available by NGX (the **Exchange Trading Platform**).

- (c) Contracting Parties use the Exchange Trading Platform as principals.
- 5. Trades in Contracts are executed solely by Contracting Parties that have entered into a Contracting Party's Agreement with NGX which sets out the rules applicable to the Exchange Trading Platform (the **Rules**) and establishes a minimum qualification requirement for an entity to become a Contracting Party (the **Minimum Qualification Requirement**).
- 6. All transactions in Contracts that NGX makes available for trading are executed on the Exchange Trading Platform during hours prescribed by NGX for such trading.

Undertakings

- 7. NGX undertakes:
 - (a) not to enter into any contract, agreement or arrangement that may limit its ability to comply with Alberta securities laws;
 - (b) to operate the Exchange Trading Platform in accordance with the operating requirements set out in Appendix A to this order (the **Operating Requirements**);
 - (c) to report to the Commission in accordance with the reporting requirements set out in Appendix B to this order (the **Reporting Requirements**);
 - (d) to employ reasonable procedures for monitoring and enforcing compliance with these undertakings (the **Undertakings**), the Operating Requirements and the Reporting Requirements;
 - (e) to take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets;
 - (f) to establish, maintain and enforce Rules, policies and other similar instruments (collectively, the **NGX Requirements**) that are not contrary to the public interest and are designed to: (i) govern the terms and conditions of the Contracts, operation of the Exchange Trading Platform, access to the Exchange Trading Platform and the conduct of Contracting Parties; (ii) ensure compliance with securities legislation; (iii) prevent fraudulent and manipulative acts and other abuses on the Exchange Trading Platform; (iv) promote just and equitable principles of trade; (v) foster cooperation and coordination with persons or entities engaged in regulating, clearing, settling and processing information relating to trading on the Exchange Trading Platform; and (vi) provide appropriate sanctions for violations of the NGX Requirements;
 - (g) to investigate any possible violation of the NGX Requirements promptly upon request from the Commission or its representative;

- (h) to provide accurate and complete information in any communication with the Commission and any information required to be transmitted or made available to Contracting Parties or the public;
- (i) to notify the Commission immediately upon NGX becoming aware that any of the representations in this order are no longer true and accurate or that it has become unable to fulfil any of the Undertakings; and
- (j) to comply with any request from the Commission, or its representative, relating to the oversight of NGX as an exchange.

Decision

8. Based on the above representations and undertakings, the Commission, being satisfied that it would not be prejudicial to the public interest to do so:

- (a) under:
 - (i) section 62 of the Act, continues to recognize NGX as an exchange;
 - (ii) section 144(1) of the Act, grants the Registration Relief; and
 - (iii) section 15.1(1) of NI 21-101, exempts NGX from the requirements of NI 21-101;

provided that, and for so long as, NGX continues to fulfil the Undertakings;
- (b) under section 213 of the Act, grants the Forward Exemption provided that NGX maintains for a period of seven years, and provides to the Commission upon request, records of trades by Contracting Parties in Forwards; and
- (c) under section 214(1) of the Act, revokes the Existing Recognition Order.

9. This order takes effect on March 31, 2017.

For the Commission:

“original signed by”

Tom Cotter
Vice-Chair

“original signed by”

Stephen Murison
Vice-Chair

APPENDIX A

Operating Requirements

This Appendix forms a part of, and adopts terms defined in, the order governing NGX's recognition as a derivatives exchange (the **Order**).

Access

1. NGX Requirements concerning access to the Exchange Trading Platform must not unreasonably prohibit, condition or limit access by an entity to the Exchange Trading Platform or permit unreasonable discrimination among Contracting Parties.
2. NGX will only provide access to the Exchange Trading Platform to entities authorized by NGX pursuant to a Contracting Party's Agreement and will take reasonable steps to prevent third parties, including Contracting Parties, from providing unauthorized access.
3. NGX must take reasonable steps to ensure that each officer and director, or other individual performing a similar function or occupying a similar position, of each entity applying to become a Contracting Party, is a fit and proper person for that role. When conducting this assessment, NGX must consider whether the past conduct of such individual affords reasonable grounds for the belief that the individual will perform his or her duties with integrity.
4. If NGX makes a decision denying or suspending access of a Contracting Party or an applicant to be a Contracting Party to the Exchange Trading Platform, NGX must ensure that the party has been given an opportunity to be heard and the party is able to appeal the decision or otherwise have it reviewed.
5. NGX must not impose any restriction on competition among Contracting Parties that is not reasonably necessary or appropriate.

Fees

6. NGX's process for setting fees must be fair and appropriate and its fee model must be readily accessible to Contracting Parties and applicants to become Contracting Parties.

Financial integrity of transactions

7. NGX must take steps to ensure the financial integrity of transactions, including:
 - (a) requiring transactions in Contracts executed on the Exchange Trading Platform to be cleared through a clearing agency recognized in Alberta; and
 - (b) confirming, on a periodic basis and as otherwise required, that each Contracting Party continues to be able to meet the Minimum Qualification Requirement.

Trade monitoring and market integrity

8. NGX must have an effective program for monitoring trading activity on the Exchange Trading Platform to identify (i) in real time, disorderly trading and market or system

anomalies and (ii) by the close of trading on the business day following each day of trading, indications of fraud, manipulation or other market abuses.

9. Contracts traded on the Exchange Trading Platform must not be readily susceptible to manipulation.
10. NGX must establish risk-control mechanisms including powers to: address trading errors and system malfunctions (including the power to cancel trades); impose trading halts or suspensions in market conditions prescribed by NGX; and apply position-management mechanisms.
11. Trade cancellations, excluding trade cancellations made in relation to block transactions or “exchange for related positions” transactions, must be visible on the Exchange Trading Platform to Contracting Parties.

Recordkeeping

12. NGX must maintain for a period of seven years, in a form and manner acceptable to the Commission, and make available to the Commission upon request, records of all activities relating to NGX carrying on business as an exchange. Without limiting the foregoing, NGX must keep records of:
 - (a) each decision to grant, deny or limit access to the Exchange Trading Platform, and the reasons therefor;
 - (b) any other decision made by NGX that significantly affects a Contracting Party, or an applicant to be a Contracting Party, and reasons therefor; and
 - (c) all trading activities on the Exchange Trading Platform.
13. The records required under section 12(c) (the **Audit Trail**) must be sufficient to facilitate the accurate reconstruction of all transactions in Contracts on the Exchange Trading Platform within a reasonable time and must consist of:
 - (a) an unalterable, sequentially identified original source document for each order and each modification or cancellation of an order or trade containing: the terms of each order and each modification or cancellation of an order or trade; a Contracting Party account identifier; and the time and date of order entry and modification or cancellation of an order or trade; and
 - (b) an electronic transaction history database, with electronic surveillance and analysis capability, that includes: a history of all orders and trades and modifications and cancellations of orders and trades; all data entered into the order entry or matching system for the transaction to match and clear; identification of each account to which Contracts are allocated; and timing and sequencing data.

14. The NGX Requirements must establish the terms upon which Contracting Parties are required to keep records of their trading activities on the Exchange Trading Platform, including records of their activity in any underlying commodity and related derivatives markets.

Post trade reporting

15. NGX must report to the public directly, or indirectly through an information vendor, daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded Contracts by the close of the business day following the day to which the information pertains.

Conflicts of interest

16. NGX must establish a process for identifying and managing conflicts of interest.
17. NGX must establish, maintain and enforce policies and procedures that require that confidential information regarding NGX's operations, regulatory functions or a Contracting Party, if obtained by an individual who is a partner, director, officer or employee of a shareholder of TMX through that individual's involvement in the management or oversight of NGX's operations or regulatory functions:
 - (a) be kept separate and confidential from the business or other operations of the individual and the relevant TMX shareholder, except with respect to information the disclosure of which is necessary to carry out the individual's responsibilities for the management or oversight of NGX's operations or regulatory functions and with respect to which the individual exercises due care in disclosing the information; and
 - (b) not be used to provide an advantage to the individual or the TMX shareholder or its affiliated entities.
18. NGX must make publicly available on its website the policies and procedures referenced under paragraph 17 of the Order.

Enquiries and investigations

19. The NGX Requirements must provide that NGX may make enquiries or conduct investigations relating to the activities of Contracting Parties to ensure compliance with, or enforcement of, the NGX Requirements and, in relation to such an enquiry or investigation, the NGX Requirements must give NGX access to a Contracting Party's records of trading activity upon reasonable notice to the Contracting Party.

Governance

20. NGX's governance arrangements must be designed to ensure effective oversight of the Exchange Trading Platform.
21. NGX must take reasonable steps to ensure that each officer and director of NGX is a fit and proper person for that role. When conducting this assessment, NGX must consider

whether the past conduct of such director or officer affords reasonable grounds for the belief that the director or officer will perform his or her duties with integrity.

System safeguards

22. NGX must maintain a program of risk analysis and oversight designed to identify and manage sources of operational risk (an **Enterprise Risk Management Program**) through the development of appropriate controls and procedures and the development of systems that are reliable, secure and adequately scalable.
23. NGX must have business continuity and disaster recovery plans designed to ensure that NGX can resume trading on the Exchange Trading Platform after trading is disrupted. Under normal commercial circumstances, NGX should ensure capability to resume trading on the next business day following a disruption.
24. NGX must conduct regular testing and review of its automated systems and business continuity and disaster recovery capabilities and retain records of such tests and reviews for a period of seven years.
25. Where necessary, and to the extent practicable, NGX will coordinate and test its business continuity and disaster recovery capabilities with those of its essential service providers and Contracting Parties upon whom NGX depends to provide liquidity.

Resources and outsourcing

26. NGX must have access to sufficient financial, operational, managerial and regulatory compliance and oversight resources to fulfil its functions and regulatory responsibilities.
27. NGX must ensure that any arrangements for outsourcing of services will not impair NGX's ability to satisfy its obligations under the Order.

APPENDIX B Reporting Requirements

This Appendix forms a part of, and adopts terms defined in, the order governing NGX's recognition as a derivatives exchange (the **Order**).

Event reporting

1. NGX will notify the Commission as soon as reasonably practicable, and in any event not later than 10 business days prior to:
 - (a) any significant change to NGX's constituting documents or bylaws;
 - (b) any significant change to the Minimum Qualification Requirement;
 - (c) entering into an agreement to outsource key Exchange Trading Platform functions;
 - (d) any significant change in the design or operation of the Exchange Trading Platform;
 - (e) any change of the identity of the entity or entities by which NGX is directly or indirectly controlled as that term is defined in National Instrument 24-102 *Clearing Agency Requirements* (**NI 24-102**);
 - (f) any change of direct ownership of NGX;
 - (g) any significant change to automated systems that may affect the reliability, security or adequate scalability of such systems;
 - (h) any significant change to NGX's Enterprise Risk Management Program;
 - (i) engaging in a new type of business activity or ceasing to engage in a business activity in which NGX is then engaged; and
 - (j) any significant change to the fees charged by NGX, including the addition of new significant fees.
2. Prior to implementing a significant change contemplated in subparagraph 1(a) or 1(j), NGX will file with the Commission, concurrently with the notification required under such subparagraph, a certification by NGX that the change does not conflict with the terms of the Order.
3. NGX will not implement a change contemplated in subparagraph 1(b) without the Commission's prior written approval.

4. NGX will promptly notify the Commission upon NGX becoming aware of:
 - (a) any electronic trading halts or systems malfunctions that occur for 15 minutes or more;
 - (b) cyber security incidents or targeted threats that jeopardize automated system operation, reliability, security or capacity;
 - (c) any event triggering the activation of NGX's business continuity plan;
 - (d) any change to NGX's board membership or senior management team or any significant change to NGX's corporate governance or corporate structure unless a notification of the change has been made under paragraph 1(a);
 - (e) any order, sanction or other directive imposed on NGX by a regulatory or government body;
 - (f) any investigation of NGX by a regulatory or government body;
 - (g) any criminal or quasi-criminal charge brought against NGX, any of its subsidiaries, or any of the officers or directors of NGX or its subsidiaries;
 - (h) any civil suit brought against NGX, any of its subsidiaries, or any of the officers or directors of NGX or its subsidiaries, that is reasonably expected to have a significant impact on NGX's business; and
 - (i) any significant change to an agreement between NGX and any exchange platform service provider.

The NGX Requirements and Contracts

5. Not later than 10 business days prior to implementing a significant change to the NGX Requirements, NGX will file with the Commission a certification by NGX that the change will not conflict with the terms of the Order.
6. NGX will publish all changes to the Rules on the date of implementation of the changes.
7. Not later than one business day prior to listing a new or amended Contract for trading on the Exchange Trading Platform, NGX will file with the Commission a certification by NGX that the new or amended Contract will not conflict with the terms of the Order.
8. NGX will publish details of the new or amended Contract on the date of listing of the Contract.

Quarterly reporting

9. NGX will provide to the Commission within 45 days after the end of each financial quarter:
- (a) a list of additions to, or deletions from, NGX's list of Contracting Parties from the time of the previous quarterly report; and
 - (b) interim financial statements in the form required for clearing agencies under NI 24-102.

Annual reporting

10. NGX will provide to the Commission within 90 days after the end of each financial year:
- (a) audited annual financial statements in the form required for clearing agencies under NI 24-102; and
 - (b) an assessment of the accomplishments and the challenges faced by NGX during the year, which will include a summary of:
 - (i) NGX's business activity for the year;
 - (ii) new Contracts introduced during the year;
 - (iii) testing undertaken to ensure the adequacy of system safeguards; and
 - (iv) staffing changes at NGX during the year.