

13.1.2 Notice and Request for Comment – Application for Exemption from Recognition and Registration as an Exchange from Natural Gas Exchange Inc.

NOTICE AND REQUEST FOR COMMENT

APPLICATION FOR EXEMPTION FROM RECOGNITION AND REGISTRATION AS AN EXCHANGE FROM NATURAL GAS EXCHANGE INC.

A. Background

Natural Gas Exchange Inc. (NGX) has applied to the Commission for an exemption from the requirement to be registered as an exchange pursuant to section 15 of the *Commodity Futures Act* (Ontario) (CFA) and the requirement to be recognized as an exchange pursuant to section 21 of the *Securities Act* (Ontario) (OSA).

NGX offers electronic trading on a principal-to-principal basis of a variety of energy commodity derivatives contracts including commodity futures contracts and futures contract options (collectively, Contracts). NGX proposes to offer direct electronic access to trading in its Contracts to qualifying market participants in Ontario (Ontario Participants). NGX is recognized as an exchange and clearing agency by the Alberta Securities Commission (ASC).

As NGX is carrying on business in Ontario, it is required to be recognized as an exchange under the OSA and registered as an exchange under the CFA or apply for exemptions from both requirements. NGX is currently operating in Ontario pursuant to an interim exemption order granted by the Commission on November 17, 2006 and extended on November 16, 2007 and May 13, 2008. NGX has applied for a permanent exemption from the registration and recognition requirements on the basis that it is already subject to regulatory oversight by the ASC.

B. Exemption Request

NGX seeks to provide trading access to sophisticated participants that meet specific financial thresholds. Therefore, NGX is requesting exemptive relief from the registration requirements under section 22 of the CFA for trades in Contracts by Ontario Participants.

NGX is also seeking relief from the requirements in section 33 of the CFA for trades in Contracts by Ontario Participants. By virtue of being an exempted exchange, NGX would not be registered or recognized by the Commission and its Contracts would not be approved by the Director, and therefore trading by Ontario Participants would be prohibited without a further exemption.

C. Draft Recognition Order

In its application, NGX has addressed each of the criteria for exemption from recognition and from registration as an exchange. Subject to comments received, staff will recommend that the Commission grant an exemption order with terms and conditions based on the proposed draft order attached.

The draft exemption order requires that NGX notify Commission staff of any material changes to the business or operations of NGX as set out in its application and establishes terms and conditions in the following areas:

1. Regulation of NGX
2. Access
3. Products
4. Submission to Jurisdiction
5. Regulation of Participants
6. Filing Requirements
7. Information Sharing

D. Comment Process

The Commission is publishing for public comment the application of NGX and the proposed draft exemption order. We are seeking comment on all aspects of NGX's application for an exemption, as well as the draft exemption order.

You are asked to provide your comments in writing, via e-mail and delivered on or before **February 23, 2009** addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8, e-mail: jstevenson@osc.gov.on.ca.

The confidentiality of submissions cannot be maintained as a summary of written comments received during the comment period will be published.

Questions may be referred to:

Winfield Liu
Senior Legal Counsel, Market Regulation
(416) 593-8250
e-mail: wliu@osc.gov.on.ca

Sonali GuptaBhaya
Legal Counsel, Market Regulation
(416) 593-2331
e-mail: sguptabhaya@osc.gov.on.ca

January 9, 2009

DELIVERED BY EMAIL AND COURIER

Attention: Winfield Liu

Ontario Securities Commission
20 Queen Street West, Suite 1903
Toronto, Ontario M5H 3S8

Dear Winfield:

Re: Natural Gas Exchange Inc. - Application for exemptive relief under the Ontario Commodity Futures Act and Ontario Securities Act

1. Introduction

Natural Gas Exchange Inc. ("**NGX**"), a Canadian corporation with its head office located in Calgary, Alberta, hereby applies to the Ontario Securities Commission (the "**OSC**" or "**Commission**") for exemptive relief as further described herein pursuant to sections 38 and 80 of the Commodity Futures Act (the "**CFA**") and section 147 of the Ontario Securities Act (the "**OSA**").

2. Business Overview

NGX is a leading trading and clearing system for sophisticated entities transacting in energy products in the North American market. During calendar year 2007, NGX cleared 238,373 transactions with a total quantity of 11,000 Petajoules of natural gas (an aggregate notional value of approximately \$C67 billion¹) (approximately US\$69.8 billion) and approximately 18 Terawatt-hours of electricity (an aggregate notional value of approximately \$C1.3 billion (approximately US\$1.32 billion)). NGX was incorporated in 1993 and has operated continuously since 1994.

Corporate Structure

NGX is currently a wholly owned subsidiary of TMX Group Inc. ("**TMX Group**"), which is also the parent company of TSX Inc., which owns and operates the Toronto Stock Exchange. Historically, NGX was comprised of two related legal entities, Natural Gas Exchange Inc. ("**Market**") and its wholly owned subsidiary NGX Financial Inc. ("**Financial**"). Market and Financial were amalgamated on November 1, 2002 to form Natural Gas Exchange Inc. ("**NGX 2002**"). On March 1, 2004, TMX Group acquired 100% of the shares of NGX Canada Inc. from OMHEX AB (the "**Acquisition**"). Immediately following the Acquisition, 6182224 Canada Inc. (a wholly owned subsidiary of TMX Group) and its then wholly owned subsidiary, NGX Canada Inc., as well as its wholly owned subsidiary, NGX 2002, amalgamated under the Canada Business Corporations Act to form NGX. This amalgamation had the effect of consolidating all of the operations relating to NGX trading and clearing businesses into NGX.

TMX Group is a corporation incorporated under the Business Corporation Act (Ontario) and has its head office in Toronto, Ontario. Its shares have been listed for trading on the Toronto Stock Exchange since November 2002. TMX Group is a reporting issuer in every province and territory of Canada and its financial information is available on Canada's SEDAR system for public company filings, located at www.sedar.ca. As of December 31, 2007, TMX Group's market capitalization was approximately \$C3.5 billion. TMX Group operates Canada's two national stock exchanges serving the senior equity and public venture equity markets (Toronto Stock Exchange and TMX Venture Exchange) as well as other core equity operations. On May 1, 2008, the company completed its acquisition of the Montreal Exchange to become a combined equity and derivatives exchange. The combined entity was then rebranded from TSX Group under the name TMX Group Inc.

In November 2005, NGX incorporated a Delaware company, NGX US Inc. ("**NGX US**"), as a wholly owned subsidiary of NGX, to facilitate a planned expansion of its business into the United States. NGX may in the future conduct clearing operations for certain products, such as those with U.S. delivery points, through NGX US.

In September 2006, NGX acquired Alberta Watt Exchange, Ltd. ("**Watt-ex**"). Watt-ex provides an automated procurement mechanism through which the local system operator procures electricity on a standby commitment basis to support the grid. This entity operates as a separate subsidiary and has not been integrated into NGX's trading or clearing business.

¹ Conversions of Canadian dollars to US dollars in this application have been made using the exchange rate for December 31, 2007 of \$C0.9881/US\$.

Summary of Trading and Clearing Activities

Marketplace

NGX operates an electronic marketplace (the “**Marketplace**”) based in Calgary, through which NGX contracting parties (“**Participants**”) may enter into the following types of transactions.²

- spot and forward physically settled natural gas (and, in the future, oil) contracts for delivery at various Canadian and U.S. pipeline hubs (“**Physicals**”); and
- swap and option contracts relating to natural gas, electricity (and, in the future, oil) and referencing various Canadian and U.S. pricing points (“**Financials**”).

We refer to such Physicals and Financials as “**Current Contracts**.” NGX plans to add additional contracts to the Marketplace from time to time, including Physicals and Financials relating to different pricing points or delivery hubs, auction matched contracts, contracts that may settle on a different schedule, and contracts for other physical energy commodities and their derivatives. NGX may expand into other non-energy physical commodities and their derivatives in the future.³

NGX currently operates the Marketplace pursuant to orders from applicable Canadian provincial regulatory authorities, as described below, and as an exempt commercial market (“**ECM**”) under Section 2(h)(3) of the U.S. Commodity Exchange Act (“**CEA**”). Further information is described below under the heading “Existing and Pending Orders”.

Clearing Services

NGX also provides clearing services (the “**Clearing Services**”) through which it acts as central counterparty for transactions in Current Contracts entered into on the Marketplace (“**Marketplace Transactions**”), certain transactions in Current Contracts executed in the OTC market (“**OTC Transactions**”) and, in the future, transactions entered into on a third party marketplace (“**Third Party Marketplace Transactions**”) and, together with the Marketplace Transactions and OTC Transactions, the “**Transactions**”).⁴

- *Clearing of Marketplace Transactions.* Transactions may be automatically cleared through NGX. Individuals authorized to transact on behalf of Participants (“**Traders**”) enter anonymous bids and offers for Current Contracts on the Marketplace. On matching with another party, each Trader/Participant is notified that it has bought or sold the relevant contract from or to NGX, which immediately becomes the counterparty to both sides of the trade. The identity of the other Participant is not disclosed. Concurrently with the launch of the NGX/IntercontinentalExchange Inc. alliance on February 9, 2008, Contracting Parties, if authorized by NGX, are also permitted to trade in an NGX product that is cleared by the Contracting Parties themselves as opposed to NGX. Such trades are referred to in the CPA as “**Bilateral Transactions**”.⁵
- *Clearing of OTC Transactions.* Participants that have arranged trades in Current Contracts outside of the Marketplace on a bilateral OTC basis, including through an OTC broker, may submit these trades to NGX for clearing in accordance with NGX’s rules.
- *Clearing of Third-Party Marketplace Transactions.* NGX currently clears transactions executed on the ICE electronic trading platform and expects it may sometime in the future, clear transactions on other regulated or exempt marketplaces.

NGX acts as a central counterparty for all NGX-cleared Transactions. NGX’s clearing model does not provide for mutualization of credit risk among Participants, however. Performance is backed by Participants’ margin and a clearing guarantee fund, as described below. All Participants are required to self-clear; Participants are currently not permitted to clear positions on behalf of other Participants.

² As discussed below, all Participants must enter into a Contracting Party’s Agreement with NGX.

³ On September 6, 2007, NGX’s parent company, TMX Group Inc., purchased an option in March 2009 to acquire NetThruPut Inc. (“**NTP**”), a Calgary, Alberta-based electronic exchange and clearing house for physically and financially settled crude oil commodity contracts. If the option is exercised, current plans are for NGX to build NTP’s operations into its current business. NTP has exemptive relief in Alberta as an exchange and is recognized as a clearing agency by the ASC. NTP has cross-border status in the U.S. as a Multilateral Clearing Organization (MCO), relying upon the ASC recognition. Orders are attached as Appendix “N”.

⁴ NGX announced an alliance with IntercontinentalExchange Inc. (“**ICE**”) on March 28, 2007, which involves an outsourcing by NGX of certain trading services from ICE, and the provision of clearing services by NGX for U.S. physically-settled natural gas contracts traded on the ICE platform. Operations officially commenced under the alliance on February 9, 2008. The operation of the trading platform has been fully outsourced to ICE on the terms and conditions described in the Services Agreement (provided to OSC staff on August 9, 2007). NGX products are not currently available on any other platforms.

⁵ Bilateral Transactions do not constitute “commodity futures contracts” as defined in the CFA.

All Current Contracts are currently modelled after and are similar to those utilized by market participants for OTC energy derivatives, such as the forms of NAESB and ISDA documentation. The principal difference results from the fact that NGX acts as the central counterparty to all NGX-cleared Transactions, which requires the addition of certain provisions, such as NGX's standard collateral requirements and liquidation rights described below.

NGX provides for several types of settlement procedures depending on the type of contract. For Financials, final settlement takes place between NGX and each Participant. For all Physicals cleared by NGX, as the central counterparty, NGX guarantees the performance obligations of the parties, including physical and financial settlement. The delivery/receipt mechanisms vary at each hub depending on the rules established by the hub operator. At certain hubs, NGX will handle the required delivery/receipt arrangements directly with buyers and sellers. At other hubs, NGX will randomly pair buyers and sellers, who will handle the delivery/receipt arrangements between them as required by the hub operator.

The relationship between NGX and Participants is set forth in a standard form contract (the Contracting Party's Agreement (the "CPA")) entered into between NGX and each Participant, the current form of which is attached as Appendix A. The CPA governs access to the Marketplace and Clearing Services and specifies the terms and conditions of all traded and cleared contracts. The CPA also provides for a detailed framework of rules, including, without limitation, rules regarding Participant eligibility, risk management and default procedures. NGX also has documented policies and procedures pursuant to which the business operates.

3. Existing Orders

Alberta, Saskatchewan and Manitoba

The Alberta Securities Commission (the "ASC"), as principal regulator, issued MRRS Order No. 1662761 on its own behalf and on behalf of the securities and commodities regulatory authorities in the provinces of Saskatchewan and Manitoba on December 1, 2004 (the "MRRS Order"). The MRRS Order granted NGX exemptive relief from applicable laws in Alberta, Saskatchewan and Manitoba regarding:

- (a) the prohibition against carrying on business as an exchange unless recognized as an exchange;
- (b) the prohibition against trading in exchange contracts and/or commodity futures contracts unless the form of contract has been approved and unless such contracts are traded through a recognized exchange; and
- (c) prospectus and/or registration requirements that may apply to trades in these contracts.

NGX applied to the ASC for a change in status with respect to the Marketplace and its clearing operations most recently in 2008. NGX applications to the ASC sought: i) recognition as an exchange pursuant to Section 62 of the Alberta Securities Act (the "ASA") and as a clearing agency pursuant to Section 67 of the ASA; ii) approval of the form of NGX exchange contracts pursuant to Section 107 of the ASA; and iii) relief from the requirement that Contracting Parties must be registered prior to trading Exchange Contracts.

In its Alberta applications, NGX emphasized that it was already subject to a level of regulation substantially similar to the level of regulation applied to an entity recognized as an exchange and clearing agency in Alberta since NGX must abide by the terms of the MRRS Order and NGX's nine operating principles (the "Operating Principles"), which principles were derived from a combination of U.S. regulations applicable to certain commodity futures exchanges and derivative clearing organizations under U.S. laws. This regime strikes an appropriate balance between substantive requirements for exchanges and clearing agencies in the commodity markets while recognizing the necessary pace at which such entities must evolve with these sophisticated markets that are unique in fundamental respects from equity markets. The ASC also conducts periodic oversight compliance audits of NGX.

The ASC granted recognition orders to NGX as an exchange and clearing agency on October 9, 2008 (attached hereto as Appendix M).⁶ The ASC's recognition of NGX as an exchange and as a clearing agency facilitates a more accurate understanding of NGX's regulatory structure in the marketplace and, if exemptive relief is granted in other applicable jurisdictions based on such recognition, NGX hopes to be better positioned to efficiently manage its multi-jurisdictional regulatory structure.⁷ ASC oversight is generally comprised of extensive reporting requirements and periodic oversight audits assessing NGX compliance with the operating principles and terms and conditions of NGX's exchange and clearing recognition orders.

⁶ NGX has informed the ASC and other provincial regulators of its intention to add crude oil Physicals and Financials and anticipates revising the applicable orders accordingly prior to the launch of crude oil in Q2-2009.

⁷ Note in Canada, the Autorité des Marchés Financiers ("AMF") in its recent Working Paper and Derivatives Proposal, proposes the adoption of a principles-based approach to derivatives (equities and commodities) regulation in Quebec, as did the Ontario Commodity Futures Reformulation Committee in its 2006 Report to the Ontario Government regarding the regulation of exchanges, clearing agencies and participants in the commodities markets. The ASC has also historically endorsed a principles-based approach through the incorporation of core principle terms and conditions in the exemptive relief orders applicable to NGX, NetThruPut Inc. ("NTP") and Alberta Watt Exchange, as well as NTP's current recognition order as a clearing agency.

It is on the basis of NGX having become a recognized exchange in Alberta that NGX is submitting this application for exemptive relief from applicable legislation in Ontario.

British Columbia and Quebec

NGX also has exemptive orders in both British Columbia and Quebec. The British Columbia Securities Commission (the "BSCS") issued Exemption Order COR #01102 on September 18, 2001, attached hereto as Appendix B, Schedule B, pursuant to Sections 48 and 60 of the Securities Act (British Columbia) (the "B.C. Act"). This order provides that trades in physical (natural gas) or financial (natural gas or electricity) contracts conducted through NGX are exempt from the requirements under Section 34(1)(a) of the B.C. Act (relating to the registration requirement) and Section 59(1) of the B.C. Act (relating to trading contracts on an exchange located outside of British Columbia which has not been recognized by the BCSC).

The Autorité des marchés financiers in Québec (the "AMF") issued Decision No. 2002-C-0439 on November 29, 2002 (as revised on July 27, 2004 to include trades relating to swap agreements based on notional amounts of electricity and to electricity futures contracts), attached hereto as Appendix B, Schedule C, pursuant to Section 263 of the Securities Act (Québec) (the "Quebec Act"). This order provides exemptions from: (i) the registration requirements under Sections 148 and 149 of the Quebec Act; (ii) the obligations in Section 1.3 of the Regulation to the Quebec Act to deliver the disclosure document defined in the schedule to Policy Statement No. Q-22; and (iii) the application of Section 1.4 of the Regulation to allow trading in futures contracts that do not appear on the list established by the AMF.

U.S.

NGX operates the Marketplace pursuant to the exemption under CEA section 2(h)(3) in the U.S., attached hereto as Appendix B, Schedule D. NGX became a registered derivatives clearing organization ("DCO") with the Commodity Futures Trading Commission pursuant to the CEA. NGX constitutes a DCO as defined in Section 1a(9) of the CEA and is eligible for voluntary registration under CEA Section 5b(b). Specifically, NGX acts as a central counterparty for cleared Transactions and in that capacity enables each Participant that is a party to a Transaction to substitute the credit of NGX for the credit of the parties.

4. OSC Orders Sought

NGX is seeking an order under (a) section 80 of the CFA: (i) exempting NGX from the prohibition in section 15 of the CFA on carrying on the business of a commodity futures exchange in Ontario unless registered by the Commission under the CFA; (ii) exempting current and future Participants from the registration requirements of section 22 of the CFA in respect of entering into CFA Contracts and all acts, advertisements, solicitations, conduct or negotiations made directly or indirectly in furtherance thereof; and (iii) exempting current and future Participants from the prohibition in section 33 of the CFA on trading in CFA Contracts other than on a commodity futures exchange that is registered or recognized by the Commission under the CFA and where the form of such contracts has been approved by the Director under the CFA; and (b) section 147 of the OSA exempting NGX from the prohibition in section 21 of the OSA on carrying on business as a stock exchange in Ontario unless recognized by the Commission under the OSA.

We note that although the CFA provides for the recognition of clearing houses or clearing agencies by the Commission, there is currently no requirement in the CFA that such clearing houses or clearing agencies obtain this recognition. Therefore, NGX is not pursuing relief with respect to its clearing operations at this time.

5. Background and Compliance with ASC Recognition Order Core Principles

NGX operates its business as an exchange in accordance with, and as described under, the operating principles set out in the ASC order granting NGX recognition as an exchange and as set out below.

Financial Resources

The Exchange shall maintain adequate financial, operational and managerial resources to operate the Trading System and support its trade execution functions.

Financial

The primary financial resources that NGX uses to support its activities consist of (a) the collateral NGX collects from Participants in accordance with its risk management policy, as described below (the "Risk Management Policy"),⁸ and in accordance with applicable procedures described in Section 3.2 of the CPA, (b) a credit facility maintained by NGX, and (c) a guarantee fund maintained by NGX.

⁸ The Risk Management Policy is set forth as a Schedule to the CPA as amended from time to time.

Collateral

Participants are required to post and maintain with NGX an aggregate amount of collateral sufficient to cover the margin requirement applicable to their NGX positions. The margin requirement is calculated as the sum of initial margin, variation margin and accounts receivable margin, which represents the net potential exposure of the Participant to NGX at any given time. The margin methodology utilized by NGX continues to evolve as market conditions change, new risk measurement techniques are developed and new products become eligible for the Clearing Services. Pursuant to the CPA, NGX has the right to amend its margin methodology as it determines necessary by providing notice to the Participants. This section describes the margin methodology currently applicable to the Transactions cleared through NGX.

Because Participants often utilize NGX for Physicals that have a long underlying settlement cycle, the accounts receivable margin is typically the largest factor in setting collateral requirements at NGX. Initial margin, which acts as security coverage to protect NGX against adverse market movements that would affect open positions in a portfolio through a liquidation period, is typically the second largest factor in setting collateral requirements. As discussed in more detail below, NGX calculates initial margin requirements for each contract based on its Risk Management Policy, taking into account different liquidation periods and historical price volatility. Initial margins are established to cover commodity price movements during a liquidation event and are currently calculated using 2.7 standard deviations (a 99.5% confidence interval) from the last mark-to-market price (calculated using historical volatility data) over a minimum of a two-day hold (liquidation) period. Variation margin reflects the daily mark-to-market value of the relevant positions.

Acceptable forms of collateral include cash and letters of credit from an A-rated bank in Canadian or U.S. currency.⁹ Accounts payable from NGX to the relevant Participant and variation margin reflecting mark-to-market values in favor of the Participant are used as margin offsets and therefore reduce a Participant's overall collateral requirement. To use the Clearing Services, a Participant must post collateral or sell and deliver sufficient quantities of natural gas (or oil) to generate a receivable from NGX that covers margin requirements. The minimum amount of collateral required is \$C500,000 (approximately US\$506,000), although lower amounts are acceptable under certain conditions (Risk Management Policy, Section 6.0). As of December 31, 2007, NGX held approximately \$C2.5 billion (approximately US\$2.53 billion) of collateral. In the case of Financials, the amount of posted collateral must cover initial and variation margins until the day of settlement price or index publication and determination of accounts payable/receivable. Financials generally settle on the sixth business day of the month of delivery. In the case of Physicals, the amount of posted collateral must cover initial and variation margin until released on each day during the delivery month with respect to the portion of the contract settled on that day. Margin is thereafter required to the extent of any amounts payable to NGX. NGX believes, based on its calculations and operating experience, that it has ready access to the required amounts of collateral to close out any Participant's positions in the event of a default by such Participant.

In an effort to collect collateral in advance of an increase in margin requirements, NGX has instituted a series of margin triggers based on a Participant's margin requirement as compared to its collateral on deposit. When the margin requirement reaches a threshold percentage of such Participant's collateral on deposit, NGX will advise the Participant and will typically request additional collateral. If such collateral is not forthcoming in a form or time frame acceptable to NGX, NGX may restrict that Participant's ability to enter into Transactions on the Marketplace or to use the Clearing Services. In certain circumstances, if the Participant is unable or unwilling to provide additional collateral as determined by NGX, NGX will provide notice of "Failure to Provide Collateral" and may invoke liquidation procedures pursuant to Section 5.6 of the CPA.

NGX's Clearing Department monitors the status of each Participant's margin requirements, collateral posted and available margin in real time and provides a daily report to NGX's Clearing Committee (which consists of the Vice-President of Clearing & Compliance and the President) identifying Participants that have reached any margin trigger. NGX's Clearing Department documents and secures daily approval from NGX's Clearing Committee for any exceptions to these general requirements. In determining whether to grant an exception, the Clearing Committee examines a number of factors, including the total amount of collateral posted by the Participant, upcoming delivery or settlement responsibilities and the time of the month in relation to those responsibilities, the level of diversification of the Participant's portfolio and the Participant's creditworthiness and track record with NGX.

Credit Facility

NGX maintains a daylight overdraft credit facility (the "Credit Facility") with a clearing and settlement bank to facilitate movements of funds on settlement days, and a line of credit from the bank to cover overnight imbalances. A copy of the Credit Facility is attached as Appendix C. The collateral arrangements and monitoring mechanisms set forth in the Risk Management Policy have been reviewed by NGX's principal lender and found to provide an acceptable level of security against a material adverse break in clearing operations due to Participant default.¹⁰

⁹ See "Additional Information Regarding Treatment of Funds" (Appendix L).

¹⁰ See "Additional Information Regarding Credit Facilities" (Appendix I).

Guarantee Fund

NGX maintains a \$U.S. 100 million fund (the “**Guarantee Fund**”) which only Participants (not NGX or its non-Participant creditors) may access in the event that NGX defaults on its obligations under the CPA. The Guarantee Fund is in the form of a letter of credit issued by TD Bank under the Credit Facility and deposited with an independent trustee (currently CIBC Mellon Trust) pursuant to a deposit agreement, a copy of which is attached as Appendix D (the “**Deposit Agreement**”). NGX’s reimbursement obligation to TD Bank with respect to the letter of credit is supported by an unsecured guarantee from TMX Group in the amount of \$U.S. 100 million. The Guarantee Fund is held for the benefit of all Participants.¹¹

Based on its operating experience since 1994, NGX believes that these financial resources are adequate to support its operations under an appropriate range of reasonably foreseeable market conditions and Participant default scenarios. NGX has to date experienced no defaults in performance by any Participant that were beyond its capacity to remedy within its financial resources. As discussed below, NGX engages in regular stress testing to monitor its ability to handle Participant defaults under adverse market conditions.

We note that unlike some clearing organizations, NGX does not provide for mutualization of risk among Participants. Under no circumstance would a Participant become liable for, or have to make additional contributions to NGX to cover, the loss or default of another Participant. The ASA does not require mutualization of risk as a form of credit or financial support for recognized clearing agencies (indeed, the definition of clearing agency clearly contemplates organizations that do not provide for mutualization of risk). NGX believes that its non-mutualized, self-clearing model is sufficient to support its activities consistent with the business requirements and objectives of its Participants, which are largely commercial market participants rather than the futures commission merchants or other financial intermediaries that serve as clearing members in more traditional mutualized clearinghouses.

Managerial Resources

NGX employs an executive management team with specialized expertise in energy markets and energy trading, clearing and system operations. The management team is located in Calgary. The current management team consists of a President, a Vice-President for Clearing & Compliance, a Vice-President of Finance & Administration, a Vice-President of Marketing, a Vice-President of U.S. Business Development, a Vice-President of Corporate Development, a Vice-President of IT, and Chief Legal Counsel. Reporting to the Vice-President for Clearing & Compliance are an Operations Manager, who oversees daily physical settlement operations, and a Credit Manager, who oversees real-time risk monitoring. A list of the names and contact information for the current members of the senior management team is provided in Appendix E. The management team is subject to the supervision of the Board of Directors, which has the authority to change management structure and personnel from time to time. At present, NGX has 44 employees, of which 38 are based in Calgary, one in Ontario and five in Texas.

Operational Resources

NGX maintains office space in Calgary where all clearing-related staff works. NGX’s U.S. subsidiary has acquired office space in the United States.

NGX routinely retains the services of independent consultants in support of certain areas of its business, such as IT development, risk management, legal advice, business development and marketing. NGX has historically engaged Towers Perrin Risk Capital and has currently engaged Deloitte Touche LLP as a consultant to support the quantitative analysis involved in NGX’s margin model. Deloitte has extensive experience in modeling value-at-risk and portfolio management and provides quantitative support to NGX in the development and ongoing assessment of the initial margin model, backtesting of initial margin rates, reviews of margin methodology change proposals and various related quantitative tasks. NGX uses the services of an established bank (currently TD Bank) as clearing bank for maintaining segregated accounts for Participants and fund transfer arrangements for all margin and settlement payments.

NGX’s communications and IT systems, including the servers, switches and routers on which the Marketplace operates, are located at its office in Calgary. As a safeguard against hardware malfunctions and failures, a secondary set of hardware is hosted by a third party at a second site in Calgary. The two systems operate such that failure of any hardware at one site would result in a rapid switch to the other site, as described in more detail below.

In addition, NGX maintains and periodically tests a Business Continuity Plan (the “**BCP**”), which is designed to ensure that the Marketplace and the Clearing Services will not be significantly affected in the event of operational problems at our primary data site, inability to access the office space, and/or significant staffing problems. These arrangements involve a combination of alternate computer and office sites, the ability to operate systems remotely and extensive cross-training of employees.

¹¹ See “Additional Information Regarding Guarantee Fund (Appendix J).”

Operational Information Relating to Trading System and Contracts

The Exchange shall provide disclosure to its participants of information about contract terms and conditions, trading conventions, mechanisms and practices, trading volume and other information relevant to participants.

As a general matter, the rules and procedures governing trading, clearing and settlement through NGX (including default procedures and rights and remedies upon a default) are set forth in the CPA, which is a standard form document. Each Participant must sign the CPA in order to access the Marketplace and Clearing Services. Although the CPA is not distributed publicly, it is made available to prospective Participants.

NGX may amend the CPA upon notice to the Participants (CPA, Section 1.1). All amendments or updates are distributed to Participants and posted on NGX's website. If amendments are made, each Participant may, for a period of ten business days following the effective date of the amendment, terminate its participation in NGX (CPA, Section 9.1(d)).

Although NGX does not provide formal training to Participants, NGX staff members are available to provide assistance on accessing and trading on the Marketplace and using the Clearing Services. NGX also provides prospective Participants with information relating to the structure, rules and procedures of the Marketplace and the Clearing Services throughout the application process.

NGX's website also provides Participants with confidential access to certain other information, such as copies of material agreements, information regarding system upgrades, collateral and transaction reports for Participants, invoices with respect to settlements and information concerning new products. NGX currently maintains a help desk that allows Participants to obtain information or contact the appropriate NGX employees.

Financial information in respect of NGX is not given to Participants as a matter of course but is available upon request, subject to confidentiality provisions.

Market Oversight

The Exchange shall establish appropriate minimum standards for participants and programs for ongoing monitoring of the financial status or creditworthiness of participants; monitor trading to ensure an orderly market; maintain authority to collect or capture and retrieve all necessary information; and to intervene as necessary to ensure an orderly market.

The CPA is the core document for legal and disclosure purposes. Key terms of the CPA relating to Participants, monitoring, and authority to intervene are as follows.

Participant Eligibility

As of December 31, 2007, NGX had approximately 163 Participants, the majority of which are Alberta-based and approximately one-third of which are organized in the United States. While the majority of Participants are commercial energy market participants, there has been a gradual increase in the participation of financial institutions and hedge funds and similar investment vehicles. Each Participant is required to execute the CPA.

Admission Requirements

The CPA requires Participants to meet certain initial admission requirements designed to evidence their institutional status and sophistication in energy markets. Participation is not open to the "retail" market. NGX believes that these limitations are consistent with the requirements for an ECM and help ensure the soundness and integrity of the Clearing Services.

A Participant must be a corporate or other business entity that has total tangible assets exceeding \$C25 million (approximately US\$25.3 million) or a net worth exceeding \$C5 million (approximately US\$ 5.1 million), or have a majority of its voting shares owned by an entity (or entities) meeting such requirements (CPA, Section 2.3) or have a credit support provider (CPA, Section 2.3 and Risk Management Policy). Natural persons may not be Participants. If the Participant satisfies this requirement only as a subsidiary of an entity (or with a credit support provider) meeting the asset/net worth test, the parent entity (or credit support provider) may be required to provide a guarantee as determined in NGX's discretion in an amount at least equal to \$C5 million (CPA, Risk Management Policy, Section 5). Each Participant must represent that it meets this requirement when it enters into the CPA (CPA, Section 2.5). In addition, a Participant must post collateral as required in the CPA and described above. These financial requirements are designed to limit participation to sophisticated commercial entities. NGX reviews the admission requirements periodically and, if appropriate, may modify them or adopt additional or alternative requirements.¹²

¹² NGX conducts an annual review of participants by reviewing their financial statements to confirm compliance with our 5/25 test.

As part of the application process, NGX provides prospective Participants with a copy of the CPA, a copy of the Deposit Agreement, and the required trader application form. NGX also requests all required financial information from the applicant and responds to any queries regarding these documents. Applications are reviewed by the NGX Clearing & Compliance staff and legal staff. NGX maintains the right to request all additional information it reasonably requires in order to assess sophistication and risk regarding an applicant (CPA, Section 2.3 and Risk Management Policy, Section 5). Absent significant countervailing reasons, NGX typically approves any applicant that satisfies the eligibility requirements to become a Participant. Participants are able to access and view the NGX system after they have signed the CPA. In order to be authorized for trading on the Marketplace and/or for using the Clearing Services, Participants must also complete the required trader application form, which designates which individuals are authorized to trade on behalf of the Participant, for which products and to what order size limits, and must post sufficient collateral.

A Participant may only trade or clear Transactions through NGX as principal, and not as agent or in a fiduciary or similar capacity. To the extent required by law, each U.S. Participant must also be an "eligible swap participant", an "eligible contract participant", and an "eligible commercial entity" as defined in the CEA. Participants that wish to engage in Physicals must at all times have the capacity to satisfy their obligations to deliver or receive the relevant commodity through the relevant pipeline or hub operator (CPA, Section 2.6). Ontario participants must also be "accredited investors" as defined in National Instrument 45-106.

Continuing Eligibility Requirements

Each Participant is deemed to reaffirm that it meets the initial admission requirements described above each time it completes a Transaction on NGX (CPA, Section 2.5). NGX currently conducts a rolling annual review of all Participants to ensure ongoing compliance with the eligibility requirements. Upon NGX's request, each Participant is required to file (a) audited consolidated financial statements for its fiscal year within 140 days of the end of such fiscal year (or substitute statements acceptable to NGX), (b) additional financial information reasonably necessary for the administration by NGX of the Risk Management Policy, and (c) reasonable confirmation with respect to the representations and warranties made by the Participant. Each Participant is obligated to notify NGX of any material adverse change in its financial condition or the financial condition of its credit support provider and agrees to NGX's conducting investigations, inquiries and credit checks (CPA, Section 3.1). In addition, NGX maintains broad contractual rights to restrict a Contracting Party's ability to transact or take any other reasonable actions with respect to a Contracting Party where its actions increase the credit exposure or pose additional risks to NGX's business (CPA, Risk Management Policy, Section 9).

Product Eligibility

NGX lists and clears products that have been authorized in accordance with its procedures and incorporated into the CPA through an amendment. In addition to the Current Contracts, NGX contemplates that it may from time to time add new Physicals, Financials or other products relating to natural gas, electricity (or oil) at different delivery or price points in the United States and Canada. In addition, it may elect to begin clearing other physical energy commodities and derivatives thereof.

Prospective new products must be approved by NGX's senior management in consultation with risk management, legal and other relevant personnel. Prior to adding a new product, NGX must determine that a reliable source of daily settlement information is available and must establish initial margin requirements and market pricing information to allow the calculation of variation margin for the new product. For Physicals, NGX must also determine that appropriate delivery procedures are in place, including nomination arrangements as required by the hub operator. New products must also be approved by its clearing and settlement bank under the Credit Facility and by its insurer under an insurance policy.

Once approved, the terms and conditions of the new product are added to the CPA by means of an amendment and posted on NGX's website. Any amendments to the CPA are provided to the ASC promptly upon becoming effective.

A list of the Current Contracts may be found in the CPA.

Defaults

The electronic trading system itself has a number of monitoring programs which are directly linked to actions required to be taken by NGX under the Risk Management Policy. There are specific persons designated by NGX who oversee the market created through the Trading System to ensure adherence to the Risk Management Policy and also to monitor any unusual market activity. The Trading System collects and archives all trading information. The Contracting Party's Agreement contains provisions which give NGX the right to intervene as necessary to ensure an orderly market.

Rule Enforcement

The Exchange shall maintain adequate arrangements and resources for the effective monitoring and enforcement of its rules and for resolution of disputes and shall have the capacity to detect, investigate and enforce those rules (including the authority and ability to discipline, limit, suspend or terminate a participant's activities for violation of system rules).

NGX maintains adequate arrangements and resources for the effective monitoring and compliance with NGX's rules by Participants and for the resolution of disputes that arise from Transactions traded or cleared through NGX. NGX has the authority and ability to discipline, limit, suspend or terminate a Participant's use of the Clearing Services for violations of NGX's rules.¹³

Code of Conduct

Section 6 of the CPA establishes a code of conduct applicable to Participants, which prohibits fraud, dishonest conduct, manipulation or attempted manipulation of prices (including by spreading inaccurate information or reporting false transactions) and other activities detrimental to the market. In the case of a violation, NGX may suspend the breaching Participant and exercise the default remedies described above.

In addition, NGX may exercise its right to suspend a Participant if it determines, in its sole discretion, that (a) an adverse change in the Participant's financial condition has occurred, (b) marketing irregularities have been caused by the Participant, including manipulation and false reporting, or (c) an event or circumstance has occurred which may detrimentally affect a Participant's regulatory approvals in respect of its performance under the CPA. If a Participant is suspended, NGX may prevent it from clearing any transactions (or specified transactions) and exercise the default remedies described above.

Monitoring

NGX monitors both the Marketplace and the Clearing Services. Marketplace monitoring is conducted by NGX marketing and operations staff largely by tracking current market prices, both in other marketplaces and the OTC markets, for actively traded Current Contracts in real time. Such market price information is used to resolve trades in error and to assist with end-of-day settlement prices in Current Contracts. Clearing Services monitoring is conducted by NGX's clearing staff to ensure compliance with the Risk Management Policy and with delivery and settlement responsibilities. The clearing staff is aided by detailed reports and information provided by TD Bank and various hub operators.

Section 6.8 of the CPA provides staff members designated by NGX with broad authority to investigate, examine documents and take such other actions as are reasonably necessary or advisable to verify compliance by all Participants with the CPA or to review any matter that has resulted in a suspension. Each Participant is required to provide copies of any documents and records directly related to its activities upon request and to make a person knowledgeable of the matter under investigation available.

Dispute Resolution

NGX has established mediation and arbitration procedures with respect to disputes involving the CPA or any Transaction executed or cleared on NGX. Participants agree that all disputes in respect of a material amount or with a material consequence to the initiating party and which arise in respect of the CPA or any transaction executed or cleared on NGX will be referred to mediation. If the dispute is not resolved by mediation within 20 days, it will be referred to binding arbitration (CPA, Schedule B).

System Safeguards

The Exchange shall established and maintain a program of oversight and risk analysis to ensure systems function properly and have adequate capacity and security, including emergency procedures and a plan for disaster recovery to ensure daily processing of transactions; and a program of periodic objective system testing and risk review to assess the adequacy and effectiveness of the Trading System's internal control systems, including a risk review of every new service and significant enhancement to existing services.

NGX has established an oversight and risk analysis program for its electronic systems, for both the Marketplace and Clearing Services, to ensure that they function properly and have adequate capacity and security. NGX has developed emergency procedures and a disaster recovery plan and conducts periodic testing of key system functions.

Oversight/Risk Analysis Program

NGX has designed its computer systems with target availability in excess of 99% during trading hours. During 2007, system availability was approximately 99.88%.

¹³ NGX has comprehensive rules contained in the CPA for managing its business. NGX staff have sufficient knowledge of the rules applicable to the respective business units and are trained to identify compliance issues or monitor unusual activity that could be contrary to our rules and escalate potential issues to senior management, including legal. Management, including legal, then determine whether further investigation is required or whether disciplinary action needs to be taken. Regarding dispute resolution, NGX rules have a clear process for resolving disputes raised by participants either through mediation and ultimately arbitration.

NGX has developed and maintains its automated systems in a manner consistent with the principles set forth in the Commodity Futures Trading Commission's Policy Statement Concerning the Oversight of Screen-Based Trading Systems.¹⁴ NGX notes in particular, as these principles relate to the Clearing Services, that:

- (a) The system meets all applicable legal standards, regulatory policies and/or market custom.
- (b) The system is designed to operate in a manner that is equitable for all Participants. As noted above, there is only one class of Participants, and all Participants have equal access to the system.
- (c) NGX has analyzed, and continues to analyze, the system to address vulnerabilities (including risks of unauthorized access, internal failures, attacks and natural catastrophes).
- (d) Applicable procedures under the CPA have been established to ensure the competence, integrity and authority of system users and to ensure that access is not arbitrarily denied. In particular, NGX has established procedures for Participants to designate persons entitled to access the system (CPA, Section 3.1).
- (e) The CPA contains detailed statements and disclaimers concerning the status of the electronic systems and the limitations on NGX's liability to Participants for system failures.

Under the CPA, NGX undertakes to use commercially reasonable efforts to implement and maintain security systems and procedures designed to prevent unauthorized access to its electronic systems through any network connections between the Participant and NGX. NGX monitors the system and has agreed to take commercially reasonable steps to prevent fraud and breaches of security. Upon discovering any fraud or breach of security, NGX has agreed to notify the affected Participant and take all commercially reasonable measures to remedy the situation, including halting the Participant's access to the system. (CPA, Section 3.3(j)). In accordance with this undertaking, NGX has implemented a number of security measures. Electronic communications between client software and NGX host software are protected by an encryption protocol. Virtual and direct remote access to NGX's system is permitted only through NGX's password-protected business network and requires an additional level of authentication. Network devices such as firewalls and routers are strictly controlled through secure protocols and can only be accessed from within the network or over a secure VPN (Virtual Private Network) connection. In addition, NGX performs regular vulnerability threat assessments.

NGX's primary data center is located in a controlled-access computer room facility at NGX's office in Calgary, while the secondary site is located in a secure "card access only" building maintained by Telus, the largest telecommunications company in Western Canada and the second largest in the country. The methods and processes employed by NGX with respect to security have been reviewed by TMX Group and have been determined to meet TMX Group's standards. In addition, NGX uses the COBIT (Control Objectives for Information and Related Technology) standards as a guide in the maintenance of its security environment.

Emergency Procedures and Disaster Recovery

NGX operates a parallel, duplicate network in a separate physical location that is updated on a real-time basis. As a result, in the event of a malfunction in one network, NGX can continue to operate its Marketplace and Clearing Services with a minimum of interruption and loss of data. As a general matter, the system is designed so that in the event of a network failure, the system can be switched to an alternate network in a reasonable period of time. The primary server and the duplicate network are connected through a direct fiberlink. Each site has an independent internet connection, supplied by different internet providers. Either site can fully support the NGX trading and clearing system.

NGX also performs regular back ups of data in the automated systems. A complete back up is produced once a week, with incremental back ups being carried out on a daily basis. The back ups are removed and stored off-site on a weekly basis.

As noted above, NGX has developed a BCP and Disaster Recovery Plan designed to ensure the continued functioning of the Trading System and the Clearing Services in the event of certain disasters and emergencies, such as inaccessibility to the NGX premises or office, power outages, illness or evacuation. NGX has a "BCP Team" designed to handle all crucial business functions for the immediate period following a disaster. Employees have been issued company laptops, that are updated regularly, to use during disaster scenarios, and an alternative work site has been established to accommodate employees if NGX is not accessible. NGX employees can also access the NGX network over either one of two VPN connections; one being located at the primary NGX office site and the other being located at the off-site data centre location, each running on connections supplied by different internet providers. TMX Group provides independent oversight of NGX's BCP and conducts an annual internal audit. Pursuant to the BCP and in conjunction with NGX's ongoing reporting obligations to TMX Group relating to internal controls, NGX engages in regular testing of its BCP and reviews and updates the BCP each quarter.

¹⁴ 55 Fed. Reg. 48670 (adopting the "Principles for the Oversight of Screen-Based Trading Systems for Derivative Products" formulated by eight jurisdictions which comprised Working Party 7 of the Technical Committee of IOSCO), as supplemented by IOSCO in October 2000.

Testing

NGX has established procedures for quality assurance and system testing that relate to system connectivity, order volumes, trade volumes and the overall integrity of the automated aspects of the Marketplace and Clearing Services. NGX conducts quality assurance and system testing for both the Marketplace and the Clearing Services. Testing of the Marketplace focuses on client software performance and testing for the Clearing Services focuses on the reports generated by NGX's electronic systems in connection with those services.

Record Keeping

The Exchange shall maintain records of all activities related to the Trading System's business in a form and manner acceptable to the Commission for a period of five years and provide an undertaking to make books and records available for inspection by Commission representatives on request.

NGX will maintain records of all activities related to its business as a clearing agency for a minimum period of five years. NGX maintains an archive of information regarding all trading and clearing activities that is intended to permit reconstruction of each contract entered into and/or cleared through NGX. Specifically, NGX's electronic system maintains a record of end-of-day margin requirements for all Participants for the two most recent years (and paper copies of these records are maintained for seven years). NGX also keeps for seven years paper copies of the daily margin reports provided to management addressing Participants whose margin requirement exceeds 80% of collateral posted. In addition, paper copies of daily reports of collateral held by NGX are retained for seven years.

NGX confirms that records required to be maintained will be open to inspection by a representative of the Commission.

Risk Management

The Exchange shall identify and manage the risks associated with exchange operations through the use of appropriate tools and procedures such as risk analysis tools and procedures.

NGX has the ability to manage the risks that arise in connection with its operations as a clearing agency through the use of a variety of tools and procedures, including (a) risk analysis with respect to margin levels and potential exposure to open positions, (b) use of margin, (c) valuation procedures for positions and collateral, and (d) credit and position limits. The basic principles of risk management used by NGX are set forth in the Risk Management Policy.

Risk Analysis

NGX evaluates its credit and liquidity exposures on an ongoing basis. Initial margin rates for Current Contracts are updated at least monthly and more often as needed.

NGX performs periodic stress testing by increasing and decreasing market prices to locate stress points at which exceptions occur in large open positions, i.e., prices at which the potential loss exceeds the total collateral held. The stress points and number of exceptions are recorded and reviewed by management. This periodic stress testing is designed to enable NGX to identify stress points in a simulated market environment of extreme price movement, adjust initial margin rates, if deemed necessary, and address any potential credit and liquidity exposures before they arise. In conducting the stress testing, NGX assumes adverse price movements of the relevant Current Contracts and then calculates the required variation margin for the positions in each Participant's portfolio using the real-time risk monitoring system described below. An exception will be noted when NGX's uncollateralized exposure to a Participant under the assumptions (the amount of any required margin over the amount posted as collateral) would exceed the Participant's initial margin. The results of the stress testing will be used to determine if the initial margin rates should be increased or decreased to ensure that NGX holds adequate collateral amounts in the context of changing market conditions. NGX continues to develop and enhance its stress testing program on an ongoing basis.

Individual margin rates for a subset of key products, such as those for which large positions are held, are backtested on a regular basis to validate the adequacy of the underlying data used to determine the volatility history of each relevant product and time period. Daily price changes through the quarter are compared to those assumed for purposes of determining initial margin to determine the number of cases in which market movements exceeded those assumed and to ensure that the number of exceptions in a dataset (a) does not pose a material risk that would jeopardize the collateral coverage of a portfolio and (b) does not fall outside of the expectation for exceptions.

Use of Margin

NGX's principal credit risk management tool is its use of collateral. NGX engages in real-time risk monitoring through an electronic system that compares the amount of required collateral for each Participant's positions with the amount of collateral actually on deposit for that Participant.

NGX calculates an aggregate margin requirement for each Participant, which is composed of (a) initial margin for all positions, (b) variation margin for all positions, (c) net amounts payable to NGX in respect of Physicals in the delivery phase and (d) net amounts payable to NGX in respect of the settlement of Financials. Participants must post sufficient collateral to cover their margin requirement, utilizing any combination of the acceptable forms of collateral and offsets.¹⁵

An example of a margin calculation for a Physical is set forth in Appendix F.

NGX believes that these margin requirements and related procedures provide sufficient protection against the risk of default or insolvency of a Participant even under adverse market conditions.

Valuation of Positions and Collateral

NGX values open positions for margin purposes on the basis of the relevant settlement price or current market prices for each Current Contract, as set forth in the Risk Management Policy. Due to the liquid nature of the collateral (letter of credit from an A-rated bank or better, or cash), NGX values all collateral at full face value without any haircut or other reduction.

Credit and Position Limits

NGX sets an aggregate margin limit, or credit limit, for each Participant in accordance with the Risk Management Policy based on each Participant's collateral on deposit. NGX also has the right under the CPA to impose limits on open positions held by Participants (CPA, Section 3.5) but currently does not impose limits other than the margin limit. In addition to open positions with NGX, each Participant may have multiple positions in OTC Transactions for which NGX does not have information and therefore is unable to determine such Participant's net aggregate open positions. Hence NGX does not currently apply position limits based on open positions with NGX held by a Participant. NGX has the right to restrict further trading if it determines that a Participant is unable to provide additional collateral as required, or if it believes a position would be too large to liquidate in an orderly fashion in the event of Participant default.

NGX currently maintains a credit watch list for certain Participants based on NGX's assessment of the possibility that a Participant's financial condition could result in a future default. The watch list is confidential, is used for internal monitoring purposes only and does not directly affect any Participant's margin limit. NGX typically conducts a review of the financial status of any Participant placed on the watch list.

Settlement procedures are described in Appendix H attached hereto.

Governance and Conflicts of Interest

Establish and enforce rules to minimize conflict of interest in the exchange's decision-making process and appropriate limitations on the use or disclosure of significant non-public information gained through the performance of official duties by board members, committee members or exchange employees or gained through an ownership interest in the exchange.

NGX avoids adopting any rule or taking any action that results in any unreasonable restraint of trade in the relevant markets for cleared contracts or imposing any material anticompetitive burden on trading in the relevant markets. NGX believes that the Marketplace and Clearing Services as operated by NGX and described in this application have not created and will not create any anticompetitive burden or restraint on trading in the electricity and natural gas markets. Furthermore, NGX believes that by reducing counterparty credit risks in those markets, its Clearing Services enhance the competitiveness of these markets, consistent with the policies of the ASA.

6. OSC Criteria for Exemption from Recognition of an Exchange Recognized in another CSA Jurisdiction

In response to the criteria above provided by OSC staff, NGX's responses are as follows.

Regulation of the Exchange (1.1 of Criteria)

NGX is regulated in an appropriate manner by the ASC. See "Existing Orders" in the Application for a description of ASC regulation, as well as the description of how NGX meets the core principle requirements set out in the ASC exchange recognition order (section 5 of the Application).

Governance (2.1 of Criteria)

NGX is not a publicly traded company and has a single shareholder, TMX Group. NGX's board of directors is currently comprised of 9 members which constitute the senior management team of TMX Group. NGX holds quarterly board meetings.

¹⁵ See "Additional Information Regarding Use of Margin" (Appendix K)

NGX strategy and certain other material matters are subject to the oversight of the board of directors of its parent company, TMX Group Inc., which includes a majority of independent directors, including board members with experience in energy and derivative markets.

NGX holds management meetings on a regular basis where senior management participate in the major business and regulatory decisions relating to the company. NGX's business and regulatory decisions are in keeping with its public interest mandate as a commodity futures exchange and clearing agency.

As a private company, NGX does not currently have any independent directors and does not believe it is necessary based on its current private company structure and the size of its business.

NGX does not believe it is necessarily appropriate to have representatives of its participants on the board on the company. Interests of the different companies accessing the services of the exchange are represented in the daily management of NGX's business as a going concern. NGX operates in a highly competitive environment and must ensure it is always taking into account a broad spectrum of market participant interests.

NGX follows TMX Group policies regarding conflicts of interest. There are written policies in place governing the identification and management of such conflicts for directors, officers and employees.

NGX follows TMX Group policies regarding the fit and proper person tests for its directors and officers. TMX Group takes reasonable steps to ensure that each officer and director of NGX is a fit and proper person.

There are appropriate qualification, remuneration, and insurance provisions in place for directors and officers of NGX.

The governance structure and arrangements of NGX ensure effective oversight of this type of sophisticated-participant commodity exchange business.

Fees (3.1 of Criteria)

All fees imposed by NGX are equitably allocated and do not have the effect of creating unreasonable barriers to access. The process for setting fees is fair and appropriate for the commodity markets. This is a highly competitive environment and NGX must carefully consider the impact to the market and its business of any fee changes. NGX rules as well as market forces ensure there are no fee barriers to market participants and that the relevant considerations are balanced appropriately.

Regulation of Products

Approval of Products

The products traded on NGX have been approved by the ASC as part of NGX's recognition as an exchange. Based on the nature of the commodity markets and the need to respond quickly to changing market conditions in order to remain competitive, it is essential that NGX be able to add new products promptly and that such process not be subject to prior regulatory approval. It is imperative that NGX have the benefit of a level regulatory playing field with its competitors in the U.S. as the commodity markets in which it operates are North American in scope. The regime established under ASC oversight is effectively in alignment with the self-certification regime applicable to U.S. commodity exchanges. Failure to have this alignment with U.S. laws would be a significant impairment to NGX's ability to continue to conduct business. NGX is required to file product additions with the ASC within 2 business days of their addition to the NGX CPA. NGX products must conform to the terms of the NGX recognition order and the ASC has an opportunity to audit NGX's product additions at any time. See also "Product Eligibility" in this Application.

Product Specifications

The terms and conditions of trading the products conform with the usual commercial customs and practices for the trading of such products in a combination of the North American regulated and unregulated OTC commodity markets. In order for sufficient liquidity to exist, alignment with these customs and practices is essential.

Risks Associated with Trading Products

NGX maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange. See the description of margin requirements under "Collateral" in this Application. Participants often have daily trading limits attached to their account. NGX has the right under the CPA to impose position limits where appropriate (CPA, Section 3.5). NGX has certain employees who are monitoring the market in real time and can respond quickly to unanticipated events. NGX has a procedures manual that is followed by employees in terms of managing any issues associated with trading NGX products. Material issues escalated to appropriate management in accordance with NGX's procedures manual.

Access (5.1 of Criteria)

NGX has established appropriate qualification criteria and terms and conditions regarding access to NGX services in the CPA. These standards are transparent to potential participants. Such standards address the obligation for participants to be “sophisticated”, transacting as principal and have adequate pipeline arrangements in place to accommodate delivery of the commodity. Compliance by participants with the local securities and other laws of the jurisdiction in which they are based are also addressed. See the description under “Participant Eligibility” and “Access to the Public” in this Application. See also sections 2.3, 2.6 and 3.1 of the CPA in terms of qualifications and access rights by participants. Access standards and the process for obtaining, or denying access are fair and applied reasonably, and have been reviewed by the ASC.

Regulation of Participants on the Exchange (6.1 of the Criteria)

NGX has the authority, capacity, systems and processes to undertake its regulation functions by having appropriate terms and conditions governing the conduct of its participants in the CPA, as well as broad rights to monitor participant conduct and appropriately discipline them for violations of requirements. See “Financial Resources”, “Operational Information Relating to Trading System and Contracts”, “Market Oversight”, “Rule Enforcement” and “Risk Management” sections of this Application.

Rulemaking (7.1 of Criteria)

NGX maintains rules, policies and procedures as are necessary or appropriate to govern and regulate all aspects of its business, and such rules are designed to:

- (a) ensure compliance with securities legislation;
- (b) prevent fraudulent and manipulative acts and practices;
- (c) promote just and equitable principles of trade;
- (d) foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities;
- (e) provide a framework for disciplinary and enforcement actions; and
- (f) ensure a fair and orderly market.

NGX rules do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary and appropriate. See also “Governance and Conflicts of Interest” in this Application.

Due Process (8.1 of Criteria)

NGX ensures that for any decision made that materially affects a participant, NGX ensures that parties are given a fair opportunity to be heard and/or to make representations or submissions, and that NGX keeps a record of, gives reasons for, and provides for a fair resolution mechanism regarding any disputes of its decisions, in accordance with its rules. See CPA Schedule B and “Dispute Resolution” in this Application.

Systems and Technology (9 of Criteria)

Systems and Technology

NGX’s trading, clearing and financial reporting systems have appropriate internal controls to ensure accuracy, integrity and security of information, and has sufficient capacity and business continuity plans to enable NGX to properly carry on its business. See under “System Safeguards” section “Oversight/Risk Analysis”, “Emergency Procedures and Disaster Recovery” and “Testing”.

Information Technology Risk Management Procedures

NGX has procedures that handle trading errors, halts and breakers, and that ensure the company can respond quickly to the types of trading events during trading weekdays and on weekends.

Financial Viability and Reporting (10.1 of Criteria)

NGX has sufficient financial resources for the proper performance of its functions and to meet its responsibilities. See “Financial Resources” in this Application.

Clearing and Settlement (11 of Criteria)

Clearing Arrangements

Transactions in Contracts traded through NGX are cleared and settled through NGX's clearing house. Appropriate arrangements exist for the clearing and settlement as described throughout this Application.

Regulation of the Clearing House

NGX is a recognized clearing agency under the ASA. See "Existing Orders" in this Application.

Access to the Clearing House

The same qualification criteria and access standards for the exchange are applied to the clearing house. See "Access (5.1 of Criteria) above.

Sophistication of Technology of Clearing House

NGX operates as both an exchange and clearing house. The information technology used by the clearing house is reviewed, tested and updated regularly and provides as least the same level of safeguards as required of the exchange. See "Systems and Technology (9 of Criteria)" above.

Risk Management of Clearing House

NGX has appropriate risk management policies and procedures, contingency plans, default procedures and internal controls, as described above under "Regulation of Products (4 of Criteria)", "Regulation (6.1 of Criteria)" and "Rulemaking (7 of Criteria)".

Transparency (12.1 of Criteria)

NGX rules and procedures ensure the recording and disclosure of accurate and timely trade and order information to participants. This information is provided to all participants on an equitable basis through postings on the password protected members section of the NGX website. See also "Operational Information Relating to Trading System and Contracts" in the Application.

Record Keeping (13.1 of Criteria)

NGX has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of, NGX rules. See "Record Keeping" in the Application.

Outsourcing (14.1 of Criteria)

NGX has appropriate and formal arrangements and processes in place that permit it to meet its obligations under any of its outsourcing relationships. Such arrangements and processes are in accordance with industry best practices.

Information Sharing and Regulatory Cooperation (15.1 of Criteria)

NGX has mechanisms in place to ensure that is able to cooperate, by sharing information or otherwise, with the Commission and its staff, and other appropriate regulatory bodies. NGX has a specific requirement in this respect in the ASC clearing agency recognition order (see Appendix I – core principle 12).

7. Provisions of the CFA

Definition of "Commodity Futures Exchange" Under the CFA

The CFA defines a "commodity futures exchange" as an association or organization, whether incorporated or unincorporated, operated for the purpose of providing the facilities necessary for the trading of commodity futures contracts or commodity futures options.

Definition of "Commodity Futures Contract" and "Commodity Futures Option" Under the CFA

The CFA defines a "commodity" as, whether in the original or a processed state, any agricultural product, forest product, product of the sea, mineral, metal, hydrocarbon fuel, currency or precious stone or other gem, and any goods, article, service, right or interest, or class thereof, designated as a commodity under the regulations.

On May 16, 2005 OSC Rule 14-502 came into force. In addition to commodities listed in the CFA, Rule 14-502 also designated as a commodity, among other things, “energy and fuel, including gas, oil, electricity and energy-related products whether in their original or processed states, and any by-products thereof” and “any interest that is a value determined with reference to any commodity”.

The CFA defines “commodity futures contract” as a contract to make or take delivery of a specified quantity and quality, grade or size of a commodity during a designated future month at a price agreed upon when the contract is entered into on a commodity futures exchange pursuant to standardized terms and conditions set forth in such exchange’s by-laws, rules or regulations. A “commodity futures option” is “a right, acquired for a consideration, to assume a long or short position in relation to a commodity futures contract at a specified price and within a specified period of time and any other option of which the subject is a commodity futures contract”.

In our view, the definitions of “commodity futures contract” and “commodity futures option”, in conjunction with the definition of “commodity” in the CFA (as expanded by Rule 14-502), encompasses those Current Contracts with physical or cash settlement to take place in a designated future month (the CFA Contracts).

Definition of “trading” under the CFA.

The CFA defines “trading” as including:

- (a) entering into commodity futures contracts or commodity futures options, whether as principal or agent;
- (b) acting as a floor trader;
- (c) any receipt by a registrant of an order to effect a transaction in a contract;
- (d) any assignment or other disposition of rights under a contract except a disposition arising from the death of an individual enjoying rights under a contract; and
- (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing.

In our view, the activities of NGX, as described above, as it relates to the trading of CFA Contracts, falls within the definition of a “commodity futures exchange” under the CFA.

8. Submissions Pursuant to the CFA

The Contracting Parties

The business of the Exchange is to facilitate contractual arrangements among Participants who, as a result of the eligibility criteria, including the NGX Sophistication Thresholds, in the CPA (the “**Eligibility Requirements**”), have a sufficiently high degree of sophistication in business matters and access to sufficient resources to carefully evaluate the risks of entering into CFA Contracts.

Access to the Public

NGX’s electronic platform is not made available for the execution of CFA Contracts to any party other than Participants that contract as principals with NGX who are able to meet and maintain the Eligibility Requirements. Trades in Current Contracts are not entered into as a result of intermediation, but are rather transacted by the Participants themselves through an authorized representative. The interactions are therefore restricted to the Participants and do not involve the public generally. While NGX advertises its services and discusses those services with current and potential clients, it does not act as an adviser or dealer for Participants.

Purposes of the CFA

The CFA provides that its purposes are: i) to provide protection to investors from unfair, improper or fraudulent practices; and ii) to foster fair and efficient commodity futures markets and confidence in those markets. The CFA further provides that in pursuing the purposes of the CFA, the Commission shall have regard to certain fundamental principles. One such principle states that the primary means for achieving the purposes of the CFA are: i) requirements for timely, accurate and efficient disclosure of information; ii) restrictions on fraudulent and unfair market practices and procedures; and iii) requirements for the maintenance of high standards of fitness and business conduct to ensure for honest and responsible conduct by market participants. Additional principles reference that: i) the integration of commodity futures markets be supported and promoted by the sound and responsible harmonization and co-ordination of commodity futures regulation regimes; and ii) business and regulatory costs and other restrictions on the business and investment activities of market participants be proportionate to the

significance of the regulatory objectives sought to be realized. In our view, the requirement for registration in section 15 is aimed at ensuring that these purposes are achieved.

In our submission these aims will be achieved if, as is currently anticipated, NGX becomes recognized as an exchange in the Province of Alberta. Considering the terms and conditions of recognition and the oversight by the ASC of NGX's operations, it is submitted that adequate safeguards are in place to ensure the protection of the public interest. Therefore, it is submitted that it would not be contrary to the public interest for the Commission to exempt NGX from the requirement to register as a commodity futures exchange under section 15 of the CFA.

9. Provisions of the Securities Act (Ontario) (the "OSA") and Submissions

Relating to the Definition of "Stock Exchange" Under the OSA

Section 21 of the OSA provides that no person or company shall carry on business as a stock exchange in Ontario unless recognized by the Commission under section 21. The OSA does not define "stock exchange".

It is our submission that NGX does not trade "stocks" as commonly understood. To the extent "stock" encompasses "security" as defined in the OSA, we are aware that the definition includes in paragraph (p) any commodity futures contract or any commodity futures option that is not traded on a commodity futures exchange registered with or recognized by the Commission under the CFA or the form of which is not accepted under the CFA.

However, it is our submission that paragraph (p) was intended to apply to commodity futures contracts and commodity futures options traded on commodity futures exchanges that are not subject to regulatory oversight, as the CFA and OSA are meant to be complementary and not duplicative regimes. The CFA constitutes a complete regime for the regulation of commodity futures exchanges and trading in commodity futures contracts. It is our submission that paragraph (p) of the definition of "security" in the OSA was not intended to apply to commodity futures contracts and commodity futures options traded on a commodity futures exchange whose operations meet the criteria for exemptive relief under the CFA, in particular where such an exchange has been recognized under comparable laws of another jurisdiction, such as Alberta. Provided that the Commission has had the opportunity to assess the merits of an application for exemption from the registration and recognition requirements of the CFA, and exemptive relief is granted on the basis of that assessment, we submit that it would be unnecessary to characterize CFA Contracts as securities under the OSA since exemptions under both the CFA and the OSA are granted on the basis of the lack of prejudice to the public interest and any assessment under the OSA would presumably duplicate the assessment already made under the CFA. In addition, NGX is viewed as a commodities exchange and not a stock exchange by market participants. Creating a structure whereby it is implied that participants of NGX are transacting through a stock exchange is confusing to Participants. For these reasons, we are of the view that NGX is not a "stock exchange" within the meaning of section 21 of the OSA.

The Application of National Instrument 21-101 and Rule 91-503 to the Business of the Exchange

National Instrument 21-101 provides in section 1.4(2) that in Ontario the term "security", when used in the Instrument, does not include a commodity futures contract or a commodity futures option that is not traded on a commodity futures exchange registered with or recognized by the Commission under the CFA. The effect of this provision is to remove paragraph (p) from the definition of "security" for purposes of National Instrument 21-101. The result is that CFA Contracts, whether or not they are considered to fall within paragraph (p), are technically not subject to the provisions of National Instrument 21-101 if NGX is granted exemptive relief by the OSC.

We submit that OSC Rule 91-503 (the "**Rule**") applies to NGX as an exchange "situate outside Ontario" regardless of whether it is carrying on business in Ontario as it qualifies under the definition of "exempt exchange" in the Rule. Therefore, separate exemptive relief is not required from registration and prospectus requirement under the OSA (sections 25 and 53, respectively).

Relating to Clearing Houses

We note that although the Act provides for the recognition of clearing houses or clearing agencies by the Commission, there is currently no requirement in the Act that clearing houses or clearing agencies obtain recognition. We are aware of proposed legislation that would prohibit a person or company from carrying on business in Ontario as a clearing agency unless recognized by the Commission as such. However, the legislation is not yet in force and it is premature to formulate a view on whether NGX carries on business in Ontario as a clearing agency.

10. Specific Relief Requested

Exemptions

Based on this Application, recognition by the ASC of NGX as an exchange and the materials attached hereto, NGX submits that it would not be contrary to the public interest for the Commission to grant an order:

- (i) pursuant to section 80 of the CFA, exempting NGX from the prohibition in section 15 of the CFA on carrying on business as a commodity futures exchange in Ontario unless registered by the Commission under the CFA;
- (ii) pursuant to section 38 of the CFA, exempting current and future Contracting Parties from the registration requirements of section 22 of the CFA in respect of entering into CFA Contracts through the Trading System and all acts, advertisements, solicitations, conduct or negotiations made directly or indirectly in furtherance thereof;
- (iii) pursuant to section 38 of the CFA, exempting current and future Contracting Parties from the prohibition in section 33 of the CFA on trading of CFA Contracts other than on a commodity futures exchange that is registered or recognized by the Commission under the CFA and where the form of such contracts has been approved by the Director under the CFA; and
- (iv) pursuant to section 147 of the OSA, exempting NGX from the requirement to be recognized as a stock exchange unless recognized by the Commission under section 21 of the OSA.

11. Enclosures

Attached are the following:

- A. Supporting documents
 1. Form of Contracting Party's Agreement, last amended effective January 1, 2009 (Appendix A);
 2. Current Exemptive Orders granted by Canadian regulatory authorities and Notification of Exempt Commercial Market Status to the Commodity Futures Trading Commission (Appendix B);
 3. Credit Agreement, amended and restated as of November 1, 2007, between Natural Gas Exchange Inc. and The Toronto-Dominion Bank (Appendix C);
 4. Deposit Agreement, amended and restated as of December 11, 2008, between CIBC Mellon Trust Company and Natural Gas Exchange Inc. (Appendix D);
 5. List of current NGX management and organization chart (Appendix E);
 6. NGX Margin Calculation Example (Appendix F);
 7. Amended and Restated Bank Collateral Agreement, dated June 22, 2006, between Natural Gas Exchange Inc. and The Toronto-Dominion Bank (Appendix G); and
 8. Settlement Procedures (Appendix H)
 9. Additional Information Regarding Credit Facilities (Appendix I)
 10. Additional Information Regarding Guarantee Fund (Appendix J)
 11. Additional Information Regarding Use of Margin (Appendix K)
 12. Additional Information Regarding Treatment of Funds (Appendix L);
- B. ASC exchange and clearing recognition orders dated October 9, 2008 (Appendix M);
- C. NTP regulatory orders (Appendix N);
- D. Draft exemptive relief order (Appendix O); and

E. a cheque payable to the Ontario Securities Commission in the amount of \$5,000.00 representing the filing fees for this Application.

Please do not hesitate to contact the undersigned or Peter Krenkel (403-974-1705) for any further information the Commission or its staff might require in connection with this Application. Thank you for your consideration of this matter. We would be happy to provide further explanation or elaboration of any of the above points.

Respectfully submitted,

Cheryl Graden, Chief Legal Counsel
Natural Gas Exchange Inc.

Enclosures

cc. Peter Krenkel, President, Natural Gas Exchange

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20,
AS AMENDED (CFA)

AND

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5,
AS AMENDED (OSA)

AND IN THE MATTER OF
NATURAL GAS EXCHANGE INC. (NGX)

ORDER

(Sections 38 and 80 of the CFA and Section 147 of the OSA)

WHEREAS NGX has filed an application dated January 9, 2009 (Application) with the Ontario Securities Commission (Commission) requesting:

- (a) an order pursuant to section 80 of the CFA exempting NGX from the requirement to be registered as a commodity futures exchange under section 15 of the CFA;
- (b) an order pursuant to section 38 of the CFA exempting trades by NGX participants (Participants) in Ontario (Ontario Participants) in contracts on NGX (Contracts) from the registration requirement under section 22 of the CFA;
- (c) an order pursuant to section 38 of the CFA exempting trades by Ontario Participants in Contracts from the requirements under section 33 of the CFA; and
- (d) an order pursuant to section 147 of the OSA exempting NGX from the requirement to be recognized as a stock exchange under section 21 of the OSA.

AND WHEREAS Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* exempts trades of commodity futures contracts or commodity futures options made on a commodity futures exchange not registered with or recognized by the Commission under the CFA from sections 25 and 53 of the OSA;

AND WHEREAS NGX has represented to the Commission as follows:

1. NGX is a private company and is a wholly-owned subsidiary of TMX Group Inc., a public company governed by the laws of Ontario and listed on the Toronto Stock Exchange.
2. NGX operates an electronic trading system (Trading System) based in Calgary, Alberta, for the trading of Contracts in natural gas, electricity and heat rate products related to the gas and electricity markets, and proposes to introduce Contracts in oil and renewable energy certificates.
3. NGX developed the Trading System to provide an electronic platform for trading of energy related commodities by sophisticated parties in a principal to principal market, and as such the timing of settlement for Contracts align with standard over-the-counter market conventions for settlement.
4. NGX is recognized by the Alberta Securities Commission (ASC) under the Alberta Securities Act (ASA) as an exchange and a clearing agency by orders dated October 9, 2008 (Exchange Recognition Order and Clearing Agency Recognition Order, set out in Schedules "A" and "B", respectively) and is subject to regulatory oversight by the ASC pursuant to the ASA.
5. NGX is registered as a Derivatives Clearing Organization by the Commodity Futures Trading Commission (CFTC) under the Commodity Exchange Act (CEA) and is subject to oversight by the CFTC pursuant to the CEA.
6. NGX operates the Trading System as an exempt commercial market under the CEA.
7. Access to the Trading System for the purpose of trading in Contracts is restricted to Participants, each of which:
 - a. has entered into a Contracting Party's Agreement; and

- b. has, or has a majority of its voting shares owned by one or more entities each of which has a net worth exceeding \$5,000,000 or total assets exceeding \$25,000,000 (NGX Sophistication Thresholds); and
 - c. uses the Trading System only as principal.
8. NGX applies its qualification criteria by subjecting each applicant to a due diligence process, which includes: review of constituent documentation and financial statements, conducting searches of relevant financial services information databases and conducting other know-your-client procedures.
 9. NGX is required under its regulations to provide to the ASC, on request, access to all records and to cooperate with any other regulatory authority, including making arrangements for information-sharing.
 10. Contracts traded on the Trading System are either cleared and settled through NGX's central counterparty clearing house or by the Participants themselves, independent of NGX.
 11. The ASC discharges its regulatory oversight over NGX as an exchange and clearing agency through ongoing reporting requirements and by conducting periodic oversight assessments of NGX's operations to confirm that NGX is in compliance with the operating and clearing principles set out in the Exchange Recognition Order and Clearing Agency Recognition Order, respectively.
 12. Contracts fall under the definitions of "commodity futures contract" or "commodity futures option" set out in section 1 of the CFA. NGX is therefore considered a "commodity futures exchange" as defined in section 1 of the CFA and is prohibited from carrying on business in Ontario unless it is registered or exempt from registration as an exchange under section 15 of the CFA.
 13. NGX has been, and seeks to continue, providing Ontario market participants with access to trading in Contracts and as a result, is considered to be "carrying on business as a commodity futures exchange" in Ontario.
 14. NGX is not registered with or recognized by the Commission as a commodity futures exchange under the CFA and no Contracts have been accepted by the Director as contemplated under clause 33(a) the CFA, therefore, Contracts are considered "securities" under paragraph (p) of the definition of "security" in subsection 1(1) of the OSA and NGX is considered a "stock exchange" under the OSA and is prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under section 21 of the OSA.
 15. NGX has been operating in Ontario pursuant to interim exemptive relief orders granted by the Commission on November 17, 2006, as extended on November 16, 2007 and May 13, 2008.
 16. Ontario Participants may be (i) utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity and, to the extent applicable, (ii) investment banking arms of banks and (iii) hedge funds and other proprietary trading firms.

AND WHEREAS based on the Application and the representations NGX has made to the Commission, the Commission has determined that NGX satisfies the criteria set out in Schedule "C" and that the granting of exemptions from recognition and registration to NGX would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that:

- (a) pursuant to section 80 of the CFA, NGX is exempt from registration as a commodity futures exchange under section 15 of the CFA;
- (b) pursuant to section 38 of the CFA, trades in Contracts by Ontario Participants are exempt from the registration requirement under section 22 of the CFA;
- (c) pursuant to section 38 of the CFA, trades in Contracts by Ontario Participants are exempt from the requirements under section 33 of the CFA; and
- (d) pursuant to section 147 of the OSA, NGX is exempt from recognition as a stock exchange under section 21 of the OSA;

PROVIDED THAT NGX complies with the terms and conditions attached hereto as Schedule "D".

SCHEDULE "A"

ALBERTA SECURITIES COMMISSION

**RECOGNITION ORDER
EXCHANGE**

Natural Gas Exchange Inc.

Background

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

Interpretation

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

Representations

4. NGX represents as follows:
 - (a) NGX operates an electronic trading system (the **Trading System**) based in Calgary, Alberta, for the trading of natural gas, electricity and related contracts (the **Contracts**).
 - (b) NGX has operated the Trading System since 1993 in accordance with the terms and conditions of a series of exemptive relief orders granted by the Commission and other Canadian securities regulatory authorities, the most recent of which is MRRS decision #1662761 dated December 1, 2004 (the **Current Decision**).
 - (c) Access to the Trading System in respect of exchange contracts is restricted to Contracting Parties, each of which:
 - (i) has entered into a Contracting Party's Agreement; and
 - (ii) has, or has a majority of its voting shares owned by one or more entities each of which has, a net worth exceeding \$5 000 000 or total assets exceeding \$25 000 000 (the **NGX Sophistication Thresholds**).
 - (d) The Contracting Parties use the Trading System only as principals.

Undertakings

5. NGX undertakes:
 - (a) to comply with applicable securities legislation;
 - (b) to operate the Trading System in accordance with the operating principles set out in Appendix A to this order (the **Operating Principles**);

- (c) to report to the Commission in accordance with the reporting requirements set out in Appendix B to this order (the **Reporting Requirements**);
- (d) not to enter into any contract, agreement or arrangement that may limit its ability to comply with applicable securities legislation or this order;
- (e) to take reasonable steps to ensure that each officer or director of NGX is a fit and proper person for that role and that the past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity;
- (f) to have appropriate conflict of interest provisions for all directors, officers and employees;
- (g) to notify the Commission at least 10 business days in advance of entering into any agreement to outsource key Trading System functions;
- (h) to notify the Commission at least 10 business days in advance of any significant change in the operation of the Trading System;
- (i) to notify the Commission at least 10 business days in advance of any change in the beneficial ownership of NGX;
- (j) to use its best efforts to provide the information required in paragraphs 5(g) to (i) above earlier than specified, when possible;
- (k) to seek the Commission's prior approval of any significant changes to the NGX Sophistication Thresholds;
- (l) to seek the Commission's acceptance of, or an exemption for, any new or revised Contract that differs significantly from the exchange contracts that have already been exempted by the Commission;
- (m) to notify the Commission immediately upon NGX becoming aware that any of its representations in this order are no longer true and accurate or that it becomes unable to fulfil any of its undertakings set out in this order; and
- (n) to comply with any request from the Executive Director of the Commission for electronic or any other form of access to the Trading System to assist the Commission in its oversight of NGX as an exchange.

Decision

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

"original signed by"

Glenda A. Campbell, QC
Alberta Securities Commission

"original signed by"

Stephen R. Murison
Alberta Securities Commission

APPENDIX A

Operating Principles

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

APPENDIX B

Reporting Requirements

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

Immediate Reporting

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

Key Event Reporting

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

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

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

Quarterly Reporting

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

Annual Reporting

4. NGX will provide, within 90 days of the end of each fiscal year:
 - (a) audited financial statements; and
 - (b) a self-assessment of the accomplishments and the challenges faced during the year which will include, but is not limited to:
 - (i) a summary of NGX's business activity for the year;

- (ii) a report of NGX's market share throughout the year;
- (iii) a summary of new products introduced and expansion plans that were implemented during the year;
- (iv) a report detailing the testing undertaken to ensure the adequacy of system safeguards, including, but not limited to, risk management methodologies, emergency procedures and disaster recovery plans, business continuity and proper functionality of backup facilities;
- (v) a summary of staffing changes at NGX during the year; and
- (vi) any additional information that NGX considers important.

Other

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

SCHEDULE "B"

**RECOGNITION ORDER
CLEARING AGENCY**

Natural Gas Exchange Inc.

Background

1. Natural Gas Exchange Inc. (**NGX**) has applied to the Alberta Securities Commission (the **Commission**) for recognition under the *Securities Act* (Alberta), R.S.A. 2000, c. S-4 (the **Act**) as a clearing agency.
2. NGX has concurrently applied to the Commission for recognition under the Act as an exchange because it also operates an electronic trading system.
3. The definition of "clearing agency" in the Act does not contemplate an entity that is also an exchange (the **Definition Limitation**).

Interpretation

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

Representations

5. NGX represents as follows:
 - (a) NGX operates an electronic clearing system (the **Clearing System**) based in Calgary, Alberta, for clearing and settlement of natural gas, electricity and related commodity contracts, certain of which constitute exchange contracts, futures contracts or options under the Act (the **Contracts**).
 - (b) NGX has operated an electronic trading system (the **Trading System**) since 1993 in accordance with the terms and conditions of exemptive relief granted by the Commission and other Canadian securities regulatory authorities.
 - (c) NGX provides clearing and settlement services for Contracts traded through the Trading System and on third party marketplaces.
 - (d) NGX also provides clearing services for certain over-the-counter transactions that are entered into the Clearing System.
 - (e) Access to the Clearing System is restricted to entities (**Contracting Parties**) each of which:
 - (i) has entered into a contractual agreement (the **Contracting Party's Agreement**) with NGX; and
 - (ii) has, or has a majority of its voting shares owned by one or more entities each of which has, a net worth exceeding \$5 000 000 or total assets exceeding \$25 000 000 (the **NGX Sophistication Thresholds**).
 - (f) The Contracting Parties use the Clearing System only as principals.

Undertakings

6. NGX undertakes:
 - (a) to comply with applicable securities legislation;
 - (b) to operate the Clearing System in accordance with the clearing principles set out in Appendix A to this order (the **Clearing Principles**);
 - (c) to report to the Commission in accordance with the reporting requirements set out in Appendix B to this order (the **Reporting Requirements**);

- (d) not to enter into any contract, agreement or arrangement that may limit its ability to comply with applicable securities legislation or this order;
- (e) to take reasonable steps to ensure that each officer or director of NGX is a fit and proper person for that role and that the past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity;
- (f) to notify the Commission at least 10 business days in advance of entering into any agreement to outsource key Clearing System functions;
- (g) to notify the Commission at least 10 business days in advance of any significant change in the operation of the Clearing System;
- (h) to notify the Commission at least 10 business days in advance of any change in the beneficial ownership of NGX;
- (i) to use its best efforts to provide the information required in paragraphs 6(f) to (h) above earlier than specified, when possible;
- (j) to seek the Commission's prior approval of any significant changes to the NGX Sophistication Thresholds;
- (k) to notify the Commission immediately upon NGX becoming aware that any of its representations in this order are no longer true and accurate or that it becomes unable to fulfil any of its undertakings set out in this order; and
- (l) to comply with any request from the Executive Director of the Commission for electronic or any other form of access to the NGX Clearing System to assist the Commission in its oversight of NGX as a clearing agency.

Decision

7. Based on the above representations and undertakings and notwithstanding the Definition Limitation, the Commission, being satisfied that it would not be prejudicial to the public interest, recognizes NGX as a clearing agency pursuant to sections 67 and 213 of the Act, provided that:
- (a) subject to paragraph 6(k) above, the representations made by NGX remain true and accurate; and
 - (b) NGX fulfils the undertakings given above.

"original signed by"
Glenda A. Campbell, QC
Alberta Securities Commission

"original signed by"
Stephen R. Murison
Alberta Securities Commission

APPENDIX A

Clearing Principles

1. **Core Principle 1: Financial Resources** - The clearing agency shall demonstrate on an ongoing basis that it has adequate financial, operational, and managerial resources to discharge the responsibilities of a clearing agency.
2. **Core Principle 2: Participant and Product Eligibility** - The clearing agency shall maintain: (i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for its members or participants; and (ii) appropriate standards for determining eligibility of products, agreements, contracts or transactions submitted to the clearing agency.
3. **Core Principle 3: Risk Management** - The clearing agency shall maintain the ability to manage the risks associated with discharging the responsibilities of a clearing agency through the use of appropriate tools and procedures.
4. **Core Principle 4: Settlement Procedures** - The clearing agency shall maintain the ability to: (i) complete settlements on a timely basis under varying circumstances; (ii) maintain an adequate record of the flow of funds associated with each transaction cleared; and (iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.
5. **Core Principle 5: Treatment of Funds** - The clearing agency shall maintain standards and procedures designed to protect and ensure the safety of member or participant funds.
6. **Core Principle 6: Default Rules and Procedures** - The clearing agency shall maintain rules and procedures designed to allow for the efficient, fair, and safe management of events of member or participant insolvency or default by the member or participant with respect to its obligations to the clearing agency.
7. **Core Principle 7: Rule Enforcement** - The clearing agency shall: (i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with the rules of the clearing agency and for resolution of disputes; and (ii) maintain the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations of rules of the clearing agency.
8. **Core Principle 8: System Safeguards** - The clearing agency shall: (i) maintain a program of oversight and risk analysis to ensure that the automated systems of the clearing agency function properly and have adequate capacity and security; (ii) maintain emergency procedures and a plan for disaster recovery; and (iii) ensure that its systems, including back-up facilities, are annually tested by a qualified professional, sufficient to ensure timely processing, clearing and settlement of transactions.
9. **Core Principle 9: Reporting** - The clearing agency shall provide to the Commission all information necessary for the Commission to conduct its oversight function of the clearing agency with respect to the activities of the clearing agency.
10. **Core Principle 10: Recordkeeping** - The clearing agency shall maintain records of all activities related to its business as a clearing agency, in a form and manner acceptable to the Commission, for a period of 5 years. The clearing agency shall also maintain a record of allegations or complaints it receives concerning instances of suspected fraud or manipulation in clearing activity.
11. **Core Principle 11: Public Information** - The clearing agency shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to its market participants.
12. **Core Principle 12: Information Sharing** - The clearing agency shall: (i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and (ii) use relevant information obtained from the agreements in carrying out the clearing agency's risk management program.
13. **Core Principle 13: Restraint of Trade** - The clearing agency shall avoid: (i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or (ii) imposing any material anticompetitive burden on trading in the regulated markets.

APPENDIX B

Reporting Requirements

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

Immediate Reporting

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

Key Event Reporting

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

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

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

Quarterly Reporting

3. NGX will provide, within 60 days of the end of each fiscal quarter:
 - (a) a description of any significant margin requirement exceptions that NGX allowed during that quarter;
 - (b) an up-to-date list of Contracting Parties; and
 - (c) interim financial statements.

Annual Reporting

4. NGX will provide, within 90 days of the end of each fiscal year:
 - (a) audited financial statements; and
 - (b) a self-assessment of the accomplishments and the challenges faced during the year, which will include, but is not limited to:

- (i) a summary of NGX's business activity for the year;
- (ii) a summary of new products introduced and expansion plans that were implemented during the year;
- (iii) a report detailing the testing undertaken to ensure the adequacy of system safeguards including, but not limited to, risk management methodologies, emergency procedures and disaster recovery plans, business continuity and proper functionality of backup facilities;
- (iv) a summary of staffing changes at NGX during the year; and
- (v) any additional information that NGX considers important.

Triennial Reporting

- 5. Every three years NGX will provide a report of a review conducted by an independent party, assessing NGX's clearing operations risk and controls.

Other

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

SCHEDULE "C"

**Criteria for Exemption from Recognition of a Derivatives Exchange
Recognized in Another CSA Jurisdiction**

PART 1 REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange

The Exchange is recognized or authorized by another securities commission or similar regulatory authority in Canada and, where applicable, is in compliance with National Instrument 21-101 – *Marketplace Operation* and National Instrument 23-101 – *Trading Rules*, each as amended from time to time.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the Exchange ensure:

- (a) effective oversight of the Exchange,
- (b) the Exchange's business and regulatory decisions are in keeping with its public interest mandate,
- (c) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors,
- (d) a proper balance among the interests of the different persons or companies accessing the facilities and/or services of the Exchange,
- (e) the Exchange has policies and procedures to appropriately identify and manage conflicts of interest,
- (f) each director or officer of the Exchange, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the Exchange is a fit and proper person, and
- (g) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors and officers.

PART 3 FEES

3.1 Fees

- (a) All fees imposed by the Exchange are equitably allocated and do not have the effect of creating unreasonable barriers to access.
- (b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 4 REGULATION OF PRODUCTS

4.1 Approval of Products

The products traded on the Exchange are approved by the appropriate authority.

4.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

4.3 Risks Associated with Trading Products

The Exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the Exchange including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.

PART 5 ACCESS

5.1 Fair Access

- (a) The Exchange has established appropriate written standards for access to its services including requirements to ensure
 - (i) participants are appropriately registered as applicable under Ontario securities laws or Ontario commodity futures laws, or exempted from these requirements,
 - (ii) the competence, integrity and authority of systems users, and
 - (iii) systems users are adequately supervised.
- (b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

PART 6 REGULATION OF PARTICIPANTS ON THE EXCHANGE

6.1 Regulation

The Exchange has the authority, capacity, systems and processes to undertake its regulation functions by setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of Exchange requirements.

PART 7 RULEMAKING

7.1 Purpose of Rules

- (a) The Exchange's rules, policies and other similar instruments (Rules) are designed to govern the operations and activities of participants.
- (b) The Rules are not contrary to the public interest and are designed to
 - (i) ensure compliance with securities legislation,
 - (ii) prevent fraudulent and manipulative acts and practices,
 - (iii) promote just and equitable principles of trade,
 - (iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities,
 - (v) provide a framework for disciplinary and enforcement actions, and
 - (vi) ensure a fair and orderly market.
- (c) The Exchange shall not
 - (i) permit unreasonable discrimination among participants, or
 - (ii) impose any burden on competition that is not reasonably necessary and appropriate.

PART 8 DUE PROCESS

8.1 Due Process

For any decision made by the Exchange that affects 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) the Exchange keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the Exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the Exchange to properly carry on its business. Critical systems are those that support the following functions:

- (a) order entry,
- (b) order routing,
- (c) execution,
- (d) trade reporting,
- (e) trade comparison,
- (f) data feeds,
- (g) market surveillance,
- (h) trade clearing, and
- (i) financial reporting.

9.2 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 10 FINANCIAL VIABILITY AND REPORTING

10.1 Financial Viability

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

PART 11 CLEARING AND SETTLEMENT

11.1 Clearing Arrangements

The Exchange has appropriate arrangements for the clearing and settlement of transactions through a clearing house.

11.2 Regulation of the Clearing House

The clearing house is subject to acceptable regulation.

11.3 Access to the Clearing House

- (a) The clearing house has established appropriate written standards for access to its services.
- (b) The access standards for clearing members and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

11.4 Sophistication of Technology of Clearing House

The Exchange has assured itself that the information technology used by the clearing house has been adequately reviewed and tested and provides at least the same level of safeguards as required of the Exchange.

11.5 Risk Management of Clearing House

The Exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 12 TRANSPARENCY

12.1 Transparency

The Exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.

PART 13 RECORD KEEPING

13.1 Record Keeping

The Exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the Exchange, audit trail information on all trades, and compliance with, and/or violations of Exchange requirements.

PART 14 OUTSOURCING

14.1 Outsourcing

Where the Exchange has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

PART 15 INFORMATION SHARING AND REGULATORY COOPERATION

15.1 Information Sharing and Regulatory Cooperation

The Exchange has mechanisms in place to ensure that it is able to cooperate, by sharing information or otherwise, with the Commission and its staff, self-regulatory organizations, other exchanges, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE "D"

Terms and Conditions

REGULATION OF NGX

1. NGX will maintain its recognition as an exchange and a clearing agency with the ASC and will continue to be subject to the regulatory oversight of the ASC.
2. NGX will continue to comply with its ongoing requirements set out in the ASC Exchange Recognition Order and Clearing Agency Recognition Order.
3. NGX will continue to meet the criteria for exemption from registration as an exchange, as set out in Schedule "C".

ACCESS

4. Each Participant is a sophisticated party that meets the NGX Sophistication Thresholds.
5. All orders for Contracts transmitted to the Trading System by an Ontario Participant pursuant to the relief herein will be solely as principal.

PRODUCTS

6. Contracts traded on the Trading System are only for natural gas, electricity, oil, heat rate products related to the gas and electricity markets, and renewable energy certificates.

SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE

7. For greater certainty, NGX submits to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of NGX in Ontario.
8. For greater certainty, NGX will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of NGX in Ontario.

REGULATION OF PARTICIPANTS

9. NGX will provide for adequate arrangements and resources to effectively monitor trading by Participants on the Trading System to ensure an orderly market and to enforce its rules.

FILING REQUIREMENTS

ASC Filings

10. NGX will provide to staff of the Commission, concurrently, all notices and reports it is required to provide to or file with the ASC pursuant to the undertakings given by NGX in the Exchange Recognition Order and Clearing Agency Recognition Order, except:
 - (a) reports on defaults by a contracting party not resolved within 2 days;
 - (b) with respect to the self-assessment to be provided on an annual basis;
 - i. the summary of NGX's business activities,
 - ii. the report on NGX's market share;
 - iii. the summary of new products and expansion plans implemented during the year;
 - iv. the summary of staffing changes; and
 - (c) the description of significant margin exceptions.

Prompt Notice

11. NGX will promptly notify staff of the Commission of any of the following:
 - (a) any material change to the business or operations of NGX as provided in the Application.
 - (b) any change in the NGX Sophistication Thresholds,
 - (c) any change or proposed change to the Exchange Recognition Order or the Clearing Agency Recognition Order, and
 - (d) any change to the regulatory oversight of NGX by the ASC,

Quarterly Reporting

12. NGX will maintain the following updated information and submit such information to the Commission on at least a quarterly basis, and at any time promptly upon the request of staff of the Commission:
 - (a) a current list of all Ontario Participants;
 - (b) a list of all Ontario Participants against whom disciplinary action has been taken in the last quarter by NGX or the ASC with respect to activities on NGX;
 - (c) a list of all investigations by NGX relating to Ontario Participants; and
 - (d) a list of all Ontario applicants who have been denied membership to NGX;

INFORMATION SHARING

13. Upon request from staff of the Commission to the ASC, NGX will provide to staff of the Commission through the ASC, subject to applicable laws, any information within the possession or control of NGX and otherwise co-operate wherever reasonable with the Commission or its staff.