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Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 20th Floor
Toronto, ON M5H 3S8
E-mail: marketregulation@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: Nasdaq CXC Limited (Nasdaq Canada) and Ensoleillement Inc. (CXCH) Application for Recognition as Exchanges

Since our launch in 2015, Aequitas NEO Exchange (“NEO”) has advocated for greater competition, fairness, transparency and efficiency in Canadian capital markets. It is in that context that we are responding to the request for comments by staff of the Ontario Securities Commission (the “OSC”) with respect to Nasdaq Canada’s and CXCH’s application for recognition as exchanges (the “Application”).

While it is always significant when a globally-recognized entity such as the applicants’ ultimate parent company, Nasdaq, Inc., indicates intentions to increase its participation in a jurisdiction, Nasdaq Canada and CXCH are only seeking a change in status for their trading venues from alternative trading systems (“ATs”) to trading books of an exchange, and we do not at this point see any material changes evidenced in the Application. We do, however, see a significant departure from the oversight approach taken to date with respect to the parent company of an exchange, which raises both questions of appropriateness and fairness concerns, as existing Canadian exchanges with parent companies are subject to additional regulatory obligations. We provide further detail on this below, as well as some additional questions and comments relating to the supporting documents.

The separately filed request for comments for the proposed GEF Facility was mirrored in the revised supporting documents that were subsequently posted with the Application, and our comments on that proposal are included below.

Recognition of the Exchange’s Parent Company

Nasdaq, Inc. was not required to be recognized as an exchange, in contrast to the treatment of the parent companies of existing Canadian exchanges operating out of subsidiary entities. The purpose of including TMX Group Inc. and Aequitas Innovations Inc. in the respective TMX and Aequitas NEO Exchange recognition orders was to ensure that where key functions such as governance and

technology were to be outside of the subsidiary, and the parent company had a meaningful role in providing resources and strategic development, the parent was also directly regulated.

There is a section of the Application dedicated to the rationale as to why Nasdaq was not included and only subjected to terms and conditions as a shareholder, but it is difficult to understand the conclusions. The relationship between the exchange subsidiary and the US parent appears to follow standard practices for a regional subsidiary with a parent company headquartered elsewhere, including in respect of the composition of the proposed Nasdaq Canada board of directors, the size of current operations in Canada, and the reliance on the US parent for technology and other resources. Specifically, the Application notes that two of three non-independent directors hold senior positions in Nasdaq, Inc.; the technology runs on the Nasdaq INET platform and the DR site is in Chicago; and, as we understand it, a number of the Canadian employees have reporting lines into the US.

For the reasons set out above, parent companies of existing Canadian exchanges must satisfy significant record keeping and reporting obligations under recognition orders, which allow Canadian regulators to be assured that they can oversee all regulated functions. As proposed, Nasdaq, Inc. will be spared this regulatory burden and we respectfully submit that the current facts do not support the exception. It is difficult to perceive the demarcation line between Nasdaq, Inc. and Nasdaq Canada that would enable the latter to develop a strategic direction separate and apart from the influence of the former, as stated in the Application. In our view, Nasdaq, Inc.'s ongoing role in the operations of the Canadian exchange subsidiary make it very important that Canadian regulators have a clear and defined ability to ensure its activities are in the public interest in Canada. The recent settlement agreement between the OSC and US-based Nasdaq affiliate, Execution Access, LLC, which operated as a marketplace in Canada without registration as an ATS from 2013 to 2017, provides further support for looking at the parent company's role in ongoing operations. There is also a competitive aspect to be considered: allowing a subsidiary with minimal operations to be the recognized entity would create an un-level playing field for smaller exchanges competing against large groups with multiple business lines and services.

Listing-Related Requirements

Nasdaq Canada notes in the Application that "...[it] 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."

We seek confirmation that if and when Nasdaq Canada proposes to offer listings, in addition to submitting its listing rules for review and comment, it will also publish for comment amendments to its recognition order similar to the extensive issuer regulation requirements Canadian exchanges have in their recognition orders. Further, in the likely event that Nasdaq Canada would have opening and/or closing functionality for its listed issuers, it will need to publish changes to its trading rules and policies as well. As a competitor it is of interest that listings are not a priority for Nasdaq Canada; however, based on the notice and Application it is not obvious that the process for launching that business line will be similar to that required of the current exchanges.

Other Comments and Clarification Questions

1. Publication of application and associated documents

It was surprisingly difficult to find all applicable documents on the OSC website. Once in the “Marketplaces, SROs and Clearing Agencies” section, the materials do not appear in the “Latest Documents” list. They can only be found by clicking on “ATSS”, and clicking on “Chi-X Canada/CX2 Canada”. The unusual file naming conventions also added challenges to the process¹. Added to the fact that the member agreement, trading rules and policies and trading functionality guide were noted in the Application as attached but posted on the OSC website subsequent to publication, it made it very difficult to synthesize everything properly to comment on the Application.

2. NASDAQ CXC Limited Trading Rules and Policies

In the interests of clarifying some of the operational aspects, we have the following comments and questions about the trading rules and policies:

- (a) “DEA Client” definition. It is not evident whether Nasdaq Canada is limiting DEA Client access to those clients that are eligible under National Instrument 23-103. Elements of the NI 23-103 definition of “direct electronic access” are present in its DEA Client definition but the concept that registered dealers cannot be DEA Clients is missing. This is further reinforced by the language in the definition of “GEF Eligible Order” that excludes from eligibility an order entered by a DEA Client “unless the DEA Client is a broker acting as an agent for retail client order flow”. What type of broker is Nasdaq Canada referring to, given that US dealers are dealt with separately?
- (b) UMIR ID. This appears in several definitions and it is unclear if it is meant to be used in place of account ID or Trader ID, especially as the wording in section 4.1(3) refers to “UMIR account and trader ID fields”, and in Schedule A to the Member Agreement the reference is to “UMIR User ID”. The addition of a definition would be helpful.
- (c) “Market Regulator” definition. This is defined as meaning “the Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems...” As a result of the drafting error it is unclear whether it is meant to refer to the OSC as lead regulator or IIROC.
- (d) “Trade-Through” definition. This definition is incorrectly limited to executions on protected markets. An execution at an inferior price on an unprotected market (CXD, for example) would also be a trade-through.
- (e) Section 9 Appeals Policy. A decision by the ROC may be appealed via arbitration “...and/or appeal to the Market Regulator”. Please see (c) above regarding the definition of “Market Regulator”.

3. Proposed GEF Facility Comments

Adding to the complexity in reviewing the Application was the subsequent filing of the proposal for the only new exchange functionality, the GEF Facility. Our comments are as follows:

¹ The GEF Facility filing was posted with the name “ats_20171025_rfc_exchanged-established-nasdaq.pdf” and the exchange recognition application as “ats_20171012_rfc_limited-ensemble.pdf”.

- (a) “GEF UMIR ID” definition. Although it is implied, it is not clear that the UMIR IDs of a Member that may be certified are restricted to proprietary trading. Similarly, there is no further description of characteristics for certification in section 5.12 or the Trading Functionality Guide.
- (b) “GEF Member” definition. This is an ambiguous definition and does not exclude the possibility that a Member’s responsibilities may be assigned to a DEA Client.
- (c) Section 7.2 Ongoing Responsibilities. The quoting and trading obligations described in 7.2(4) and 7.2(5) are not very detailed and the detail provided is in some aspects unclear:
- It is not specified but we assume that both of these obligations are measured per Assigned Security?
 - As drafted, any activity by the Member could count towards meeting these obligations, including agency trading. Shouldn’t it be limited to measuring activity by the GEF Approved Trader?
 - Section 7.2(5) is particularly unclear. It requires a GEF Member to trade “...at least a minimum percentage of Total Consolidated Volume per listing exchange across all Trading Books”. However, the definition of “Total Consolidated Volume” (which is not defined in the trading rules and policies but can be found in the GEF proposal) is “[T]he volume of trades across all marketplaces for each exchange listed security”. Read together the obligation is to trade a minimum percentage of the volume of trades across all marketplaces “for each exchange listed security per listing exchange across all Trading Books.”

It is not apparent, generally, how the benefits and obligations are balanced, an issue on which there was significant focus as part of our market making proposals. Further, the auto-executions will occur only on CX2 but it appears that some or all of the obligations can be met across CXC, CX2 and CXD, and while we have no concerns with this in principle, we note that NEO was required to ensure that all of our DMM benefits and obligations were matched within each trading book and we seek to understand why this is not the case for Nasdaq Canada’s proposed GEF.

We appreciate the opportunity to provide these comments.

Yours truly,

“Cindy Petlock”

Cindy Petlock
Chief Legal Officer
Aequitas NEO Exchange Inc.

cc: Jos Schmitt, Chief Executive Officer
Joacim Wiklander, Chief Business Officer