

## Chapter 13

# SROs, Marketplaces, Clearing Agencies and Trade Repositories

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### 13.2 Marketplaces

#### 13.2.1 Nasdaq CXC Limited and Ensoleillement Inc. – Application for Recognition as Exchanges – Notice and Request for Comment

##### NASDAQ CXC LIMITED AND ENSOLEILLEMENT INC.

##### APPLICATION FOR RECOGNITION AS EXCHANGES

##### NOTICE AND REQUEST FOR COMMENT

### I. INTRODUCTION

Nasdaq CXC Limited (Nasdaq Canada) and Ensoleillement Inc. (CXCH) have applied to the Ontario Securities Commission (Commission) for recognition as exchanges under section 21 of the *Securities Act* (Ontario).

Nasdaq Canada is a wholly-owned subsidiary of CXCH, which is in turn wholly-owned by Nasdaq, Inc. (Nasdaq). Nasdaq Canada currently carries on business in Ontario as an alternative trading system (ATS), operating three equity trading facilities – Nasdaq CXC, Nasdaq CX2, and Nasdaq CXD. Nasdaq Canada also operates NFI, a fixed income facility that allows permitted clients to trade US treasuries on a US based ATS. In the event the Commission recognises Nasdaq Canada and CXCH as exchanges, the trading facilities operated by Nasdaq Canada will become trading facilities of the exchanges.

Staff of the Commission is publishing this Notice and Request for Comment, together with the following documentation, for a 30-day public comment period:

- Appendix A – Application by Nasdaq Canada and CXCH for recognition as exchanges (Application);
- Appendix B – Draft order, with terms and conditions, recognizing Nasdaq Canada and CXCH as exchanges.

The comment period for this Notice and Request for Comment will close on November 13, 2017. Please see Part IV of this Notice for information on how to provide comment.

### II. APPLICATION

In the Application, Nasdaq Canada and CXCH have made representations regarding how each applicant proposes to meet the criteria for recognition as an exchange. In particular, Nasdaq Canada and CXCH have made representations in respect of the recognition criteria related to: governance, fees, access, rules and rulemaking, regulation of participants, due process, systems and technology, financial viability, clearing and settlement, information sharing and regulatory cooperation. The recognition criteria can be found at Appendix A to the Application.

As proposed, the market structure for Nasdaq Canada is unchanged from that of the trading facilities presently operated by Nasdaq CXC Limited under its registration as an ATS. As indicated, in the event of recognition, the trading facilities currently operated by Nasdaq CXC Limited will become trading facilities of the exchanges, with no changes to functionality. We note as well that Nasdaq Canada is not, at this point, proposing to list issuers' securities. Consequently, the proposed terms and conditions of recognition include a provision that no securities are to be listed on Nasdaq Canada except with the prior approval of the Commission. If and when Nasdaq Canada proposes to list securities, the listing rules will go through the process of being reviewed, published for comment and presented to the Commission.

### III. TERMS AND CONDITIONS OF RECOGNITION

As indicated, Nasdaq Canada and CXCH have made representations in respect of complying with the criteria for recognition. The following sections of the notice discuss the general approach to the terms and conditions of recognition and specifically discuss the application of some of the terms and conditions.

### **Recognition of Nasdaq**

We note that, as proposed, Nasdaq will not be recognized as an exchange. Generally, the Commission's approach to the recognition of exchanges is that the Commission will seek to recognize any entity that carries on exchange-like functions, whether or not the entity actually operates an exchange. The consequence to this approach is that in some cases, the Commission has recognized an ultimate parent company of an exchange operator as an exchange because the entity carried out exchange functions. These functions included establishing the strategic direction for the exchange and nominating directors to the board.

Based on Staff's review of the Application and the representations of Nasdaq and Nasdaq Canada, Nasdaq does not carry out exchange activities in respect of Nasdaq Canada and CXCH that would warrant recognition as an exchange. We note in particular that Nasdaq maintains a separate and distinct board of directors from both Nasdaq Canada and CXCH and that Nasdaq Canada is responsible for establishing its own strategic direction.

Staff has proposed that even though Nasdaq would not be recognized, it would be subject to certain terms and conditions in areas where it has a degree of influence over the business and operations of Nasdaq Canada. In particular, Nasdaq would be required to take reasonable steps to ensure that each director and officer of Nasdaq Canada would be a fit and proper person and to allocate sufficient financial and other resources to Nasdaq Canada to ensure that Nasdaq Canada can carry out its functions in a manner that is consistent with the public interest and in compliance with Ontario securities law. Nasdaq would also be subject to the requirements to establish policies and procedures to identify and manage conflicts of interest, restrictions in respect of the routing of order flow to Nasdaq Canada, and restrictions regarding the bundling of its products and services with those of Nasdaq Canada.

The proposed terms and conditions that would apply to Nasdaq may be found at Schedule 4 to the draft recognition order.

### **Significant Shareholders of Nasdaq**

As with the recognition of ultimate parent companies as exchanges, the Commission has also, in appropriate circumstances, imposed terms and conditions on the significant shareholders<sup>1</sup> of these parent companies. The purpose of these terms and conditions is to establish requirements in areas where significant shareholders may be able to exercise influence over the business and operations of the recognized exchange. Examples of such terms and conditions include restrictions on the routing of order flow to the recognized exchange and disclosure to clients of the significant shareholders that they have an ownership interest in the recognized exchange.

Nasdaq has several shareholders that would constitute significant shareholders.<sup>2</sup> Staff is proposing a limited number of terms and conditions that would apply to these significant shareholders. These terms and conditions relate primarily to restrictions on the routing of order flow to Nasdaq Canada, the management of conflicts of interest, restrictions on the ability of significant shareholders to incent their employees to preference Nasdaq Canada as a marketplace, and requirements for the significant shareholders to disclose their relationship with Nasdaq Canada to clients whose orders may be routed to Nasdaq Canada.

We note that, based on the Application and the representations of Nasdaq Canada and Nasdaq, the significant shareholders of Nasdaq have a limited ability and opportunity to influence the business and operations of Nasdaq Canada. The significant shareholders have no rights to nominate individuals to the boards of CXCH and Nasdaq Canada and are restricted generally in their ability to vote their shares of Nasdaq. As such, in Staff's view, the approach to impose these limited terms and conditions being proposed for significant shareholders is appropriately tied to their limited ability to influence the business and operations of Nasdaq Canada.

The proposed terms and conditions that would apply to the significant shareholders of Nasdaq may be found at Schedule 4 to the draft recognition order.

### **Nasdaq Canada and CXCH Terms and Conditions**

Additional terms and conditions have been proposed for Nasdaq Canada and CXCH. In addition to terms and conditions that would require Nasdaq Canada and CXCH to establish policies and procedures to identify and manage conflicts of interest together with financial reporting and financial viability monitoring, specific terms and conditions have been proposed in order to limit Nasdaq Canada's ability to provide discounts on its fees conditional on the purchase of products and services offered by Nasdaq. The terms and conditions would also limit Nasdaq Canada's ability to incent or encourage Nasdaq affiliates or significant shareholders from coordinating the routing of order flow to Nasdaq Canada.

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<sup>1</sup> The Commission has typically established significant shareholders as the owners of more than 5% of the issued and outstanding securities of the parent company.

<sup>2</sup> The following entities own more than 5% of the issued and outstanding shares of Nasdaq: Borse Dubai (17.9%), Investor AB (11.7%), MFS Institutional Advisors (9.2%), BlackRock (5.6%), Vanguard Group (6.5%).

The proposed terms and conditions that would apply to Nasdaq Canada may be found at Schedule 2 to the draft recognition order. The proposed terms and conditions that would apply to CXCH may be found at Schedule 3 to the draft recognition order.

#### **IV. REQUEST FOR COMMENTS**

Staff is seeking comment on all aspects of the Application and the draft terms and conditions of recognition. Documentation pertaining to the operations of the proposed exchanges can be found on the Commission's website.

Comments should be in writing and submitted by November 13, 2017, to:

Market Regulation Branch  
Ontario Securities Commission  
20 Queen Street West, 20<sup>th</sup> Floor  
Toronto, ON, M5H 3S8  
Fax: 416.595.8940  
email: [marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

Comments received will be made public on the Commission's website.

Questions on the content of this Notice and the draft recognition order may be directed to:

Tracey Stern  
Manager, Market Regulation  
[tstern@osc.gov.on.ca](mailto:tstern@osc.gov.on.ca)

Christopher Byers  
Senior Legal Counsel, Market Regulation  
[cbyers@osc.gov.on.ca](mailto:cbyers@osc.gov.on.ca)

Barb Majerski  
Legal Counsel, Market Regulation  
[bmajerski@osc.gov.on.ca](mailto:bmajerski@osc.gov.on.ca)

Questions on the content of the Application may be directed to:

Matthew Thompson  
Nasdaq CXC Chief Compliance Officer  
[matthew.thompson@nasdaq.com](mailto:matthew.thompson@nasdaq.com)

APPENDIX A

NASDAQ CXC LIMITED

25 York Street, Suite 900  
Toronto, Ontario M5J 2V5

•, 2017

Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
Toronto, Ontario  
M5H 3S8

Attention: Susan Greenglass, Director of Market Regulation

Dear Sirs/Mesdames,

**Re: Application for Recognition as exchanges of Nasdaq CXC Limited (“Nasdaq Canada”) and its parent holding company, Ensoleillement Inc. (“CXCH”)**

**I. Application for Recognition of Nasdaq Canada and CXCH**

**(a) Application for recognition of Nasdaq Canada**

This letter (the “**Application**”) sets out the application of Nasdaq Canada to the Ontario Securities Commission (the “**Commission**”) for recognition of Nasdaq Canada as an exchange in accordance with section 21(2) of the *Securities Act* (Ontario), R.S.O. 1990, c. S.5 (the “**Act**”) and in accordance with the terms and conditions set out in the draft exchange recognition order published by the Commission on October 12, 2017 (the “**Recognition Order**”).

**(b) Application for recognition of CXCH**

This letter also sets out the application of CXCH, the holding company of Nasdaq Canada, to the Commission for recognition of CXCH as an exchange in accordance with section 21(2) of the Act and in accordance with the terms of the Recognition Order.

**(c) Application for Exemptive Relief in Canadian Jurisdictions other than Ontario**

Nasdaq Canada will be operating as an exchange across Canada. It has applied<sup>1</sup> for an exemption from exchange recognition for Nasdaq Canada and CXCH in each jurisdiction in Canada, other than Ontario, on the basis of the Lead Regulator Model. The Lead Regulator Model is set out in a Memorandum of Understanding (“**MOU**”) among certain members of the Canadian Securities Administrators about the oversight of exchanges<sup>2</sup>.

The underlying principles of the Lead Regulator Model are based upon each recognized exchange (“**Exchange**”) having a lead regulator (“**Lead Regulator**”) responsible for its oversight, and one or more exempting regulators (“**Exempting Regulators**”). The Exempting Regulators exempt the Exchange from recognition on the basis that:

- (A) the Exchange is and will continue to be recognized by the Lead Regulator as an Exchange;
- (B) the Lead Regulator is responsible for conducting the regulatory oversight of the Exchange; and
- (C) the Lead Regulator will inform the Exempting Regulators of its oversight activities and the Exempting Regulators will have the opportunity to raise issues concerning the oversight of the Exchange with the Lead Regulator in accordance with the MOU.

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<sup>1</sup> The exemption application will be published by the Autorité des marchés financiers.

<sup>2</sup> The current MOU became effective on January 1, 2010 and is available online here: [http://www.osc.gov.on.ca/documents/en/Securities/mou\\_20091002\\_nca-amd-mou-qtrs.pdf](http://www.osc.gov.on.ca/documents/en/Securities/mou_20091002_nca-amd-mou-qtrs.pdf)

## II. Background and Introduction to the Nasdaq Canada Application

### *Current Operations*

Since the acquisition by Nasdaq, Inc. in February of 2016, Nasdaq CXC Limited (“**Nasdaq ATS**”) has continued operating the CXC alternative trading system (“**CXC**”) for the trading of securities listed on the Toronto Stock Exchange (“**TSX**”) and TSX Venture Exchange (“**TSXV**”). Nasdaq ATS commenced operations on February 20, 2008 and is a corporation incorporated under the *Canada Business Corporations Act* (“**CBCA**”). It currently has 66 subscribers and offers trading in over 4100 securities. Nasdaq ATS subscribers must be members in good standing of the Investment Industry Regulatory Organization of Canada (“**IIROC**”) with the ability to clear trades on a continuous net settlement basis with the Canadian Depository for Securities.

Nasdaq ATS operates a second trading facility, Nasdaq CX2 (“**CX2**”), which offers trading in the same listed securities as that of CXC. CX2 is available to registered investment dealers who are members in good standing of IIROC. CX2 operates as a separate marketplace using the same trading platform as CXC. Key features of the CX2 platform are described in the Trading section of this Application letter. There is no requirement for CX2 subscribers to also become subscribers of CXC.

Nasdaq ATS also operates a third Canadian trading facility, Nasdaq CXD (“**CXD**”), which is a dark trading book. CXD is available to registered investment dealers who are members in good standing of IIROC. CXD operates as a separate marketplace using the same trading platform as CX2. Key features of the CXD platform are described in the Trading section of this Application letter. There is no requirement for CXD subscribers to also become subscribers of CXC or CX2.

Nasdaq ATS also provides Canadian “permitted clients” as defined in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (“**NI 31-103**”) access to the Nasdaq Fixed Income trading system (“**NFI**”) operated by its U.S. affiliate Execution Access, LLC (“**EA**”) for purposes of trading non-Canadian fixed income securities (“**U.S. Treasury securities**” or “**UST**”). Key features of the NFI platform are described in the Trading section of this Application letter.

On the effective date of the Recognition Order issued pursuant to this Application (the “**Recognition Date**”), Nasdaq ATS will cease operations as an ATS and Nasdaq Canada will commence operations as an exchange.

CXCH is a corporation incorporated under the New Brunswick *Business Corporations Act* on December 9, 2015. CXCH is currently and will continue to be the sole shareholder of Nasdaq Canada on the Recognition Date.

### **Participants / Membership**

Nasdaq Canada will operate an electronic automated marketplace for participating IIROC members (“**Members**”) to trade securities listed on TSX, TSXV and Canadian Securities Exchange (“**CSE**”), on substantially the same basis as Nasdaq ATS has been operating. The Nasdaq Canada market structure will include three separate trading books (each, a “**Trading Book**”): the Nasdaq CXC Book (CXC Book), the Nasdaq CX2 Book (CX2 Book) and the Nasdaq CXD Book (CXD Book). Effective on the Recognition Date, the CXC Book, CX2 Book and CXD Book will provide substantially the same services to Members as the three trading platforms of Nasdaq ATS provide to Subscribers today.

It is expected that existing CXC, CX2 and CXD subscribers will execute the proposed Nasdaq Canada Member Agreement. As part of the proposed Nasdaq Canada Member Agreement, Nasdaq Canada Members will agree to be bound by the Exchange Requirements, as more fully described further on in this Application.

A copy of the proposed Nasdaq Canada Member Agreement is published with this Application and a version will be available on Nasdaq Canada’s website from the Recognition Date.

Effective on the Recognition Date, Nasdaq Canada will continue to provide Canadian “permitted clients” as defined in NI 31-103 access to the NFI system operated by EA for purposes of trading U.S. Treasury securities.

### *Trading Policies*

Nasdaq Canada will adopt the Trading Rules and Policies published with this application and a version will be available on Nasdaq Canada’s website from the Recognition Date.

## III. **Recognition Criteria for Nasdaq Canada**

The following sets out the recognition criteria that will be applicable to Nasdaq Canada and how Nasdaq Canada proposes to address those criteria. The criteria cover the following topics:

- Governance
- Access
- Regulation of Participants and Issuers
- Rules and Rulemaking
- Due Process
- Clearing and Settlement
- Systems and Technology
- Financial Viability
- Fees
- Information Sharing and Regulatory Cooperation.

**A. Governance**

**Governance Criteria**

- (i) **The governance structure and governance arrangements of Nasdaq Canada and CXCH must ensure: (a) effective oversight of the Exchange; (b) that business and regulatory decisions are in keeping with their public interest mandate; (c) fair, meaningful and diverse representation on the board of directors and any board committees; (d) policies and procedures are in place to appropriately identify and manage conflicts of interest; and (e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors; and**
- (ii) **Nasdaq Canada and CXCH must have policies and procedures under which it will take reasonable steps, and must take such reasonable steps, to ensure that each director and officer is a fit and proper person.**

**1. Ownership of Nasdaq Canada and CXCH**

Nasdaq ATS commenced operations on February 20, 2008 and is a corporation incorporated under the CBCA. On the Recognition Date, Nasdaq ATS will cease operations as an ATS and Nasdaq Canada will commence operations as an exchange.

CXCH is a corporation incorporated under the New Brunswick *Business Corporations Act* on December 9, 2015. CXCH is currently and will continue to be the sole shareholder of Nasdaq Canada on the Recognition Date.

Nasdaq, Inc. ("**Nasdaq**") is a Delaware USA corporation incorporated on January 12, 1976. Nasdaq is the sole shareholder of CXCH.

Nasdaq, Inc. is a leading provider of trading, clearing, exchange technology, regulatory, securities listing, information and public company services across six continents. Nasdaq's global offerings are diverse and include trading and clearing across multiple asset classes, access services, data products, financial indexes, capital formation solutions, corporate solutions and market technology products and services.

Nasdaq is a publicly traded company and is owned by various shareholders. Other than the shareholders set out in the Form 21-101F1<sup>3</sup> separately filed with the Commission concurrently with this Application, and as disclosed in Nasdaq's 2017 Proxy Statement, which was filed with the U.S. Securities and Exchange Commission on March 29, 2017, no known shareholders hold a material percentage of Nasdaq's securities.

**2. Objectives of the Governance Structure**

The governance structure of Nasdaq Canada and CXCH is designed to ensure:

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<sup>3</sup> See Exhibit B – *Ownership* to the Form 21-101F1.

- That Nasdaq Canada's business and regulatory decisions are in keeping with its public interest mandate;
- Fair, meaningful and diverse representation on the board of directors and any board committees, including independent director representation;
- Proper consideration and representation of the interests of the persons or companies accessing the facilities and/or services of Nasdaq Canada;
- That Nasdaq Canada and CXCH have policies and procedures to appropriately identify and manage conflicts of interest;
- That each director and officer of Nasdaq Canada and CXCH is a fit and proper person; and
- That there are appropriate qualifications, remuneration, limitations of liability and indemnity provisions for directors and officers.

**3. CXCH and Nasdaq Canada Board Structure**

**a. CXCH Board and Committee**

CXCH is a holding company. The board of directors ("**Board**") of CXCH is expected to be comprised of 6 directors, 3 of whom will be independent. The Chair of the CXCH Board will be an independent director.

A quorum of the CXCH Board will consist of a majority of directors, at least 50% of whom shall be independent directors. Independence criteria are addressed below.

The CXCH Board will establish and maintain a Nominating Committee as further described below. The Chair of the CXCH Nominating Committee will be an independent director.

The initial CXCH and Nasdaq Canada Boards are expected to be mirror boards consisting of the same independent and non-independent directors.

**b. The Nasdaq Canada Board and Committee**

The Nasdaq Canada Board is expected to be comprised of 6 directors, 3 of whom will be independent. The non-independent directors are expected to be Dan Kessous (the CEO of Nasdaq Canada), Thomas Wittman, Executive Vice President, Global Head of Equities of Nasdaq (a current director of both CXCH and Nasdaq Canada) and Tal Cohen, Senior Vice President, Head of North American Equities of Nasdaq.

The three independent directors of Nasdaq Canada are expected to be Canadian residents with excellent experience in financial services, market risk management and governance who will meet the independence criteria further described below.

A quorum of the Nasdaq Canada Board will consist of a majority of directors, at least 50% of whom shall be independent directors. The Chair of the Nasdaq Canada Board will be an independent director.

The Nasdaq Canada Board will establish and maintain a Regulatory Oversight Committee as further described below.

**4. CXCH Board Committee Structure**

**a. CXCH Nominating Committee**

The CXCH Board will have a Nominating Committee comprised of no fewer than 3 members, a majority of whom will be independent directors, and one of the members of the Nominating Committee will be the Chairman of the CXCH Board. The Chair of the CXCH Nominating Committee will be an independent director. The role of the Nominating Committee will be to identify and put forward for nomination qualified directors to act on the CXCH Board and the Nasdaq Canada Board. A quorum of the Nominating Committee consists of a majority of the members, a majority of whom shall be independent directors.

## 5. The Nasdaq Canada Board Committee Structure

### a. The Nasdaq Canada Regulatory Oversight Committee

The Nasdaq Canada Board will have a Regulatory Oversight Committee, comprised of no fewer than 3 directors, a majority of whom shall be independent directors. A quorum of the Regulatory Oversight Committee will consist of a majority of the members, a majority of whom shall be independent directors.

The Regulatory Oversight Committee's mandate is to oversee the performance of Nasdaq Canada's regulatory responsibilities, the management of conflicts of interest, and, among other duties:

- reviews and decides, or makes recommendations to the Nasdaq Canada Board, on proposed regulations and rules that must be submitted to the Commission for review and approval under Schedule 5 of the Recognition Order;
- considers real or perceived conflicts of interest that may arise, including but not limited to the following contexts:
  - Nasdaq Canada marketplace participant's representation on the CXCH Board or the Nasdaq Canada Board;
  - significant changes in ownership of Nasdaq Canada and CXCH; and
  - the profit-making objective and the public interest responsibilities of Nasdaq Canada, including general oversight of the management of the regulatory and public interest responsibilities of Nasdaq Canada;
- oversees the establishment of mechanisms to avoid and appropriately manage conflicts of interest or potential conflicts of interest, perceived or real, including any policies and procedures that are developed by Nasdaq Canada and CXCH;
- monitors the operation of mechanisms that deal with conflicts of interest, including oversight of reporting of conflicts of interest by Nasdaq Canada and CXCH;
- reviews regularly, and at least annually, the effectiveness of the policies and procedures regarding conflicts of interest;
- annually prepares a written report examining the avoidance and management of conflicts of interest, the mechanisms used and the effectiveness of those mechanisms and provides the report to the Nasdaq Canada Board promptly, and to the Commission within 30 days of providing it to the Nasdaq Canada Board; and
- reports in writing directly to the Commission on any matter that the Regulatory Oversight Committee deems appropriate or that is required by the Commission without first requiring the Nasdaq Canada Board approval for such reporting.

Nasdaq Canada will obtain prior approval of the Commission before implementing amendments to the mandate of the Regulatory Oversight Committee and the mandate will be publicly available on the Nasdaq Canada website.

## 6. Nasdaq Canada and CXCH Independence Standards

Nasdaq Canada and CXCH have established the following standards to determine whether a director is independent (the "**Independence Standards**"). An independent director is one who does not have a direct or indirect material relationship with Nasdaq Canada or CXCH, where the term "**material relationship**" is a relationship that could, in the view of the Nasdaq Canada Board or the CXCH Board, respectively, be reasonably expected to interfere with the exercise of the director's independent judgment. A director is independent if the director is "**independent**" within the meaning of section 1.4 of National Instrument 52-110 – *Audit Committees* ("**NI 52-110**"), as amended from time to time, but is not independent if the director:

- is a partner, officer<sup>4</sup>, director or employee of a Nasdaq Canada marketplace participant, or of an affiliated entity<sup>5</sup> of a Nasdaq Canada marketplace participant, who is responsible for or is actively engaged in the day-to-day operations or activities of that Nasdaq Canada marketplace participant;

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<sup>4</sup> "officer" has the meaning ascribed to it in subsection 1(1) of the Act.

<sup>5</sup> "affiliated entity" has the meaning ascribed to it in section 1.3 of National Instrument 21-101 *Marketplace Operation*.



- is an officer or an employee of CXCH or any of its affiliated entities;
- is a partner, officer or employee of Nasdaq or an associate<sup>6</sup> of that partner, officer or employee;
- is a director of Nasdaq or an associate of that director;
- is a person who owns or controls, or is the officer or employee of a person or company that owns or controls, directly or indirectly, more than 5% of the shares of CXCH;
- is a director of a person or company that beneficially owns or controls, directly or indirectly, more than 5% of any class or series of voting shares of Nasdaq; or
- has any relationship with Nasdaq or a person or company that owns or controls, directly or indirectly, more than 5% of the shares of CXCH, that could, in the view of the Nominating Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment as a director of CXCH or Nasdaq Canada.

The Recognition Order permits the Nominating Committee of CXCH to waive specific restrictions set out above where it has determined that independence is not compromised, and the Commission does not object. This allows otherwise qualified independent persons to be considered as an independent director on the Board of Nasdaq Canada or CXCH.

The objective of the Independence Standards is to remove anyone who has a material relationship with CXCH or its affiliated entities from qualifying as an independent director. The Nominating Committee of CXCH is charged with making recommendations to the Nasdaq Canada Board and CXCH Board, as applicable, on the interpretation and application of the Independence Standards to the Nasdaq Canada directors and CXCH directors, as applicable.

#### **7. Director and Officer Fitness Requirements**

Nasdaq Canada and CXCH will ensure that each of its respective directors and officers is a fit and proper person so that there are reasonable grounds to believe that the business of Nasdaq Canada and CXCH, respectively, will be conducted with integrity and in a manner that is consistent with the public interest.

The names and qualifications of nominee directors will be provided to the CXCH Nominating Committee to consider and determine whether the person is both fit and proper, as well as qualified. The officers will be reviewed and confirmed as fit and proper by the Nasdaq Canada Board or the CXCH Board, as applicable.

#### **8. Managing potential conflicts of interest within Nasdaq Canada and CXCH**

Nasdaq Canada and CXCH, respectively, will adopt a conflicts of interest policy applicable to the members of the respective Board which will set out the obligations and expectations imposed upon directors in dealing with conflicts of interest and matters of confidentiality. This policy will, among other things, provide that every director of Nasdaq Canada or CXCH, respectively, shall, in acting in such capacity, act honestly and in good faith with a view to the best interests of Nasdaq Canada or CXCH, respectively, and shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In addition, the policy will provide that directors must ensure that their personal interests and their duty to Nasdaq Canada or CXCH, respectively, are not brought into conflict, and that they do not receive or obtain, directly or indirectly, a personal profit, gain or benefit (other than any fees paid as a result of acting as a director) as a result of their relationship with Nasdaq Canada or CXCH, respectively. The conflicts of interest policy will also contain provisions requiring a director to disclose the nature and extent of any interest that he or she has in a material contract or material transaction with Nasdaq Canada or CXCH, respectively.

In addition, Nasdaq Canada and CXCH will establish policies and procedures that address the conflict of interest matters addressed in the Recognition Order, including conflicts arising from the interactions between Nasdaq Canada and CXCH and its shareholders, and arising between the regulation functions and business activities of Nasdaq Canada.

In addition, the Recognition Order requires that Nasdaq also establish policies and procedures to manage conflicts of interest resulting from its interactions with Nasdaq Canada and CXCH, and to maintain confidentiality.

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<sup>6</sup> “associate” has the meaning ascribed to it in subsection 1(1) of the Act.

**B. Access**

**Fair Access Criteria**

**Nasdaq Canada must establish appropriate written standards for access to its services including requirements to ensure participants are appropriately registered under Ontario securities laws, or exempted from these requirements, and such access standards and the process for obtaining, limiting and denying access must be fair, transparent and applied reasonably.**

Nasdaq Canada has established appropriate written standards for access to its trading and related services. The requirement is that Nasdaq Canada Members are appropriately registered under securities laws and are dealer members of the Investment Industry Regulatory Organization of Canada ("IIROC"), except with respect to separately provided access to NFI by Canadian permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. The access standards and the process for obtaining, limiting and denying access are set out in Chapter 4 of the Trading Rules and Policies and are fair, transparent and can be applied reasonably.

Nasdaq Canada may refuse to approve an applicant based on past or present misconduct by the applicant or any related person, or if the applicant refuses to comply with Nasdaq Canada requirements or is not qualified by reason of integrity, solvency, training or experience. Any dealer who is refused approval will have a right of appeal.

Dealers who are eligible for membership must complete an application process and ultimately must sign the Nasdaq Canada Member Agreement. Once approved, a Member must comply with all Exchange Requirements as set out in the Member Agreement and the Trading Rules and Policies and as notified to Members from time to time.

Copies of the proposed Member Agreement and the Trading Policies have been filed with this Application.

**C. Regulation of Participants**

**Regulation of Participants Criteria**

**Nasdaq Canada must have the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirement.**

Nasdaq Canada has the authority, capacity, systems and processes to undertake directly or indirectly through a regulatory services provider, its regulation functions by:

- Setting requirements governing the conduct of its Members;
- Monitoring conduct of its Members and, if and when applicable, at such future time as Nasdaq Canada may engage in a listings business, its listed issuers; and
- Appropriately disciplining Members for violations of the Exchange Requirements.

Nasdaq Canada will enter into a Regulatory Services Agreement with IIROC so that IIROC will perform on its behalf market regulation services. Nasdaq ATS currently has in place a Regulatory Services Agreement with IIROC whereby IIROC performs on its behalf market regulation services in respect of the Nasdaq ATS.

**1. Trading**

**a. Summary of Features and Functions of the Trading Platform**

Nasdaq Canada will transition its market operations from those of an ATS to those of an Exchange, with no substantial changes to its current trading platform or operations. Functionality currently in place to support the Nasdaq ATS trading platform will continue to be available after the Recognition Date. The specific policies associated with the trading operations are described in the Nasdaq Canada Trading Rules and Policies, a copy of which has been filed with this Application.

Nasdaq Canada will operate a continuous auction market Monday through Friday, excluding Canadian banking holidays. It will offer trading on securities listed on TSX, TSXV and CSE, through three separate Trading Books: CXC, CX2 and CXD. Trading sessions for CXC and CX2 are from 8:30 a.m. to 5:00 p.m. (EST). Trading sessions for CXD are from 9:30 a.m. to 4:00 p.m.

The CXC Book will offer matching based on price/time priority, with visible orders having a higher priority over hidden orders that are at the same price. The default attribution for the CXC Book is that orders are anonymous. CXC will support round lot and odd lot orders.

The CX2 Book will offer matching based on price/broker/time priority, with visible broker orders having a higher priority over visible non-broker orders at the same price. Anonymous and jitney orders are not eligible for broker preferencing. The default attribution for the CX2 Book is that orders are attributed. CX2 will support round lot and odd lot orders.

The CXD Book is a dark book with matching based on price/broker/time priority. Orders entered on CXD that do not meet the minimum size requirements as defined by Universal Market Integrity Rules (UMIR) must provide incoming orders with minimum price improvement. CXD orders are attributed by default and are automatically eligible for broker preferencing. Members may not opt-out of broker preferencing for attributed orders. Anonymous orders and jitney orders are not eligible for broker preferencing. CXD will support round lot and odd lot orders.

Orders that are not immediately matched will be posted into the Trading Books.

The Nasdaq Canada trading platform will support the following order types:

- Limit
- Market

It will also support the following types of order attributes:

- Time in force (Day, IOC, FOK)
- Quantity (Minimum, Minimum Acceptable, All or None)
- Attribution (Anonymous/Attributed)
- Pegged orders (Primary, Mid-Point and Market)
- Minimum Price Improvement Order
- Visibility (Hidden, Iceberg/Reserve and X-berg orders)
- Self-Trade Prevention
- Post only

Nasdaq Canada will also provide Members with the ability to enter intentional crosses, including specialty crosses. Members will be required to enter crosses in compliance with regulatory provisions for crosses.

Nasdaq Canada will continue to provide Canadian “permitted clients” as defined in NI 31-103 access to the NFI system operated by EA for purposes of trading USTs. Nasdaq Canada will be the “client-facing” entity for Canadian fixed income customers. Such Canadian customers have entered into a supplemental agreement with Nasdaq Canada that provides for the routing of Canadian client orders to NFI. EA will continue to be responsible for the execution of trades in USTs on the NFI platform.

An intercompany agreement was entered into between Nasdaq Canada and EA in respect of the routing arrangement. Orders transmitted by a customer located in Canada for a fixed income security traded in the United States will be routed and executed in accordance with the terms of the intercompany agreement. Nasdaq Canada will not execute UST trades. Nasdaq Canada will receive orders from Canadian fixed income customers and will route them to NFI in accordance with the terms of the intercompany agreement.

The NFI graphical user interface provides Canadian fixed income customers with a trading application that enables users to create customizable order placement, and real-time monitoring and management of orders, positions and profit & loss. The NFI application program interface (API) provides Canadian customers with access to order entry and straight through processing. Canadian customers using the NFI API can also access real-time market data and historical data. The NFI FIX protocol provides Canadian customers with access to order entry and straight through processing. Canadian customers may also connect by using a third-party vendor’s order management system.

NFI accepts limit orders only. Limit orders may have a time-in-force of Day (“DAY”), Immediate or Cancel (“IOC”), Good ‘til Bettered (“GTB”), or Only-At-Best (“OAB”). A limit order will only execute at prices equal to or better than its specified price. A

limit order can be matched in part or in its entirety. If not fully executed, the unexecuted remaining quantity is posted in the order book, unless the order's time-in-force value is IOC.

**b. Access**

Nasdaq Canada will use a FIX interface for access to the trading systems. Specifications will be published on the Nasdaq Canada website. Nasdaq Canada will provide operational support and access to a test environment for development and certification of Members' interfaces.

Members can access the Exchange directly or via certified third party services providers.

**c. Operational Controls**

Nasdaq Canada will provide several operational controls in support of its mandate to operate a fair and orderly market:

- **Trading Halts:** Trading may be halted on a security, or group of securities, on any Trading Book by the Exchange ("Business Halt") or the Regulation Services Provider ("Regulatory Halt"). Halting a security is considered a significant act and generally will be done by IIROC or in consultation with IIROC. However, the maintenance of fair markets and certain market events suggest that other options need to be available in the rare circumstances where the harm is obvious and immediate, and there may not be sufficient time to get a response from IIROC. In that event, Nasdaq Canada may announce a trading halt. There will be clear accountability and oversight if such action is taken. If Nasdaq Canada takes action to halt trading, a report will be prepared and submitted to IIROC and the Commission for their review and follow up;
- **Marketplace Thresholds:** Nasdaq Canada will support marketplace thresholds in accordance with requirements established under National Instrument 23-101 – *Trading Rules* ("NI 23-101") and guidance issued by IIROC. These thresholds will be operative between the hours of 9:30 a.m. and 5:00 p.m. (EST) on CXC and CX2 and between 9:30 a.m. and 4:00 p.m. (EST) on CXD;
- **Order Protection:** in accordance with NI 23-101, Nasdaq Canada will offer the following:
  - Repricing: Members may elect to have orders that would cross the NBBO and would trade-through a better priced order on a protected market be automatically re-priced as the NBBO updates to prevent a trade-through or crossed market from occurring.
  - Cancellation: Members may elect to have their orders cancelled (in addition to the option to reprice) to prevent a trade-through from occurring.
  - Directed Action Order ("DAO") orders: Members may indicate an order as a DAO and by-pass the repricing mechanism.

**d. Nasdaq Canada Trading Rules and Policies**

Rules for membership and policies related to trading activities are published in the Nasdaq Canada Trading Rules and Policies. This document is organized into the following chapters:

Chapter 1:	Definitions and Interpretation
Chapter 2:	Policies and Authority of the Exchange
Chapter 3:	Membership
Chapter 4:	Access to Trading
Chapter 5:	Trading
Chapter 6:	Provisions Regarding Odd Lot Dealers
Chapter 7:	Clearing and Settlement
Chapter 8:	Appeals Policy
Chapter 9:	General

**e. The Nasdaq Canada Trading Policies**

Chapter 5 of the Trading Rules and Policies sets out key features and policies of Nasdaq Canada's trading. It covers the following topics:

- Trading Books
- Trading Sessions
- Trading Halts
- Marketplace Thresholds
- Trade Amendments and Cancellations
- Order Types and Attributes
- Order Processing
- Crossing
- Order Protection Rule Compliance
- Order and Trade Reporting
- Nasdaq Canada Odd Lot Facility

Nasdaq Canada has also adopted a Trading Functionality Guide that is meant to serve as a companion guide to Nasdaq Canada's Trading Rules and Policies. The Trading Functionality Guide provides various illustrations and covers the following topics:

- Trading Operations
- Trading Books
- Order Matching Priority
- Order Types
- Summary of Trading Book Orders
- Nasdaq Canada Odd Lot Facility
- Non-Display Order Handling
- Order Handling Compliance with the Order Protection Rule
- Risk Management Tools

## **2. Data**

Currently, subscribers of CXC, CX2 and CXD, as well as other third parties, may purchase any of a variety of data products for internal consumption or redistribution by entering into either a Data Use Agreement or Data Distribution Agreement with Nasdaq ATS. Nasdaq Canada will continue to offer data products on a basis consistent with the manner in which such products are currently offered by Nasdaq ATS, with such changes as may be necessary to reflect Nasdaq Canada's exchange status and related considerations.

## **3. Listing**

Nasdaq Canada does not intend to engage in a listings business at the present time.

**D. Rules and Rulemaking**

**Rules and Rulemaking Criteria**

**Nasdaq Canada must have rules, policies, and other similar instruments that are designed to (i) appropriately govern and regulate the operations and activities of participants and, at such future time as Nasdaq Canada may engage in a listings business, issuers, (ii) ensure a fair and orderly market, and (iii) provide a framework for disciplinary and enforcement actions.**

Nasdaq Canada will establish, rules, policies and other similar instruments (“**Rules**”) designed to govern the operations and activities of Members and, at any future time as Nasdaq Canada may engage in a listings business, Issuers and designed to:

- Ensure compliance with securities legislation;
- Prevent fraudulent and manipulative acts and practices;
- Promote just and equitable principles of trade;
- Provide for appropriate sanctions for violations of Nasdaq Canada Rules;
- Ensure a fair and orderly market; and
- Provide a framework for disciplinary and enforcement actions.

Nasdaq Canada will be executing a Regulatory Services Agreement with IROC regarding oversight of UMIR requirements.

Nasdaq Canada will comply with the process for review and approval of Rules and the information contained in Form 21-101F1 and the exhibits thereto as set out in the Recognition Order.

The Regulatory Oversight Committee is responsible for reviewing and deciding, or making recommendations to the Nasdaq Canada Board, on proposed regulations and rules that must be submitted to the Commission for review and approval under Schedule 5 of the Recognition Order, and to periodically, and at least annually, prepare a written report providing details of the Regulatory Oversight Committee’s review of any regulation rules and in particular any issues or concerns that arose with respect to Significant Changes, and provide the report to the Nasdaq Canada Board promptly, and to the Commission within 30 days of providing it to the Nasdaq Canada Board.

**E. Due Process**

**Due Process Criteria**

**For any decision made by Nasdaq Canada that affects a participant or, at such future time as Nasdaq Canada may engage in a listings business, an issuer, or an applicant to be a participant or issuer, including a decision in relation to access, listing, exemptions, or discipline, Nasdaq Canada must ensure that: (i) parties are given an opportunity to be heard or make representations, and (ii) it keeps a record of, gives reasons for and provides for appeals or reviews of its decisions.**

Nasdaq Canada’s requirements relating to access, listing (at such as time as this may be appropriate), exemptions and discipline will be fair and reasonable. For all decisions made by Nasdaq Canada in the administration of the Trading Rules and Policies that affect a Member or applicant for Member, Nasdaq Canada will keep a record of and provide its reasons, and a party adversely affected by a decision or proposed decision of Nasdaq Canada will be given an opportunity to be heard by the Regulatory Oversight Committee. In addition, if the affected party wishes to appeal the decision of the Regulatory Oversight Committee, it has the right to pursue either arbitration (if applicable) or its other rights under securities law, including requesting review of the decision by the Commission.

**F. Clearing and Settlement**

**Clearing and Settlement Criteria**

**Nasdaq Canada must have appropriate arrangements for the clearing and settlement of trades.**

Nasdaq Canada will require all Members to have appropriate clearing arrangements with the Clearing Corporation (currently CDS) in place. Nasdaq Canada will provide a daily file of trades executed on the Exchange to CDS.

**G. Systems and Technology**

**Systems and Technology, and Information Risk Management Criteria**

**Nasdaq Canada must have appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.**

Nasdaq Canada will be adopting the current Nasdaq ATS trading platform, which has in place appropriate risk management procedures, including those that handle trading errors, trading halts and circuit breakers. Functionality currently in place to support the Nasdaq ATS trading platform will continue to be available after the Recognition Date.

**H. Financial Viability and Reporting**

**Financial Viability Criteria**

**Nasdaq Canada must have sufficient financial resources for the proper performance of its functions and to meet its responsibilities.**

Nasdaq Canada currently has, and will maintain, sufficient financial resources for the proper performance of its functions and to meet its responsibilities. On a quarterly basis, Nasdaq Canada will provide the Commission with unaudited financial statements and a calculation of certain liquidity, debt coverage and financial leverage measures as set out in the Recognition Order.

Nasdaq Canada will file with the Commission annual audited financial statements within 90 days after the end of each financial year. In addition, Nasdaq Canada will file with the Commission its financial budget for the year, together with underlying assumptions, as approved by the Nasdaq Canada Board, within 30 days of the commencement of each financial year.

Nasdaq shall, subject to the terms of the Recognition Order, facilitate the allocation of sufficient financial and non-financial resources to ensure Nasdaq Canada and CXCH can carry out their functions in a manner that is consistent with the public interest and in compliance with Ontario securities law.

**I. Fees**

**Fees Criteria**

**(i) All fees imposed by Nasdaq Canada must be reasonable and equitably allocated and consistent with the requirements in Ontario securities laws, and (ii) the process for setting fees must be fair and appropriate, and the fee model transparent.**

All fees imposed by Nasdaq Canada will be equitably allocated and will not have the effect of creating unreasonable barriers to access. Nasdaq Canada's process for setting fees will be fair, appropriate and its fees will be fully transparent. In addition, with respect to the execution of an order, Nasdaq Canada will not impose terms that have the effect of discriminating between orders that are routed to Nasdaq Canada from other marketplaces and orders that are entered on Nasdaq Canada.

**1. Trading Fees**

Trading fees for Nasdaq Canada will be the same as those currently in effect for CXC, CX2 and CXD, respectively, and are available on the Nasdaq ATS website. The fee structure is:

- Membership fees based on the current subscriber fees; and
- Per share fees based on the type and price of the security.

**2. Data Fees**

The fees charged for data will vary depending on the type of data feed subscribed for and the intended use of such feed. All such fees will be publicly available on the Nasdaq Canada website.

**J. Information Sharing and Regulatory Cooperation**

**Information Sharing and Regulatory Cooperation**

Nasdaq Canada must have mechanisms in place to enable it to share information and otherwise cooperate with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

Nasdaq Canada will continue the mechanisms already in place at Nasdaq ATS to ensure that it is able to cooperate, by sharing information or otherwise, with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

**IV. Conclusion**

Nasdaq Canada respectfully submits that, subject to the terms and conditions imposed by the Commission, that Nasdaq Canada meets the criteria for recognition so that recognition will not be contrary to the public interest.

Sincerely,

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**Nasdaq CXC Limited**

Cc: Rene Sorell, McCarthy Tétrault  
Cristian O. Blidariu, McCarthy Tétrault



**APPENDIX B**

**IN THE MATTER OF  
THE SECURITIES ACT,  
R.S.O. 1990, CHAPTER S.5, AS AMENDED  
(the "Act")**

**AND**

**IN THE MATTER OF  
ENSOLEILLEMENT INC. AND NASDAQ CXC LIMITED**

**AND**

**IN THE MATTER OF NASDAQ, INC.**

**ORDER  
(Section 21 of the Act)**

**WHEREAS** Ensoleillement Inc. (CXCH) and Nasdaq CXC Limited (Nasdaq Canada) (collectively, the Applicants) have filed an application requesting recognition of CXCH and Nasdaq Canada as exchanges pursuant to section 21 of the Act (Application);

**AND WHEREAS** at the time of granting this order, CXCH is the sole shareholder of Nasdaq Canada, and Nasdaq, Inc. (Nasdaq) is the sole shareholder of CXCH;

**AND WHEREAS** Nasdaq Canada operates Nasdaq CXC, Nasdaq CX2 and Nasdaq CXD that are facilities of the exchange that trade Canadian exchange-traded securities;

**AND WHEREAS** Nasdaq Canada separately provides access to a fixed income trading system, Nasdaq Fixed Income, that facilitates trading in U.S. fixed income securities by Canadian permitted clients;

**AND WHEREAS** on or about the effective date of this order Nasdaq Canada will continue operations as an exchange under the terms and conditions of this order;

**AND WHEREAS** the Commission has received certain representations and undertakings from the Applicants in connection with the Application;

**AND WHEREAS** the Commission considers the proper operation of CXCH and Nasdaq Canada as essential to investor protection and maintaining a fair and efficient capital market, and therefore requires that any conflicts of interest in the operation of CXCH and Nasdaq Canada be dealt with appropriately, the fairness and efficiency of the market not be impaired by any anti-competitive activity, and that systemic risks are monitored and controlled;

**AND WHEREAS** the Applicants represent that CXCH and Nasdaq Canada satisfy the criteria for recognition as an exchange in Schedule 1 of this order;

**AND WHEREAS** the Commission has determined that it is in the public interest to recognize each of CXCH and Nasdaq Canada as an exchange pursuant to section 21 of the Act;

**AND WHEREAS** CXCH, Nasdaq Canada and Nasdaq have agreed to the applicable terms and conditions set out in Schedule 2 to Schedule 4 to the Order;

**IT IS ORDERED** that:

- (a) pursuant to section 21 of the Act, CXCH is recognized as an exchange, and
- (b) pursuant to section 21 of the Act, Nasdaq Canada is recognized as an exchange,

provided that the Applicants and Nasdaq comply with the terms and conditions set out in Schedule 2, 3 and Schedule 4 to the Order, as applicable.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

“●” “●”

**SCHEDULE 1  
CRITERIA FOR RECOGNITION**

**PART 1 COMPLIANCE WITH NI 21-101 AND NI 23-101**

**1.1 Compliance with NI 21-101 and NI 23-101**

The exchange complies with the requirements set out in National Instrument 21-101 *Marketplace Operation* (NI 21-101) and in National Instrument 23-101 *Trading Rules*, each as amended from time to time, which include requirements relating to:

- (a) access;
- (b) marketplace operations;
- (c) exchange rules, policies and other similar instruments;
- (d) order and trade transparency;
- (e) transparency of marketplace operations;
- (f) record keeping;
- (g) marketplace systems and business continuity planning;
- (h) confidentiality of information;
- (i) outsourcing;
- (j) clearing and settlement;
- (k) fair and orderly markets;
- (l) the management of conflicts of interest; and
- (m) filing of financial statements.

**PART 2 GOVERNANCE**

**2.1 Governance**

The governance structure and governance arrangements of the exchange ensure:

- (a) effective oversight of the exchange;
- (b) that business and regulatory decisions are in keeping with the exchange's public interest mandate;
- (c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:
  - (i) appropriate representation of independent directors, and
  - (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange;
- (d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest; and
- (e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

**2.2 Fitness**

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

### **PART 3 ACCESS**

#### **3.1 Fair Access**

- (a) The exchange has established appropriate written standards for access to its services including requirements to ensure participants are appropriately registered under Ontario securities laws, or exempted from these requirements.
- (b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

### **PART 4 REGULATION OF PARTICIPANTS ON THE EXCHANGE**

#### **4.1 Regulation**

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

### **PART 5 RULES AND RULEMAKING**

#### **5.1 Rules and Rulemaking**

- (a) The exchange has rules, policies, and other similar instruments (Rules) that are designed to appropriately govern and regulate the operations and activities of participants.
- (b) In addition to meeting the requirements of NI 21-101 relating to market operations and exchange rules, policies and other similar instruments as referred to in paragraphs 1.1(b) and (c) of this Schedule, respectively, the Rules are also designed to
  - (i) ensure a fair and orderly market; and
  - (ii) provide a framework for disciplinary and enforcement actions.

### **PART 6 DUE PROCESS**

#### **6.1 Due Process**

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

- (a) parties are given an opportunity to be heard or make representations, and
- (b) it keeps a record of, gives reasons for and provides for appeals or reviews of its decisions.

### **PART 7 CLEARING AND SETTLEMENT**

#### **7.1 Clearing and Settlement**

The exchange has appropriate arrangements for the clearing and settlement of trades.

### **PART 8 SYSTEMS AND TECHNOLOGY**

#### **8.1 Information Technology Risk Management Procedures**

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

### **PART 9 FINANCIAL VIABILITY**

#### **9.1 Financial Viability**

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

**PART 10 FEES**

**10.1 Fees**

- (a) All fees imposed by the exchange are reasonable and equitably allocated and are consistent with the requirements in Ontario securities laws, including those requirements listed in paragraphs 1.1(a) and (e) of this Schedule.
- (b) The process for setting fees is fair and appropriate, and the fee model is transparent.

**PART 11 INFORMATION SHARING AND REGULATORY COOPERATION**

**11.1 Information Sharing and Regulatory Cooperation**

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

**SCHEDULE 2**  
**TERMS AND CONDITIONS APPLICABLE TO NASDAQ CANADA**

**1. Definitions and Interpretation**

(a) For the purposes of this Schedule:

“accounting principles” means accounting principles as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

“Nasdaq Canada dealer” means a dealer that is also a significant shareholder;

“Nasdaq Canada marketplace participant” means a marketplace participant of Nasdaq Canada;

“affiliated entity” has the meaning ascribed to it in section 1.3 of National Instrument 21-101 *Marketplace Operation*;

“associate” has the meaning ascribed to it in subsection 1(1) of the Act;

“Board” means the board of directors of CXCH or Nasdaq Canada, as the context requires;

“criteria for recognition” means all the criteria for recognition set out in Schedule 1 to the Order;

“Competitor” means a person whose consolidated business, operations or disclosed business plans are in competition, to a significant extent, with the trading functions, market data services or other material lines of business of Nasdaq Canada or its affiliated entities;

“dealer” means “investment dealer”, as that term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations*;

“IIROC” means the Investment Industry Regulatory Organization of Canada;

“marketplace” has the meaning ascribed to it in subsection 1(1) of the Act;

“marketplace participant” has the meaning ascribed to it in section 1.1 of NI 21-101;

“Nominating Committee” means the committee established by CXCH pursuant to section 28 of Schedule 3;

“officer” has the meaning ascribed to it in subsection 1(1) of the Act;

“Regulatory Oversight Committee” means the committee established by Nasdaq Canada pursuant to section 7 of this Schedule;

“Rule” means a rule, policy, or other similar instrument of Nasdaq Canada;

“significant shareholder” means a person or company that beneficially owns or controls directly more than 5% of any class or series of voting shares of Nasdaq.

“unaudited consolidated financial statements” means financial statements that are prepared in the same manner as audited consolidated financial statements except that they are not audited; and

“unaudited non-consolidated financial statements” means financial statements that are prepared in the same manner as audited consolidated financial statements, except that

- (i) they are not audited; and
- (ii) investments in subsidiary entities, jointly controlled entities and associates are accounted for as specified for separate financial statements in International Accounting Standard 27 *Separate Financial Statements*.

(b) For the purposes of this Schedule, an individual is independent if the individual is “independent” within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*, as amended from time to time, but is not independent if the individual:

- (i) is a partner, officer, director or employee of a Nasdaq Canada marketplace participant, or of an affiliated entity of a Nasdaq Canada marketplace participant, who is responsible for or is actively engaged in the day- to-day operations or activities of that Nasdaq Canada marketplace participant;
  - (ii) is an officer or an employee of CXCH or any of its affiliated entities;
  - (iii) is a partner, officer or employee of Nasdaq, Inc. or an associate of that partner, officer or employee;
  - (iv) is a director of Nasdaq or an associate of that director;
  - (v) is a person who owns or controls, or is the officer or employee of a person or company that owns or controls, directly or indirectly, more than 5% of the shares of CXCH;
  - (vi) is a director of a person or company that beneficially owns or controls, directly or indirectly, more than 5% of any class or series of voting shares of Nasdaq; or
  - (vii) has any relationship with Nasdaq or a person or company that owns or controls, directly or indirectly, more than 5% of the shares of CXCH, that could, in the view of the Nominating Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment as a director of CXCH or Nasdaq Canada.
- (c) For the purposes of paragraph (b), the Nominating Committee may waive the restrictions set out in subparagraphs (b)(iv) and (b)(vi) provided that:
- (i) the individual being considered does not have, and has not had, any relationship with Nasdaq, Inc. that could, in the view of the Nominating Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgement as a director of Nasdaq Canada or CXCH;
  - (ii) Nasdaq Canada publicly discloses the use of the waiver with reasons why the particular candidate was selected;
  - (iii) Nasdaq Canada provides advance notice to the Commission, at least 15 business days before the public disclosure in sub-paragraph (c)(ii) is made, and
  - (iv) the Commission does not object within 15 business days of its receipt of the notice provided under sub-paragraph (c)(iii) above.

**2. Public Interest Responsibilities**

- (a) Nasdaq Canada shall conduct its business and operations in a manner that is consistent with the public interest.
- (b) The mandate of the Board shall expressly include regulatory and public interest responsibilities of Nasdaq Canada.

**3. Share Ownership Restrictions**

- (a) Without the prior approval of the Commission, and subject to terms and conditions considered appropriate by the Commission, no person or company and no combination of persons or companies acting jointly or in concert shall beneficially own or exercise control or direction over more than 10% or more than 50% respectively of any class or series of voting shares of Nasdaq Canada.
- (b) The articles of Nasdaq Canada shall contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares and the sale or redemption of voting shares held contrary to the restrictions and payment of net proceeds of the sale or redemption to the person entitled thereto.

**4. Recognition Criteria**

Nasdaq Canada shall continue to meet the criteria for recognition set out in Schedule 1 to the Order.

**5. Fitness**

In order to ensure that Nasdaq Canada operates with integrity and in the public interest, Nasdaq Canada will take reasonable steps to ensure that each person or company that is a director or officer of Nasdaq Canada, is a fit and proper person and the past conduct of each person or company that is a director or officer of Nasdaq Canada affords reasonable grounds for belief that the business of Nasdaq Canada will be conducted with integrity. Each director and officer of Nasdaq Canada must be a fit and proper person.

**6. Board of Directors**

- (a) Nasdaq Canada shall ensure that at least 50% of its Board members are independent.
- (b) The Chair of the Board shall be independent.
- (c) In the event that Nasdaq Canada fails to meet the requirement in paragraph (a) of this section, it shall immediately advise the Commission and take appropriate measures to promptly remedy such failure.
- (d) Nasdaq Canada shall ensure that its Board is subject to requirements that the quorum for the Board consists of a majority of the Board members, at least 50% of whom shall be independent directors.

**7. Regulatory Oversight Committee**

- (a) Nasdaq Canada shall establish and maintain a Regulatory Oversight Committee that, at a minimum:
  - (i) is made up of at least three directors, a majority of whom shall be independent;
  - (ii) reviews and decides, or makes recommendations to the Board, on proposed regulations and rules that must be submitted to the Commission for review and approval under Schedule 5 *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto* of this Order;
  - (iii) considers real or perceived conflicts of interest that may arise, including but not limited to the following contexts:
    - (A) ownership interests in CXCH by any Nasdaq Canada marketplace participant with representation on the Board of CXCH or the Board of Nasdaq Canada,
    - (B) significant changes in ownership of Nasdaq Canada and CXCH, and
    - (C) the profit-making objective and the public interest responsibilities of Nasdaq Canada, including general oversight of the management of the regulatory and public interest responsibilities of Nasdaq Canada.
  - (iv) oversees the establishment of mechanisms to avoid and appropriately manage conflicts of interest or potential conflicts of interest, perceived or real, including any policies and procedures that are developed by Nasdaq Canada and CXCH, including those that are required to be established pursuant to the Schedules of the Order;
  - (v) monitors the operation of mechanisms that deal with conflicts of interest, including oversight of reporting of conflicts of interest by Nasdaq Canada and CXCH;
  - (vi) reviews regularly, and at least annually, the effectiveness of the policies and procedures regarding conflicts of interest;
  - (vii) annually prepares a written report examining the avoidance and management of conflicts of interest, the mechanisms used and the effectiveness of those mechanisms and provides the report to the Board promptly, and to the Commission within 30 days of providing it to its Board;
  - (viii) reports in writing directly to the Commission on any matter that the Regulatory Oversight Committee deems appropriate or that is required by the Commission without first requiring Board approval for such reporting;
  - (ix) has a requirement that the quorum consist of a majority of the Regulatory Oversight Committee members, a majority of whom shall be independent.

- (b) The mandate of the Regulatory Oversight Committee shall be publicly available on the website of Nasdaq Canada.
- (c) The Regulatory Oversight Committee shall provide to the Commission meeting materials provided to the Regulatory Oversight Committee members in conjunction with each meeting, within 30 days after any meeting it held, and will include a list of the matters considered and a detailed summary of the Regulatory Oversight Committee's considerations, how those matters were addressed and any other information required by the Commission.
- (d) The Regulatory Oversight Committee shall provide such information as may be required by the Commission from time to time.

**8. Conflicts of Interest and Confidentiality Procedures**

- (a) Nasdaq Canada shall establish, maintain and require compliance with policies and procedures that:
  - (i) identify and manage any conflicts of interest or potential conflicts of interest, real or perceived, arising from the operation of the marketplace or the services it provides including, but not limited to, the following:
    - (A) conflicts of interest or potential conflicts of interest that arise from the involvement of any partner, director, officer or employee of a significant shareholder in the management or oversight of the exchange operations or regulation functions of Nasdaq Canada and the services or products it provides;
    - (B) conflicts of interest or potential conflicts of interest that arise from any interactions between Nasdaq Canada and a significant shareholder where Nasdaq Canada may be exercising discretion that involves or affects the significant shareholder either directly or indirectly, and
    - (C) conflicts of interest or potential conflicts of interest that arise between the regulation functions and the business activities of Nasdaq Canada; and
  - (ii) require that confidential information regarding marketplace operations, regulation functions, or a Nasdaq Canada marketplace participant that is obtained by a partner, director, officer or employee of a significant shareholder through that individual's involvement in the management or oversight of marketplace operations or regulation functions of Nasdaq Canada:
    - (A) be kept separate and confidential from the business or other operations of the significant shareholder and its affiliated entities, except with respect to information regarding marketplace operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of marketplace operations and the individual can and does exercise due care in his or her disclosure of the information, and
    - (B) not be used to provide an advantage to the significant shareholder or its affiliated entities.
- (b) The policies established in accordance with paragraph 8(a) shall be made publicly available on the website of Nasdaq Canada.
- (c) Nasdaq Canada shall regularly review compliance with the policies and procedures established in accordance with paragraph 8(a) and shall document each review, and any deficiencies, and how those deficiencies were remedied. A report detailing review(s) conducted shall be provided to the Commission on an annual basis.

**9. Access**

Nasdaq Canada's requirements shall provide access to the facilities of Nasdaq Canada only to properly registered investment dealers that are members of IIROC and satisfy reasonable access requirements established by Nasdaq Canada, except with respect to access to Nasdaq Fixed Income by Canadian permitted clients, as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

**10. Regulation of Nasdaq Canada Marketplace Participants**

- (a) Nasdaq Canada shall establish, maintain and require compliance with policies and procedures that effectively monitor and enforce the Rules against Nasdaq Canada marketplace participants, either directly or indirectly through a regulation services provider.



- (b) Nasdaq Canada has retained and shall continue to retain IIROC as a regulation services provider to provide, as agent for Nasdaq Canada, certain regulation services that have been approved by the Commission. Nasdaq Canada shall obtain approval of the Commission before amending the listed services provided by IIROC. Nasdaq Canada shall annually provide the Commission with a list of the regulation functions performed by Nasdaq Canada and the regulation functions performed by IIROC.
- (c) Nasdaq Canada shall perform all other regulation functions not performed by IIROC, and shall maintain adequate staffing, systems and other resources in support of those functions. Nasdaq Canada shall obtain prior Commission approval before outsourcing such regulation functions to any party, including affiliated entities or associates of Nasdaq Canada.
- (d) Nasdaq Canada shall notify the Commission of any violations of Ontario securities law of which it becomes aware in the ordinary course of its business or otherwise.

**11. Rules, Rulemaking and Form 21-101F1**

Nasdaq Canada shall comply with the process for review and approval of Rules and the information contained in Form 21-101F1 and the exhibits thereto, as set out in Schedule 5, as amended from time to time.

**12. Due Process**

- (a) Nasdaq Canada shall ensure that the requirements of Nasdaq Canada relating to access to the trading facilities of Nasdaq Canada, the imposition of limitations or conditions on access, and denial of access are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of a record, the giving of reasons and the provisions of appeals.

**13. Fees, Fee Models And Incentives**

- (a) Nasdaq Canada shall not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:
  - (i) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a particular marketplace participant or any other particular person or company, or
  - (ii) any discount, rebate, allowance, price concession or other similar arrangement for any service or product offered by Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders that is conditional upon:
    - (A) the requirement to have Nasdaq Canada be set as the default or first marketplace a marketplace participant routes orders to, or
    - (B) the router of Nasdaq Canada being used as the marketplace participant's primary order router.
- (b) Except with the prior approval of the Commission, Nasdaq Canada shall not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:
  - (i) any discount, rebate, allowance, price concession or other similar arrangement on any services or products offered by Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders that is conditional upon the purchase of any other service or product provided by Nasdaq Canada or Nasdaq or any affiliated entity, or
  - (ii) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies.
- (c) Except with the prior approval of the Commission, Nasdaq Canada shall not require another person or company to purchase or otherwise obtain products or services from Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders as a condition of Nasdaq Canada supplying or continuing to supply a product or service.

- (d) If the Commission considers that it would be in the public interest, the Commission may require Nasdaq Canada to submit for approval by the Commission a fee, fee model or incentive that has previously been filed with and/or approved by the Commission.
- (e) Where the Commission decides not to approve the fee, fee model or incentive submitted under paragraph (d), any previous approval for the fee, fee model or incentive shall be revoked, if applicable, and Nasdaq Canada shall no longer be permitted to offer the fee, fee model or incentive.
- (f) Any fee, fee model or incentive, or amendment thereto, shall be filed in accordance with the Rule and Form 21-101F1 Filing Protocol attached as Schedule 5.

**14. Order Routing**

Nasdaq Canada shall not support, encourage or incent, either through fee incentives or otherwise, Nasdaq Canada marketplace participants, Nasdaq affiliated entities or significant shareholders to coordinate the routing of their orders to Nasdaq Canada.

**15. Financial Reporting**

- (a) Within 90 days of its financial year end, Nasdaq Canada shall deliver to the Commission audited consolidated financial statements and unaudited non-consolidated financial statements without notes for its latest financial year.
- (b) Within 60 days of each quarter end, Nasdaq Canada shall deliver to the Commission unaudited consolidated financial statements and unaudited non-consolidated financial statements without notes for its latest financial quarter.
- (c) Nasdaq Canada shall deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days from the commencement of each fiscal year.

**16. Financial Viability Monitoring And Reporting**

- (a) Nasdaq Canada shall calculate the following financial ratios monthly:
  - (i) a current ratio, being the ratio of current assets to current liabilities;
  - (ii) a debt to cash flow ratio, being the ratio of total debt (including any line of credit draw downs, and the current and long-term portions of any loans, but excluding accounts payable, accrued expenses and other liabilities) to EBITDA (earnings before interest, taxes, stock-based compensation, depreciation and amortization) for the most recent 12 months; and
  - (iii) a financial leverage ratio, being the ratio of total assets to shareholders' equity,in each case following the same accounting principles as those used for the unaudited non-consolidated financial statements of Nasdaq Canada.
- (b) Nasdaq Canada shall report quarterly in writing to the Commission, along with the financial statements required to be delivered pursuant to this Schedule, the monthly calculations for the previous quarter of the financial ratios as required to be calculated under paragraph (a).
- (c) If Nasdaq Canada determines that it does not have, or anticipates that, in the next twelve months, it will not have:
  - (i) a current ratio of greater than or equal to 1.1/1,
  - (ii) a debt to cash flow ratio of less than or equal to 4.0/1, or
  - (iii) a financial leverage ratio of less than or equal to 4.0/1,it will immediately notify Commission staff of the above ratio(s) that it is not maintaining, the reasons, along with an estimate of the length of time before the ratio(s) will be met.
- (d) Upon receipt of a notification made by Nasdaq Canada under paragraph (c), the Commission may, as determined appropriate, impose any of the terms and conditions set out in paragraph (e) below.
- (e) If Nasdaq Canada's current ratio, debt to cash flow ratio or financial leverage ratio falls below the levels outlined in subparagraphs 16(c)(i), 16(c)(ii) and 16(c)(iii) above for a period of more than three months, Nasdaq Canada will:

- (i) immediately deliver a letter advising the Commission staff of the reasons for the continued ratio deficiencies and the steps being taken to rectify the situation;
- (ii) deliver to Commission staff, on a monthly basis, within 30 days of the end of each month:
  - (A) unaudited monthly financial statements and a status update on any pending capital raising transaction(s) including the amount, terms and name(s) of individuals/entities that have committed to providing funding and their commitment,
  - (B) a comparison of the monthly revenues and expenses incurred by Nasdaq Canada against the projected monthly revenues and expenses included in Nasdaq Canada's most recently updated budget for that fiscal year,
  - (C) for each revenue item whose actual amount was significantly lower than its projected amount, and for each expense item whose actual amount was significantly higher than its projected amount, the reasons for the variance, and
  - (D) a calculation of the current ratio, debt to cash flow ratio and financial leverage ratio for the month;
- (iii) prior to making any type of payment to any director, officer, affiliated entity or shareholder that is in excess of the amount included in the most recent annual financial budget delivered to Commission staff, demonstrate to the satisfaction of the Commission staff that it will have sufficient financial resources to continue its operations after the payment; and
- (iv) adhere to any additional terms and conditions imposed by the Commission or its staff, as determined appropriate, on Nasdaq Canada,

until such time as Nasdaq Canada has maintained each of its current ratio, debt to cash flow ratio and financial leverage ratio at the levels set out in subparagraphs 16(c)(i), 16(c)(ii) and 16(c)(iii) for a period of at least 6 consecutive months.

**17. Additional Information**

- (a) Nasdaq Canada shall provide the Commission with:
  - (i) the information set out in Appendix A to this Schedule, as amended from time to time; and
  - (ii) any information required to be provided by Nasdaq Canada to IIROC, including all order and trade information, as required by the Commission.

**18. Compliance**

Nasdaq Canada shall carry out its activities as an exchange recognized under section 21 of the Act and in compliance with Ontario securities law.

**19. Provision Of Information**

- (a) Nasdaq Canada shall, and shall cause its affiliated entities, to promptly provide to the Commission, on request, any and all data, information and analyses in the custody or control of Nasdaq Canada or any of its affiliated entities, without limitations, redactions, restrictions or conditions, including, without limiting the generality of the foregoing:
  - (i) data, information and analyses relating to all of its or their businesses; and
  - (ii) data, information and analyses of third parties in its or their custody or control.
- (b) Nasdaq Canada shall share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, recognized or exempt clearing agencies, investor protection funds, and other appropriate regulatory bodies.

**20. Compliance With Terms And Conditions**

- (a) Nasdaq Canada shall certify in writing to the Commission, in a certificate signed by its CEO and either its general counsel or chief compliance officer, within one year of the effective date of its recognition as an exchange pursuant to

this Order and every year subsequent to that date, or at any times required by the Commission, that it is in compliance with the terms and conditions applicable to it in the Order and describe in detail:

- (i) the steps taken to require compliance;
  - (ii) the controls in place to verify compliance;
  - (iii) the names and titles of employees who have oversight of compliance.
- (b) If Nasdaq Canada or any of its directors, officers or employees become aware of a breach or a possible breach of any of the terms and conditions applicable to Nasdaq Canada under the Schedules to the Order, such person shall, within five business days after becoming aware of the breach or possible breach (or within two business days in the case of a breach or possible breach of the financial ratios required by section 16(c)), notify the Regulatory Oversight Committee of the breach or possible breach. The director, officer or employee of the recognized exchange shall provide to the Regulatory Oversight Committee details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.
- (c) The Regulatory Oversight Committee shall, within five business days after being notified of the breach or possible breach (or within two business days in the case of a breach or possible breach of the financial ratios required by section 16(c)), notify the Commission and confirm that the breach or possible breach is under investigation as required by section 20(d).
- (d) The Regulatory Oversight Committee shall promptly cause to be conducted an investigation of the breach or possible breach reported under section 20(b). Once the Regulatory Oversight Committee has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to Nasdaq Canada under the Schedules to the Order, the Regulatory Oversight Committee shall, within five business days of such determination (or within two business days in the case of a determination involving a breach or possible breach of the financial ratios required by section 16(c)), notify the Commission of its determination and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

## **21. Listings**

Except with the prior approval of the Commission, no securities shall be listed on Nasdaq Canada.

**APPENDIX A  
ADDITIONAL REPORTING OBLIGATIONS**

**1. Ad Hoc**

- (a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding or other similar agreement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, data subscription agreements, etc.), or (v) relates to a business line other than exchange services.
- (b) Any plans by Nasdaq Canada to enter into new businesses (directly or indirectly, including joint ventures) or to cease existing businesses, promptly after the Board has made the decision to implement those plans.
- (c) Immediate notification of:
  - (i) the appointment of any new director or officer of Nasdaq Canada, including a description of the individual's employment history; and
  - (ii) the receipt of notice of resignation from, or the resignation of, a director or officer or the auditor of Nasdaq Canada, including a statement of the reasons for the resignation.
- (d) Any minutes of the meetings of Board and Board committees of Nasdaq Canada, promptly after their approval.
- (e) Immediate notification if Nasdaq Canada:
  - (i) becomes the subject of any order, directive or similar action of a governmental or regulatory authority;
  - (ii) becomes aware that it is the subject of a criminal or regulatory investigation; or
  - (iii) becomes, or it is notified in writing that it will become, the subject of a material lawsuit.
- (f) Any strategic plan for Nasdaq Canada, within 30 days of approval by the Board.
- (g) Any filings made by Nasdaq Canada with a Canadian securities regulatory authority pursuant to a recognition order, exemption order or NI 21-101, filed concurrently.
- (h) Copies of all notices, bulletins and similar forms of communication that Nasdaq Canada sends to the Nasdaq Canada marketplace participants.
- (i) Prompt notification of any application for exemption or waiver from Nasdaq Canada requirements received from a significant shareholder or any of its affiliated entities.

**2. Quarterly Reporting**

- (a) A list of the internal audit reports and risk management reports issued in the previous quarter that relate to the operations and business of Nasdaq Canada, if such reports are produced.
- (b) A quarterly report summarizing all exemptions or waivers granted during the period pursuant to the Rules to any Nasdaq Canada marketplace participant, which shall include the following information:
  - (i) the name of the Nasdaq Canada marketplace participant;
  - (ii) the type of exemption or waiver granted during the period;
  - (iii) the date of the exemption or waiver; and
  - (iv) a description of the recognized exchange's reason for the decision to grant the exemption or waiver.

- (c) A quarterly report summarizing instances where conflicts of interest or potential conflicts of interest with respect to Competitors have been identified by Nasdaq Canada and how such conflicts were addressed.

**3. Annual Reporting**

At least annually, an assessment of the risks, including business risks, facing Nasdaq Canada and the plan for addressing such risks.

**SCHEDULE 3**  
**TERMS AND CONDITIONS APPLICABLE TO CXCH**

**22. Definitions and Interpretation**

Terms used in this Schedule have the same meanings and interpretation as in section 1 of Schedule 2. In addition:

**23. Public Interest Responsibilities**

- (a) CXCH shall conduct its business and operations in a manner that is consistent with the public interest.
- (b) The mandate of the Board shall expressly include CXCH's regulatory and public interest responsibilities.

**24. Share Ownership Restrictions**

- (a) Without the prior approval of the Commission, and subject to terms and conditions considered appropriate by the Commission, no person or company and no combination of persons or companies acting jointly or in concert shall beneficially own or exercise control or direction over more than 10% or more than 50% respectively of any class or series of voting shares of CXCH.
- (b) The articles of CXCH shall contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares and the sale or redemption of voting shares held contrary to the restrictions and payment of net proceeds of the sale or redemption to the person entitled thereto.

**25. Recognition Criteria**

CXCH shall continue to meet the criteria for recognition set out in Schedule 1 to the Order.

**26. Fitness**

In order to ensure that CXCH and Nasdaq Canada operate with integrity and in the public interest, CXCH will take reasonable steps to ensure that each person or company that is a director or officer of CXCH is a fit and proper person and the past conduct of each person or company that is a director or officer of CXCH affords reasonable grounds for belief that the business of CXCH and Nasdaq Canada will be conducted with integrity. Each director and officer of CXCH must be a fit and proper person.

**27. Board of Directors**

- (a) CXCH shall ensure that at least 50% of its Board members are independent.
- (b) The Chair of the Board shall be independent.
- (c) In the event that CXCH fails to meet the requirement in paragraph (a) of this section, it shall immediately advise the Commission and take appropriate measures to remedy such failure.
- (d) CXCH shall ensure that its Board is subject to requirements that the quorum for the Board consists of a majority of the Board members, at least 50% of whom shall be independent.

**28. Nominating Committee**

CXCH shall maintain a Nominating Committee that, at a minimum:

- (a) is made up of at least three directors, a majority of whom shall be independent, and has an independent Chair;
- (b) confirms the status of a nominee to the Board as independent before the name of the individual is submitted to shareholders as a nominee for election to the Board;
- (c) confirms, on an annual basis, that the status of the directors that are independent has not changed;
- (d) assesses and approves all nominees of management to the Board; and

- (e) has a requirement that the quorum consist of a majority of the Nominating Committee members, a majority of whom shall be independent.

**29. Conflicts of Interest and Confidentiality Procedures**

- (a) CXCH shall establish, maintain and require compliance with policies and procedures that:
  - (i) identify and manage any conflicts of interest or potential conflicts of interest, perceived or real, arising from its ownership interest in Nasdaq Canada, and
  - (ii) require that confidential information regarding marketplace operations, regulation functions, or a Nasdaq Canada marketplace participant that is obtained by a partner, director, officer or employee of CXCH or Nasdaq through that individual's involvement in the management or oversight of the marketplace operations or regulation functions of Nasdaq Canada:
    - (A) be kept separate and confidential from the business or other operations of the partner, director, officer or employee of CXCH or Nasdaq, except with respect to information regarding marketplace operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of marketplace operations and the individual can and does exercise due care in his or her disclosure of the information, and
    - (B) not be used to provide an advantage to the partner, director, officer or employee of CXCH or Nasdaq or Nasdaq's affiliated entities,

provided that nothing in this section 29(a)(ii) shall be construed to limit CXCH or Nasdaq Canada from providing to Nasdaq necessary information. CXCH shall cause Nasdaq Canada to mandate that each Nasdaq Canada dealer and affiliated entity of a Nasdaq Canada dealer carrying on a securities business in Canada in reliance on a securities registration or exemption therefrom disclose its relationship with Nasdaq Canada to clients whose orders might be, and clients whose orders have been, routed to Nasdaq Canada.

- (b) CXCH shall regularly review compliance with the policies and procedures established in accordance with section 29(a) and shall document each review and any deficiencies and how those deficiencies were remedied. A report detailing the review(s) conducted shall be provided to the Commission on an annual basis.
- (c) The policies established in accordance with section 29(a) shall be made publicly available on the website of CXCH or Nasdaq Canada.

**30. Allocation of Resources**

- (a) CXCH shall, for so long as Nasdaq Canada carries on business as an exchange, allocate sufficient financial and other resources to Nasdaq Canada to ensure that Nasdaq Canada can carry out its functions in a manner that is consistent with the public interest and in compliance with Ontario securities law.
- (b) CXCH shall notify the Commission immediately upon being aware that it is or will be unable to allocate sufficient financial and other resources, as required under paragraph (a), to Nasdaq Canada.

**31. Fees, Fee Models and Incentives**

- (a) CXCH shall ensure that its affiliated entities, including Nasdaq Canada, do not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person, significant shareholder or company, provide:
  - (i) any discount, rebate, allowance, price concession or other similar arrangement on any services or products offered by Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders that is conditional upon the purchase of any other service or product provided by the affiliated entity; or
  - (ii) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies,

unless prior approval has been granted by the Commission.



- (b) CXCH shall ensure that Nasdaq Canada does not require a person or company to purchase or otherwise obtain products or services from Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders as a condition of Nasdaq Canada supplying or continuing to supply a product or service unless prior approval has been granted by the Commission.
- (c) CXCH shall ensure that Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders do not require another person, significant shareholder or company to obtain products or services from Nasdaq Canada as a condition of the affiliated entity supplying or continuing to supply a product or service.

**32. Order Routing**

CXCH shall not support, encourage or incent, either through fee incentives or otherwise, Nasdaq Canada marketplace participants, Nasdaq affiliated entities or significant shareholders to coordinate the routing of their order to Nasdaq Canada.

**33. Financial Reporting**

- (a) Within 90 days of its financial year end, CXCH shall deliver to the Commission audited consolidated financial statements and unaudited non-consolidated financial statements without notes for its latest financial year.
- (b) Within 60 days of each quarter end, CXCH shall deliver to the Commission unaudited consolidated financial statements and unaudited non-consolidated financial statements without notes for its latest financial quarter.
- (c) CXCH shall deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days from the commencement of each fiscal year.

**34. Prior Commission Approval**

CXCH shall obtain prior Commission approval of any changes to any agreement between CXCH and its significant shareholders.

**35. Reporting Requirements**

CXCH shall provide the Commission with the information set out in Appendix B to this Schedule, as amended from time to time.

**36. Compliance With Terms and Conditions**

- (a) CXCH shall certify in writing to the Commission, in a certificate signed by its CEO and either its Chairman of the Board, general counsel or chief compliance officer, within one year of the effective date of its recognition as an exchange pursuant to this Order and every year subsequent to that date, or at any times required by the Commission, that it is in compliance with the terms and conditions applicable to it in the Order and describe in detail:
  - (i) the steps taken to require compliance;
  - (ii) the controls in place to verify compliance; and
  - (iii) the names and titles of employees who have oversight of compliance.
- (b) If CXCH or any of its directors, officers or employees become aware of a breach or a possible breach of any of the terms and conditions applicable to CXCH under the Schedules to the Order, such person shall, within five business days after becoming aware of the breach or possible breach, notify the Board or committee designated by the Board and approved by the Commission of the breach or possible breach. The director, officer or employee of the recognized exchange shall provide to the Board or committee designated by the Board details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.
- (c) The Board or committee designated by the Board shall, within five business days after being notified of the breach or possible breach, notify the Commission and confirm that the breach or possible breach is under investigation as required by section 36(d).
- (d) The Board or committee designated by the Board shall promptly cause to be conducted an investigation of the breach or possible breach reported under section 36(b). Once the Board or committee designated by the Board has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to CXCH under the Schedules to the Order, the Board or committee designated by the Board shall, within five business days of such determination, notify the Commission of its determination and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

**APPENDIX B  
ADDITIONAL REPORTING OBLIGATIONS**

**1. Ad Hoc**

- (a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding or other similar agreement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, data subscription agreements, etc.), or (v) relates to a business line other than exchange services.
- (b) Any plans by CXCH to enter into new businesses (directly or indirectly, including joint ventures) or to cease existing businesses, promptly after the Board has made the decision to implement those plans.
- (c) Immediate notification of:
  - (i) the appointment of any new director or officer of CXCH, including a description of the individual's employment history; and
  - (ii) the receipt of notice of resignation from, or the resignation of, a director or officer or the auditor of CXCH, including a statement of the reasons for the resignation.
- (d) Any minutes of the meetings of Board and Board committees of CXCH, promptly after their approval.
- (e) Immediate notification if CXCH:
  - (i) becomes the subject of any order, directive or similar action of a governmental or regulatory authority;
  - (ii) becomes aware that it is the subject of a criminal or regulatory investigation; or
  - (iii) becomes, or it is notified in writing that it will become, the subject of a material lawsuit.
- (f) Immediate notification if Nasdaq becomes, or it is notified in writing that it will become, the subject of a criminal, administrative or regulatory proceeding.
- (g) Any strategic plan for CXCH, within 30 days of approval by the Board.
- (h) Any filings made by CXCH with a Canadian securities regulatory authority pursuant to a recognition order, exemption order or NI 21-101, filed concurrently.

**2. Quarterly Reporting**

A list of the internal audit reports and risk management reports issued in the previous quarter that relate to the operations and business of CXCH and Nasdaq Canada, if such reports are produced.

**3. Annual Reporting**

At least annually, or more frequently if required by the Commission, an assessment of the risks, including business risks, facing CXCH and Nasdaq Canada and the plan for addressing such risks.

**SCHEDULE 4**  
**TERMS AND CONDITIONS APPLICABLE TO NASDAQ AND SIGNIFICANT SHAREHOLDERS**

**37. Definitions and Interpretation**

Terms used in this Schedule have the same meanings and interpretation as in section 1 of Schedule 2.

**38. Public Interest Responsibilities**

Nasdaq shall ensure that Nasdaq Canada and CXCH conduct the business and operations of recognized exchanges in a manner that is consistent with the public interest.

**39. Fitness**

Nasdaq shall take reasonable steps to ensure that each director and officer of Nasdaq Canada and CXCH is a fit and proper person. As part of those steps, Nasdaq shall consider whether the past conduct of each director or officer affords reasonable grounds for belief that the business of Nasdaq Canada and CXCH will be conducted with integrity and in a manner that is consistent with the public interest responsibilities of Nasdaq Canada and CXCH.

**40. Conflicts of Interest and Confidentiality Procedures**

- (a) Nasdaq shall establish, maintain and require compliance with policies and procedures that:
- (i) identify and manage any conflicts of interest or potential conflicts of interest, real or perceived, arising from the involvement of a nominee of Nasdaq or a significant shareholder of Nasdaq on the Board of CXCH or Nasdaq Canada in the management or oversight of the marketplace operations or regulation functions of Nasdaq Canada, and
  - (ii) require that confidential information regarding marketplace operations or regulation functions, or regarding a Nasdaq Canada marketplace participant that is obtained by such nominee on the Board of Nasdaq Canada or CXCH:
    - (A) be kept separate and confidential from the business or other operations of such significant shareholder, except with respect to where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of exchange operations and the individual can and does exercise due care in his or her disclosure of the information, and
    - (B) not be used to provide an advantage to Nasdaq, its significant shareholder or affiliated entities,provided that nothing in this section 40(a)(ii) shall be construed to limit CXCH or Nasdaq Canada from providing to Nasdaq necessary information.
- (b) Nasdaq shall establish, maintain and require compliance, or ensure that its affiliated entities that are dealers, if any, establish, maintain or require compliance with policies and procedures that identify and manage any conflicts of interest or potential conflicts of interest, real or perceived, arising from its ownership interest in CXCH, and indirectly in Nasdaq Canada, including, but not limited to, conflicts of interest or potential conflicts of interest that arise from any interactions between either of Nasdaq Canada and Nasdaq, Nasdaq Canada or significant shareholders or between Nasdaq Canada and the affiliated entities of Nasdaq that are dealer where Nasdaq Canada may be exercising discretion in the application of its Rules that involves or affects Nasdaq or its affiliated entities either directly and indirectly.
- (c) Nasdaq shall regularly review compliance with the policies and procedures established in accordance with paragraphs (a) and (b), as applicable, and shall document each review of compliance.

**41. Allocation of Resources**

- (a) To ensure Nasdaq Canada and CXCH can carry out their functions in a manner that is consistent with the public interest and in compliance with Ontario securities law, Nasdaq shall, for so long as Nasdaq Canada and CXCH carry on business as exchanges, facilitate the allocation of sufficient financial and non-financial resources for the operations of these exchanges.
- (b) Nasdaq shall notify the Commission immediately upon being aware that it is or will be unable to allocate sufficient financial or other resources to Nasdaq Canada or CXCH, as required under paragraph (a).

**42. Routing and Other Operational Decisions**

- (a) Nasdaq shall not enter into, and shall not cause any of its affiliated entities that are dealers to enter into, any arrangements, undertakings, commitments, understandings or agreements with CXCH, Nasdaq Canada, or any marketplace participant with respect to coordination of the routing of orders to Nasdaq Canada except with respect to activities that are permitted by the requirements of Nasdaq Canada or IIROC.
- (b) Each significant shareholder shall not enter into, and shall not cause any of its affiliated entities that are dealers to enter into, any arrangements, undertakings, commitments, understandings or agreements with Nasdaq, CXCH, Nasdaq Canada or any marketplace participant with respect to coordination of the routing of orders to Nasdaq Canada, except with respect to activities that are permitted by the requirements of Nasdaq Canada or IIROC.
- (c) For greater certainty, paragraph (a) is not intended to prohibit any temporary agreements or coordination between Nasdaq or affiliated entities of Nasdaq that is a dealer and any other shareholder or affiliated entities of a shareholder that is a dealer or any other person in the event of any failure, malfunction or material delay of the systems or equipment of a marketplace if and to the extent reasonably necessary to protect the integrity and liquidity of capital markets, provided that prior notice of the temporary agreement or coordination is provided to the Commission.
- (d) Nasdaq shall not cause any of its affiliated entities to offer or pay any benefit, financial or otherwise to its traders that would incent such traders to direct their orders to Nasdaq Canada in preference to any other marketplace.
- (e) No significant shareholder shall cause any of its affiliated entities to offer or pay any benefit, financial or otherwise, to its traders, if applicable, that would incent such traders to direct their orders to Nasdaq Canada in preference to any other marketplace.
- (f) Significant shareholders shall provide a written directive to their traders, if applicable, that they shall not cause routing decisions to be made based on Nasdaq's ownership interest in CXCH and Nasdaq Canada.

**43. Disclosure To Clients**

- (a) A significant shareholder shall ensure that any affiliated entity that is a Nasdaq Canada marketplace participant shall disclose its relationship with Nasdaq Canada and CXCH and its affiliated entities to clients whose orders might be, and clients whose orders have been, routed to Nasdaq Canada.

**44. Conditional Provision of Products or Services**

- (a) A Nasdaq Canada dealer shall not require another person or company to obtain products or services from Nasdaq Canada or any of its affiliated entities as a condition of the Nasdaq Canada dealer supplying or continuing to supply a product or service.
- (b) Nasdaq shall not cause its dealer affiliated entities to require another person or company to obtain products or services from Nasdaq Canada or any of its affiliated entities as a condition of the significant shareholder supplying or continuing to supply a product or service.

**45. Notification of New Dealer Affiliated Entities**

Nasdaq shall promptly notify the Commission if it creates or acquires an affiliated entity that is a dealer.

**46. Provision of Information**

Nasdaq shall promptly provide to the Commission, on request, any and all data, information, and analyses in its custody or control related to the business and operations of Nasdaq Canada or CXCH without limitations, redactions, restrictions, or conditions.

**47. Certifications**

- (a) Nasdaq shall certify in writing to the Commission, in a certificate signed by its CEO and either its general counsel or chief compliance officer, within ten days of the date that is one year from the effective date of the recognition of CXCH and Nasdaq Canada as exchanges pursuant to this Order and every year subsequent to that date, or at other times required by the Commission that, based on their knowledge, having exercised reasonable diligence, Nasdaq is in compliance with the terms and conditions applicable to it in this Schedule and describe the steps taken to require compliance.

- (b) Nasdaq shall certify in writing to the Commission, in a certificate signed by its CEO and either its general counsel or chief compliance officer, within ten days of the date that is one year from the effective date of the recognition of CXCH and Nasdaq Canada as exchanges pursuant to this Order and every year subsequent to that date, or at other times required by the Commission, that, based on their knowledge, having exercised reasonable diligence:
- (i) Nasdaq is not acting jointly or in concert with any other significant shareholder, or any affiliated entity or associated thereof, with respect to any voting shares of CXCH;
  - (ii) despite subparagraph (b)(i), Nasdaq may act jointly or in concert with any other shareholders under arrangements to nominate a director to the board of CXCH or Nasdaq Canada;
  - (iii) Nasdaq has no agreement, commitment or understanding, written or otherwise, with any other significant shareholder, or any affiliated entity or associate thereof, with respect to the acquisition or disposition of voting shares of CXCH, the exercise of any voting rights attached to any voting shares of CXCH or the coordination of decisions or voting by its nominee director of CXCH (if any) with the decisions or voting by the nominee of any other significant shareholder, other than what is included in the CXCH shareholders' agreement; and
  - (iv) since the last certification, Nasdaq has not acted jointly or in concert with any other significant shareholder, or any affiliated entity or associate thereof, with respect to any voting shares of CXCH, including with respect to the acquisition or disposition of any voting shares of CXCH or the exercise of any voting rights attached to any voting shares of CXCH.

**48. Compliance with Terms and Conditions**

- (a) If Nasdaq or its partners, officers, directors or employees becomes aware that there has been a breach or possible breach of any of the terms and conditions applicable to it under this schedule of the Order, such person shall, promptly after becoming aware of the breach or possible breach, notify the Designated Recipient (as defined below) of the breach or possible breach. The partner, director, officer or employee of Nasdaq shall provide to the Designated Recipient details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.
- (b) "Designated Recipient" means the person or body that Nasdaq designates as having the responsibilities described in this section, which may be its Board, audit committee, governance committee (or chairperson of any of the foregoing), General Counsel, Chief Compliance Officer, an ombudsperson specifically designated by Nasdaq to review compliance with corporate policies under Nasdaq's established whistle-blowing procedures, or, with the approval of the Commission, such other person or committee designated by Nasdaq .
- (c) The Designated Recipient shall promptly cause an investigation to be conducted of the breach or possible breach reported under paragraph (a) and shall promptly provide a report to the Commission and to Nasdaq Canada after concluding such investigation if the Designated Recipient determines that a breach has occurred or that there is an impending breach. Any such report to the Commission by the Designated Recipient shall include details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

**49. Expiry of Terms and Conditions**

The obligations of Nasdaq to comply with the terms and conditions of this Schedule expire on the later of:

- (a) the date on which, for a consecutive six month period, Nasdaq owns less than 10% of the number of voting shares of CXCH that it had beneficially owned or exercised control or direction over at the launch of the recognized exchange, and
- (b) the date on which the nominee or partner, officer, director or employee of Nasdaq has ceased to be a director on the board of CXCH or Nasdaq Canada.

**SCHEDULE 5**  
**PROCESS FOR THE REVIEW AND APPROVAL OF RULES AND**  
**THE INFORMATION CONTAINED IN FORM 21-101F1 AND THE EXHIBITS THERETO**

**50. Purpose**

This Protocol sets out the procedures a recognized exchange (Exchange) must follow for any Rule or Change, both as defined in section 51 below, and describes the procedures for their review by Commission Staff (Staff) and approval by the Commission or the Director.

**51. Definitions**

For the purposes of this Protocol:

- (a) *Change* means a Fee Change, a Housekeeping Change or a Significant Change.
- (b) *Fee Change* means any new fee or fee model of the Exchange and any amendment to a fee or fee model.
- (c) *Housekeeping Change* means an amendment to the information in Form 21-101F1 that
  - (i) does not have an impact on the Exchange's market structure, members, issuers, investors or the capital markets, or
  - (ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.
- (d) *Housekeeping Rule* means a new Rule or an amendment to a Rule that
  - (i) does not have an impact on the Exchange's market structure, members, issuers, investors or the capital markets, or
  - (ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.
- (e) *Public Interest Rule* means a Rule or an amendment to a Rule that is not a Housekeeping Rule.
- (f) *Rule* includes a rule, policy and other similar instrument of the Exchange.
- (g) *Significant Change* means an amendment to the information in Form 21-101F1 other than
  - (i) a Housekeeping Change,
  - (ii) a Fee Change, or
  - (iii) a Rule,and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101 CP.
- (h) *Significant Change subject to Public Comment* means a Significant Change that
  - (i) is listed in paragraphs 6.1(4)(a), (b), (c) or (d) of Companion Policy 21-101 CP, or
  - (ii) in Staff's view, has an impact on the Exchange's market structure or members, or on issuers, investors or the capital markets or otherwise raises public interest concerns and should be subject to public comment.

**52. Scope**

- (a) The Exchange and Staff will follow the process for review and approval set out in this Protocol for all Changes, new Rules and Rule amendments.

**53. Board Approval**

- (a) The Exchange's board of directors, or a duly authorized committee of the board, must approve all Rules prior to their submission under this Protocol.

**54. Waiving or Varying the Protocol**

- (a) The Exchange may file a written request with Staff to waive or vary any part of this Protocol. The request must provide reasons why granting the waiver is appropriate in the circumstances.
- (b) Staff will use their best efforts to provide to the Exchange within five business days of receipt of its request either:
- (i) written notice that Staff object to granting the waiver or variation; or
  - (ii) written notice that the waiver or variation has been granted by Staff.

**55. Materials to be Filed and Timelines**

- (a) Prior to the implementation of a Fee Change, Public Interest Rule or Significant Change, the Exchange will file with Staff the following materials:
- (i) a cover letter that, together with the notice for publication filed under paragraph 55(a)(ii), if applicable, fully describes:
    - (A) the proposed Fee Change, Public Interest Rule or Significant Change;
    - (B) the expected date of implementation of the proposed Fee Change, Public Interest Rule or Significant Change;
    - (C) the rationale for the proposal and any relevant supporting analysis;
    - (D) the expected impact of the proposed Fee Change, Public Interest Rule or Significant Change on the market structure, members and, if applicable, on investors, issuers and the capital markets;
    - (E) whether a proposed Public Interest Rule or Significant Change would increase or decrease systemic risk in the Canadian financial system and how any increase would be mitigated, if applicable;
    - (F) a discussion of the expected impact of the Fee Change, Public Interest Rule or Significant Change on the Exchange's compliance with Ontario securities law and in particular on requirements for fair access and maintenance of fair and orderly markets;
    - (G) details of any consultations undertaken in formulating the Fee Change, Public Interest Rule or Significant Change, including the internal governance process followed to approve the Rule or Change;
    - (H) if the Public Interest Rule or Significant Change will require members and service vendors to modify their own systems after implementation of the Rule or Change, a reasonable estimate of the amount of time needed to perform the necessary work, or an explanation as to why a reasonable estimate was not provided;
    - (I) a discussion of any alternatives considered; and
    - (J) if applicable, whether the proposed Fee Change, Significant Change or Public Interest Rule would introduce a fee model, feature or Rule that currently exists in other markets or jurisdictions;
  - (ii) for a proposed Public Interest Rule or Significant Change subject to Public Comment, a notice for publication that includes the information required under paragraph 55(a)(i) above, except that the following may be excluded from the notice:
    - (A) supporting analysis required under subparagraph 55(a)(i)(C) above that, if included in the notice, would result in the public disclosure of intimate financial, commercial or technical information;
    - (B) the information on systemic risk required under subparagraph 55(a)(i)(E) above;

- (C) the information on the internal governance processes followed required under subparagraph 55(a)(i)(G) above;
  - (D) the reasonable estimate of time needed for members and service vendors to modify their own systems, or the explanation as to why a reasonable estimate was not provided, required under subparagraph 55(a)(i)(H), so long as the notice for publication contains a statement that the Exchange did not or could not make a reasonable estimate; and
  - (E) the discussion of alternatives required under subparagraph 55(a)(i)(I) above.
- (iii) for a proposed Public Interest Rule, the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules, and if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and
  - (iv) for a proposed Fee Change or Significant Change, blacklined and clean copies of Form 21-101F1 showing the proposed Change.
- (b) The Exchange will file the materials set out in subsection 55(a)
    - (i) at least 45 days prior to the expected implementation date of a proposed Public Interest Rule or Significant Change; and
    - (ii) at least seven business days prior to the expected implementation date of a proposed Fee Change.
  - (c) For a Housekeeping Rule, the Exchange will file with Staff the following materials:
    - (i) a cover letter that fully describes the Rule and indicates that it was classified as a Housekeeping Rule and provides an analysis of the rationale for the classification, and the date or proposed date of implementation of the Rule;
    - (ii) the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules;
    - (iii) if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and
    - (iv) a notice for publication on the OSC website and in the OSC Bulletin that contains the information in paragraph (ii) above as well as the implementation date for the Rule, and indicates that the Rule has been classified as a Housekeeping Rule and was not published for comment.
  - (d) For a Housekeeping Change, the Exchange will file with Staff the following materials:
    - (i) a cover letter that indicates that the Change was classified as a Housekeeping Change and provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and
    - (ii) blacklined and clean copies of Form 21-101F1 showing the Change.
  - (e) The Exchange will file the materials set out in subsection 55(d) by the earlier of
    - (i) the Exchange's close of business on the 10th calendar day after the end of the month in which the Housekeeping Change was implemented; and
    - (ii) the date on which the Exchange publicly announces a Housekeeping Change, if applicable.

**56. Review by Staff of notice and materials to be published for comment**

- (a) Within 5 business days of the receipt of the notice and materials filed by the Exchange relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with subsection 55(a), Staff will review the notice and materials to ensure that they contain an adequate level of detail, analysis and discussion to elicit meaningful public comment, and will promptly notify the Exchange of any deficiency requiring a re-filing of the notice and materials.



- (b) Where the notice and materials are considered by Staff to be deficient, the Exchange will amend and resubmit the notice and materials accordingly, and the date of resubmission will serve as the filing date for the purposes of this Protocol.
- (c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 57.

**57. Publication of a Public Interest Rule or Significant Change Subject to Public Comment**

- (a) As soon as practicable after the receipt of the notice and materials filed by the Exchange relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with subsection 55(a), Staff will publish in the OSC Bulletin and on the OSC website the notice prepared by the Exchange, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the Exchange within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.
- (b) If public comments are received
  - (i) the Exchange will forward copies of the comments promptly to Staff; and
  - (ii) the Exchange will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

**58. Review and Approval Process for Proposed Fee Changes, Public Interest Rules and Significant Changes**

- (a) Staff will use their best efforts to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change within
  - (i) 45 days from the date of filing of a proposed Public Interest Rule or Significant Change; and
  - (ii) seven business days from the date of filing of a proposed Fee Change.
- (b) Staff will notify the Exchange if they anticipate that their review of the proposed Fee Change, Public Interest Rule or Significant Change will exceed the timelines in subsection 58(a).
- (c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change, Staff will use best efforts to provide the Exchange with a comment letter promptly by the end of the public comment period for a Public Interest Rule or Significant Change subject to Public Comment, and promptly after the receipt of the materials filed under section 55 for all other Changes.
- (d) The Exchange will respond to any comments received from Staff in writing.
- (e) Unless Staff agree to an extension of time, if the Exchange fails to respond to Staff's comments within 120 days after the receipt of Staff's comment letter, the Exchange will be deemed to have withdrawn the proposed Fee Change, Public Interest Rule or Significant Change. If the Exchange wishes to proceed with the Fee Change, Public Interest Rule or Significant Change after it has been deemed withdrawn, the Exchange will have to re-submit it for review and approval in accordance with this Protocol.
- (f) Upon completion of Staff's review of a Fee Change, Public Interest Rule or Significant Change, Staff will submit the Change or Rule to the Director or, in the circumstances described in subsection 58(g), to the Commission, for a decision within the following timelines:
  - (i) for a Public Interest Rule or a Significant Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the Exchange;
  - (ii) for any other Significant Change, the later of 45 days from the date of filing of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange; or
  - (iii) for a Fee Change, the later of seven business days from the date of filing of the change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange.
- (g) A Fee Change, Public Interest Rule or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection 58(f),

- (i) if the proposed Fee Change, Public Interest Rule or Significant Change is complex or introduces a novel feature to the Exchange or the capital markets;
  - (ii) if comments received through the public comment process raise significant public interest concerns; or
  - (iii) in any other situation where, in Staff's view, Commission approval is appropriate.
- (h) Staff will promptly notify the Exchange of the decision.
- (i) If a Public Interest Rule or Significant Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and on the OSC website promptly after the approval:
- (i) a notice indicating that the proposed Rule or Change is approved;
  - (ii) the summary of public comments and responses prepared by the Exchange, if applicable; and
  - (iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the Exchange and a blacklined copy of the revised Rule or Change highlighting the revisions made.

**59. Review Criteria for a Fee Change, Public Interest Rule and Significant Change**

- (a) Staff will review a proposed Fee Change, Public Interest Rule or Significant Change in order to assess whether it is in the public interest for the Director or the Commission to approve the Rule or Change. In making this determination, Staff will have regard to the mandate of the Commission as set out section 1.1 of the Securities Act (Ontario). The factors that Staff will consider in making their determination also include whether:
- (i) the Rule or Change would impact the Exchange's compliance with Ontario securities law;
  - (ii) the Exchange followed its established internal governance practices in approving the proposed Rule or Change;
  - (iii) the Exchange followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose and effect of the Rule or Change; and
  - (iv) the Exchange adequately addressed any comments received.

**60. Effective Date of a Fee Change, Public Interest Rule or Significant Change**

- (a) A Fee Change, Public Interest Rule or Significant Change will be effective on the later of:
- (i) the date that the Exchange is notified that the Change or Rule is approved;
  - (ii) if applicable, the date of publication of the notice of approval on the OSC website; and
  - (iii) the date designated by the Exchange.

**61. Significant Revisions and Republication**

- (a) If, subsequent to its publication for comment, the Exchange revises a Public Interest Rule or a Significant Change subject to Public Comment in a manner that results in a material change to the proposed substance or effect of the Rule or Change, Staff will, in consultation with the Exchange, determine whether or not the revised Rule or Change should be published for an additional 30-day comment period.
- (b) If a Public Interest Rule or Significant Change subject to Public Comment is republished under subsection 61(a), the request for comments will include a blacklined version marked to the originally published version, a summary of comments and responses prepared by the Exchange, and an explanation of the revisions and the supporting rationale for the revisions.

**62. Withdrawal of a Fee Change, Public Interest Rule or Significant Change**

- (a) If the Exchange withdraws a Fee Change, Public Interest Rule or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.

- (b) If the notice of withdrawal relates to a Public Interest Rule or Significant Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and OSC website as soon as practicable.
- (c) If a Public Interest Rule or Significant Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 58(e), Staff will prepare and publish a notice informing market participants that the Exchange did not proceed with the Rule or Change.

**63. Effective Date of a Housekeeping Rule or Housekeeping Change**

- (a) Subject to subsections 63(c) and 63(d), a Housekeeping Rule will be effective on the later of
  - (i) the date of the publication of the notice to be published on the OSC website in accordance with subsection 63(e), and
  - (ii) the date designated by the Exchange.
- (b) Subject to subsections 63(c) and 63(d), a Housekeeping Change will be effective on the date designated by the Exchange.
- (c) Staff will review the materials filed by the Exchange for a Housekeeping Change or Housekeeping Rule to assess the appropriateness of the categorization of the Rule or Change as housekeeping within five business days from the date that the Exchange filed the documents in accordance with subsections 55(c) and 55(d). The Exchange will be notified in writing if there is disagreement with respect to the categorization of the Rule or Change as housekeeping.
- (d) If Staff disagree with the categorization of the Rule or Change as housekeeping, the Exchange will immediately repeal the Change, if applicable, file the proposed Rule as a Public Interest Rule or the proposed Change as a Significant Change, and follow the review and approval processes described in this Protocol as applying to a Public Interest Rule or Significant Change, including those processes applicable to a Significant Change subject to Public Comment if applicable.
- (e) If Staff do not disagree with the categorization of the Rule, Staff will publish a notice to that effect in the OSC Bulletin and on the OSC website as soon as is practicable.

**64. Immediate Implementation of a Public Interest Rule or Significant Change**

- (a) The Exchange may need to make a Public Interest Rule or Significant Change effective immediately where the Exchange determines that there is an urgent need to implement the Rule or Change to maintain fair and orderly markets, or because of a substantial and imminent risk of material harm to the Exchange, its members, other market participants, issuers or investors.
- (b) When the Exchange determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible but in any event at least five business days prior to the proposed implementation of the Public Interest Rule or Significant Change. The written notice will include the expected effective date of the Public Interest Rule or Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must also be included as part of the written notice.
- (c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the Exchange, in writing, of the disagreement no later than the end of the third business day following filing of the notice under subsection 64(b). If the disagreement is not resolved, the Exchange will file the Public Interest Rule or Significant Change in accordance with the timelines in section 55.

**65. Review of a Public Interest Rule or Significant Change Implemented Immediately**

A Public Interest Rule or Significant Change that has been implemented immediately in accordance with section 64 will be published, if applicable, and reviewed and approved by the Director or by the Commission in accordance with the procedures set out in section 58, with necessary modifications. If the Director or the Commission does not approve the Public Interest Rule or Significant Change, the Exchange will immediately repeal the Rule or Change and inform its members of the decision.

**66. Application of Section 21 of the *Securities Act* (Ontario)**

The Commission's powers under subsection 21(5) of the *Securities Act* (Ontario) are not constrained in any way, notwithstanding a Rule or Change having been approved under this Protocol.