

ALBERTA SECURITIES COMMISSION

RECOGNITION ORDER: CLEARING AGENCY

Citation: Re Natural Gas Exchange Inc., 2017 ABASC 53

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 583, as varied by further orders cited as *Re Natural Gas Exchange Inc.*, 2009 ABASC 163, *Re Natural Gas Exchange Inc.*, 2012 ABASC 307, and *Re Natural Gas Exchange Inc.*, 2013 ABASC 562, and as so varied referred to herein as the **Existing Recognition Order**) recognizing NGX as a clearing agency under section 67 of the *Securities Act* (Alberta) (the **Act**).

Interpretation

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

Representations

3. 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 operates an electronic clearing system (the **Clearing System**) based in Calgary, Alberta, for clearing and settlement of natural gas, electricity, crude oil and related commodity contracts identified in NGX's Contracting Party's Agreement (defined below) as "Futures" and "Options" (**Contracts**).
 - (c) Access to the Clearing System is restricted to clearing participants (**Contracting Parties**) that enter into a standard-form participation agreement (**Contracting Party's Agreement**) with NGX which sets out the rules applicable to NGX's clearing services (the **Rules**) and establishes a minimum qualification requirement for Contracting Parties (the **Minimum Qualification Requirement**).
 - (d) Contracting Parties use the Clearing System as principals.

Undertakings

4. 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 report to the Commission in accordance with the reporting requirements set out in the Appendix to this order (the **Reporting Requirements**);
- (c) to employ reasonable procedures for monitoring and enforcing compliance with these undertakings (the **Undertakings**) and the Reporting Requirements;
- (d) to establish, maintain and enforce Rules, policies and other similar instruments (collectively, the **NGX Requirements**) governing NGX's clearing services;
- (e) to investigate any possible violation of the NGX Requirements promptly upon request from the Commission or its representative;
- (f) to 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:
 - (i) 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
 - (ii) not be used to provide an advantage to the individual or the TMX shareholder or its affiliated entities;
- (g) 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;
- (h) 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 has become unable to fulfil any of the Undertakings; and
- (i) to comply with any request from the Commission, or its representative, relating to its oversight of NGX as a clearing agency.

Decision

5. 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 section 67 of the Act, continues to recognize NGX as a clearing agency provided that, and for so long as, NGX continues to fulfil the Undertakings; and
 - (b) under section 214(1) of the Act, revokes the Existing Recognition Order.
6. 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

Reporting Requirements

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

Event reporting

1. The requirements in paragraphs 2, 6 and 7 of this Appendix govern the subject matter contained in section 2.2 of National Instrument 24-102 *Clearing Agency Requirements (NI 24-102)* as contemplated by section 1.5 of NI 24-102.
2. 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 Clearing System functions;
 - (d) any significant change in the design or operation of the Clearing System;
 - (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 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 program of risk analysis and oversight designed to identify and manage sources of operational risk;
 - (i) engaging in a new type of business activity or ceasing to engage in a business activity in which NGX is then engaged;
 - (j) any significant change to the fees charged by NGX including the addition of new significant fees; and
 - (k) establishing or removing a link as defined in NI 24-102 or making any significant change to an existing link.

3. Prior to implementing a significant change contemplated in subparagraph 2(a), 2(j) or 2(k) above, 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.
4. NGX will not implement a change contemplated in subparagraph 2(b) without the Commission's prior written approval.
5. NGX will notify the Commission not later than two business days after the date of occurrence of a default by a Contracting Party under its Contracting Party's Agreement that is not resolved within that time.
6. NGX will promptly notify the Commission upon NGX becoming aware of:
 - (a) cyber security incidents or targeted threats that jeopardize automated system operation, reliability, security or capacity;
 - (b) any event triggering the activation of NGX's business continuity plan;
 - (c) 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 2(a);
 - (d) any order, sanction or other directive imposed on NGX by a regulatory or government body;
 - (e) any investigation of NGX by a regulatory or government body;
 - (f) 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;
 - (g) 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;
 - (h) any default by NGX under a Contracting Party's Agreement that affects NGX's financial resources or its ability to meet its obligations as a clearing agency, including the particulars of the default, the resolution proposed and details of the impact of the default on the adequacy of NGX's financial resources; and
 - (i) any significant change to any agreement establishing or amending a credit facility or default insurance coverage.

The NGX Requirements

7. 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.
8. NGX will publish all changes to the Rules on the date of implementation of the changes.

Quarterly reporting

9. NGX will provide to the Commission, and concurrently make public, any amendments to NGX's qualitative disclosure that forms part of the PFMI Disclosure Framework Document as defined in NI 24-102 that are made as a consequence of a change referenced under paragraphs 2, 6 or 7 of this Appendix within 45 days after the end of each financial quarter, or within such shorter period as the Executive Director may direct.
10. 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;
 - (b) a list of defaults by Contracting Parties under their Contracting Party's Agreements that occurred within the quarter and were not resolved within two days of the date of default;
 - (c) a description of any significant margin requirement exceptions that occurred during the quarter;
 - (d) a summary of the results of any testing performed during the quarter on NGX's model for the computation of participant margin; and
 - (e) evidence of compliance as of the last day of the quarter with "Key Consideration 2" of "PFMI Principle 15", as PFMI Principle is defined in National Instrument 24-102 *Clearing Agency Requirements*, including:
 - (i) a statement of NGX's anticipated operating costs calculated as of the last day of such quarter;
 - (ii) for each asset on which reliance is placed to comply with Key Consideration 2 of PFMI Principle 15, (A) a description of such asset and (B) NGX's assessment of the current market value of such asset calculated as of the last day of such quarter; and
 - (iii) an explanation of the calculations in subparagraphs (i) and (ii), including any reductions in the assessment of market value to reflect market risk and credit risk.

Annual reporting

11. NGX will provide to the Commission within 90 days after the end of each financial year an assessment of the accomplishments and the challenges faced by NGX during the year, which will include a summary of:
 - (a) NGX's business activity for the year;
 - (b) testing undertaken to ensure the adequacy of system safeguards; and
 - (c) staffing changes at NGX during the year.