

## Chapter 13

# SROs, Marketplaces and Clearing Agencies

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## 13.2 Marketplaces

### 13.2.1 OSC Notice and Request for Comment – NGX – Application to Amend Exemption Order

#### OSC NOTICE AND REQUEST FOR COMMENT

#### NATURAL GAS EXCHANGE INC.

#### APPLICATION TO AMEND EXEMPTION ORDER

### A. Background

On March 1, 2011, subsection 21.2(0.1) of the *Securities Act* (Ontario) (OSA) will come into force prohibiting clearing agencies from carrying on business in Ontario unless they are recognised as a clearing agency or are exempt from the requirement to be recognised by order of the Ontario Securities Commission (Commission).

Natural Gas Exchange Inc. (NGX) is a wholly owned subsidiary of TMX Group Inc. that operates a trading system and a clearing system for contracts, both physical and financial, in natural gas, electricity and crude oil products. The Commission issued an order, dated March 31, 2009, exempting NGX from, among other things, the requirement to be recognised as a stock exchange under the OSA and registered as a commodity futures exchange under the *Commodity Futures Act* (2009 Order).

NGX has filed an application (Application) to amend the 2009 Order to explicitly acknowledge that it engages in certain clearing agency functions. NGX seeks to continue its exemption order on the basis that it is already subject to appropriate regulatory oversight by the Alberta Securities Commission (ASC). NGX is recognised as an exchange and a clearing agency by the ASC.

In assessing the Application, staff used as guidance the considerations and process set out in OSC Staff Notice 24-702 - *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*.

### B. Draft Order

In its Application, NGX has addressed each of the criteria for exemption from recognition for clearing agencies. Subject to comments received, staff will recommend that the Commission grant an amended and restated exemption order with terms and conditions to NGX based on the proposed draft order (Draft Order) attached as Appendix "A" to the Application.

The Draft Order requires NGX to comply with terms and conditions relating to:

1. Regulation of NGX,
2. Access,
3. Products,
3. Submission to Jurisdiction and Agent for Service,
4. Filing Requirements, and
5. Information Sharing

### C. Comment Process

The Commission is publishing for public comment the Application and Draft Order. We are seeking comment on the Application and changes in the Draft Order.

You are asked to provide your comments in writing and delivered on or before January 10, 2011, addressed to:

c/o John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1903, Box 55  
Toronto, Ontario M5H 3S8  
E-mail: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

We request that you also submit an electronic copy of your submission. 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 Branch  
Tel: 416-593-8250  
wliu@osc.gov.on.ca

December 10, 2010

November 30, 2010

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 a variation order under the Ontario Securities Act**

**1. Introduction**

Natural Gas Exchange Inc. (“**NGX**”), a Canadian corporation with its head office located in Calgary, Alberta, was granted an order pursuant to section 147 of the Ontario Securities Act (the “**OSA**”) dated March 31, 2009 (the “**2009 Order**”) exempting NGX from certain provisions of the Commodity Futures Act and the OSA, including the requirement to be registered as a commodity futures exchange in the province of Ontario. As of March 1, 2011, subsection 21.2(0.1) of the OSA will prohibit a clearing agency from carrying on business in Ontario unless it is recognized by the Ontario Securities Commission (the “**OSC**” or “**Commission**”) as a clearing agency or is exempt from the requirement to be recognized by order of the Commission. NGX is an exchange that also engages in certain clearing agency functions. As such, NGX hereby applies to the OSC for an order under section 144 of the OSA, varying the 2009 Order to reflect that NGX’s clearing agency functions meet the criteria for clearing agencies as set out in OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*.

**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 2009, NGX cleared 309,277 transactions with a total quantity of 15,000 Petajoules of natural gas (an aggregate notional value of approximately \$C53 billion<sup>1</sup>) (approximately US\$50.3 billion) and approximately 67 Terawatt-hours of electricity (an aggregate notional value of approximately \$C4.2 billion (approximately US\$4.0 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., and 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.

In November 2005, NGX incorporated a Delaware company, NGX U.S. 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 Limited (“**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 businesses.

On September 6, 2007, NGX’s parent company, TMX Group Inc., purchased an option to acquire NetThruPut Inc. (“**NTP**”), a Calgary, Alberta-based electronic exchange and clearing house for physically and financially settled crude oil commodity contracts. The option was exercised on April 1, 2009 (the “**Option Exercise Closing**”). NGX acquired NTP’s trading platform and launched crude oil contracts on May 1, 2009 pursuant to NGX’s standardized rules and using the NGX clearing model applicable to natural gas and electricity. NTP remained operative for the sole purpose of clearing and settling the legacy NTP contracts (transacted prior to the Option Exercise Closing). NTP legacy contracts were transacted pursuant to the terms and conditions of NTP rules, including its non-collateralized clearing model. The final legacy contracts expired in August 2009.

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<sup>1</sup> Conversions of Canadian dollars to US dollars in this application have been made using the exchange rate for December 31, 2009 of \$C0.9499/US\$.

## Summary of Business

### *Marketplace*

NGX operates a non-intermediated electronic marketplace (the “**Marketplace**”) based in Calgary, through which NGX contracting parties (“**Participants**”), which satisfy certain eligibility standards, may enter into the following types of transactions.<sup>2</sup>

- physically settled natural gas and crude oil contracts for delivery at various Canadian and U.S. locations or hubs (“**Physicals**”); and
- swap and/or option contracts relating to natural gas, electricity and referencing various Canadian pricing points (“**Financials**”).

We refer to such Physicals and Financials as “**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. 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 “Regulatory Regime”.

### *Clearing Services*

NGX provides clearing services (the “**Clearing Services**”) through which it acts as central counterparty for transactions in Contracts entered into on the Marketplace (“**Marketplace Transactions**”), transactions entered into on a third party marketplace (“**ICE Transactions**”) and certain transactions in Contracts executed bilaterally over-the-counter (“**OTC Transactions**”), together with the Marketplace Transactions and ICE Transactions, these three categories of cleared transactions are referred to as “**Transactions**”.<sup>3</sup>

- *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 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 (the “**ICE Alliance**”), Participants, if authorized by NGX, are also permitted to trade in an NGX product that is cleared by the Participants themselves as opposed to NGX. Such trades are referred to in the CPA (as defined below) as “**Bilateral Transactions**”.
- *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.<sup>4</sup>
- *Clearing of OTC Transactions.* Participants that have arranged trades in 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.

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.

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<sup>2</sup> As discussed below, all Participants must enter into a Contracting Party’s Agreement with NGX and must satisfy certain eligibility criteria to participate in NGX’s principal to principal market.

<sup>3</sup> 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. NGX products are not currently available on any other third-party execution platforms.

<sup>4</sup> Note, the passage of the U.S. Dodd-Frank Act on July 21, 2010 may require clearing agencies, such as NGX, to accept standardized swaps from other regulated execution platforms. NGX is awaiting CFTC rule-makings that may impact it as a derivatives clearing organization under U.S. laws.

All Contracts are currently modelled after and are similar to those utilized by market participants for OTC energy derivatives, such as the forms of documentation standardized by the North American Energy Standards Board (“NAESB”) and the International Swaps and Derivatives Association (“ISDA”). 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.

### **3. Criteria for Recognition of Clearing Agencies**

#### **1. Governance**

As previously mentioned, NGX is a wholly owned subsidiary of TMX Group Inc.

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](http://www.sedar.ca). As of December 31, 2009, TMX Group’s market capitalization was approximately \$2.6 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.

NGX’s Board of Directors is composed of eight individuals, all of whom are members of management of TMX Group. As of November 30, 2010 the following individuals comprise the Board of Directors: Kevan Cowan, Brenda Hoffman, Thomas Kloet, Chief Executive Officer, TMX Group; Peter Krenkel, Alain Miquelon, Sharon Pel, Senior Vice President, Michael Ptasznik and Eric Sinclair.

NGX employs an executive management team with specialized expertise in energy markets and energy clearing and system operations. The current management team consists of the following persons: (1) President; (2) Chief Legal Counsel & Regulatory Compliance Officer; (3) Vice President of Sales & Marketing; (4) Vice President of Clearing & Development; (5) Vice President of U.S. Operations; (6) Vice President of Crude Oil; (7) Vice President of Finance & Administration; (8) Vice President of Information Technology; and (9) Vice President, Markets. The management team is subject to the supervision of the Board of Directors, which may change the structure and personnel of the management team from time to time.

In order to avoid conflicts of interest, NGX has established approval processes which govern internal decision-making for both exchange and clearing matters. Material clearing matters are also addressed through an internal risk management process. In addition, NGX staff must adhere to the internal corporate employee code of conduct and conflict of interest policies.

#### **2. Fees**

NGX clearing fees are set out in Schedule A to the CPA. Clearing fees are set by product (physical gas, physical oil, and swap transactions) and by delivery point. 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. To determine an appropriate fee, NGX will consider the risk associated with the product, whether the new product is similar to an existing product, and overall market conditions. Any updates to the fee schedule become effective six (6) business days following receipt of notice by the Participants of such revision.

#### **3. Access**

Participants must meet a number of eligibility requirements to access the NGX Trading System. They must be a validly organized corporation, partnership organization, trust or other business entity or have a majority of its voting shares owned directly or indirectly by one or more such entities with a net worth exceeding \$5 million or total tangible assets exceeding \$25 million as shown on its latest balance sheet. The applicant must have any necessary regulatory and business licenses. It must submit appropriate documentation that it has been duly authorized to enter into transactions on the NGX Trading Platform.

In addition a Participant must represent that it has access to a transportation system (to the extent that such Participant wishes to enter into Physical Transactions), will enter into each Transaction in conjunction with its line of business, is an “eligible swap participant”, “eligible contract participant”, and “eligible commercial entity” as defined by the *Commodity Exchange Act* (United States), is an accredited investor as defined in *National Instrument 45-106* if resident in Ontario, and will enter into all transactions as principal and not as agent for any other party.

NGX keeps records of each application, including a checklist of application criteria. Once all of the above-noted criteria have been met, as well as any other qualification requirements that NGX may impose, NGX will notify the applicant that it has been accepted as a Participant. The Participant will then be activated on the NGX Trading System and the NGX Clearing System. NGX may apply order size limits, or limit a Participant by product.

In the event that an applicant does not meet the all the criteria, NGX will notify the applicant of the reasons for the non-acceptance and keep appropriate records of the reasons.

Participants must additionally satisfy ICE’s participant requirements and must have valid access rights to, and remain in good standing for its participation on, the ICE trading platform with respect to any products that are included in the ICE Alliance. NGX is responsible for verifying that a new NGX market Participant has fulfilled the criteria to be accepted as a trader on the ICE Platform.

Pursuant to its Risk Management Policy, NGX may impose additional conditions on applicants. NGX will initially determine a Margin Limit for each participant. If the Participant approaches, equals or exceeds the margin limit, NGX may call for additional collateral to be deposited, or may suspend the Participant’s trading rights, or close-out and liquidate the Participant’s outstanding contracts.

NGX does regular review of Participant financials to ensure compliance with the eligibility criteria (a net worth of \$5 million or total tangible assets of \$25 million). In addition, NGX subscribes to a Chapter 11-reporting site that allows us to monitor whether one of our Contracting Parties files for creditor protection in the US. NGX is not aware of any such service in Canada, however, NGX subscribes to Canada Newswire email alerts, which allow NGX to filter for news releases on our Contracting Parties, and automatically notify NGX’s clearing staff of any relevant news releases.

Some Participants execute bilateral, non-cleared, transactions on NGX. Although NGX may perform certain types of clearance and settlement functions in connection with such transactions, it does not novate these bilateral contracts and does not become the universal counterparty. The credit risk of these transactions remains bilateral and is addressed through the standard credit arrangements that exist between the two parties.

#### 4. *Rules and Rulemaking*

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 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.

Periodic amendments to the CPA must first be approved by NGX’s clearing bank and by its insurer. After written approval has been received, pursuant to Section 1.1 of the CPA, Participants will receive six business days notice of pending amendments before such amendments become effective. Any Participant who disagrees with such amendments may give notice of termination pursuant to section 9.1 of the CPA.

All such rules are reviewed by NGX’s regulators to ensure compliance with securities legislation. NGX is of the view that the rules set out in the CPA do not permit unreasonable discrimination among participants, nor impose any burden on competition that is not necessary or appropriate.

Article 6 of the CPA also sets out rules allowing NGX to monitor and investigate Participant conduct to ensure compliance with the CPA, and to impose penalties in the event of a breach.

#### 5. *Due Process*

NGX ensures that for any decision that materially affects a Participant, that Participant is given a fair opportunity to be heard and/or 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. NGX’s dispute resolution process is set out in Schedule “B” to the CPA.

6. *Risk Management*

NGX clears transactions executed on the NGX Trading Systems and specified OTC transactions. NGX acts as a CCP for all cleared transactions. NGX's clearing model does not provide for mutualization of credit risk among Participants. Performance is backed by Participants' margin and a clearing guarantee fund. All Participants are required to self-clear and may not clear positions on behalf of others. As discussed above, all cleared contracts are modeled 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 cleared contracts, 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 financially settled contracts, final settlement takes place between NGX and each Participant. Settlement on physical products takes place on or about the 25<sup>th</sup> day following the month of delivery; financial products settle on the 6<sup>th</sup> business day following month end and options premiums settle two business days after execution.<sup>5</sup> For all physically settled contracts, NGX, as the central counterparty, guarantees the performance obligations of the parties, including physical and financial settlement. The delivery/receipt mechanisms vary at each natural gas 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.

NGX settlement procedures vary slightly as between physical and financial contracts. As a predominantly physical clearing house, NGX plays a role in facilitating delivery of physical contracts. As such, NGX must work within the parameters set by each pipeline operator, such as rules for submitting nominations, and the manner in which over and under supply situations need to be managed. In addition to customer default risk, which is common to both physical and financial contracts, physical contracts carry the additional risk that physical supply may be disrupted or unavailable due to various logistical reasons (pipeline, production or storage related issues). Accordingly NGX's operations group manages this risk by monitoring delivery/supply positions and taking immediate action to remedy variances as they occur. In the event a customer is unable to correct a delivery/supply issue, NGX maintains physical supply backstop arrangements in its primary markets to allow for third party supply of product at current market prices. In the event that physical supply was ever unattainable, the CPA allows NGX to settle the obligations on a financial basis.

Clearing procedures

The clearing systems were developed internally by NGX and are electronically connected to the NGX Trading Systems. The clearing operations run on a platform and database called NGX Ts-2. NGX is in the process of replacing TS2 with NGX NCS, (collectively called the "**NGX Clearing System**") because NCS has been created to better handle the specific needs of a clearing agency.

The clearing process is initiated by the automated entry into the NGX Clearing System of the trade details. Trades are accepted by the clearinghouse and novated upon receipt by the NGX Clearing System, subject to a trade-in-error provision initiated within a 10 minute window of the ICE time stamp on the executed trade. Clearing takes place on a real time (2 minute delay) continuous basis with positions being managed to available collateral previously deposited by the Participant.

Because every Participant self-clears, NGX does not offer give-up or take-up procedures. Thus, there are no additional instructions that can be entered into the clearing system following acceptance of a trade by the clearing house.

Risk Management

NGX evaluates its credit and liquidity exposures on an ongoing basis. 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.

Positions are marked-to-market on a continuous basis using the most recent traded prices for market values, and for less liquid instruments, end-of-day prices. 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<sup>6</sup> and (d) net amounts payable to NGX in respect of the settlement of Financials.<sup>7</sup> Because Physicals have a long underlying settlement cycle, the accounts receivable margin is typically the largest factor in setting collateral requirements at NGX.

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<sup>5</sup> NGX anticipates, in the near term, introducing "daily (futures-style) settlements" for its electricity swaps, and eventually its natural gas contracts.

<sup>6</sup> Physicals are a contract for the purchase or sale of the commodity. See, CPA Article 1.2mmmm.

<sup>7</sup> Financials are financially-settled contracts for the purchase or sale of a commodity.

Initial margin protects NGX from adverse price movements within a defined confidence interval that would affect positions for an interval during liquidation of the portfolio. 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 currently calculated using 2.7 standard deviations (a 99.7% confidence interval) from the last mark-to-market price (calculated using historical volatility data) over a minimum of a two-day liquidation period. Initial margin is typically the second largest factor in setting collateral requirements. Initial margin rates for Contracts are updated at least monthly and more often as needed.

Variation margin reflects the daily mark-to-market value of the relevant positions. Margin is calculated on a portfolio basis; that is, the risks of certain positions may be reduced or off-set by other positions in the portfolio. Participants must post sufficient collateral to cover the overall risk of the account in a form acceptable to NGX. Acceptable collateral is in the form of a letter of credit from an A-rated bank or better, or cash, which NGX values at full face value without any haircut.

NGX performs periodic stress testing to identify market prices at which the potential loss exceeds the total collateral held. The results of these stress tests are reviewed by management in order to evaluate the adequacy of initial margin rates. In conducting the stress testing, NGX assumes adverse price movements of the relevant 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 report is created 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 are 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.

In addition, NGX has implemented a program of on-going backtesting, including regular backtesting to validate the volatility assumptions for various key products. 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 is not larger than expected or pose a material risk.

To use the Clearing Services, a Participant must post collateral or sell and deliver sufficient quantities of the underlying commodity to generate a receivable from NGX that covers margin requirements. The minimum amount of collateral required varies by commodity and instrument type, but in any event is no less than \$C500,000 (approximately US\$480,000). In the event a Participant's available margin was to fall below the minimum threshold, NGX may request additional 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.<sup>8</sup> 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.

#### Credit Limits

NGX sets an aggregate margin or credit limit for each Participant in accordance with the Risk Management Policy based on each Participant's collateral on deposit.<sup>9</sup> NGX has instituted a series of margin triggers that, if breached, will cause NGX to request additional collateral from the Participant. If the Participant does not deposit additional collateral as requested, or if it believes a position would be too large to liquidate in an orderly fashion in the event of Participant default, NGX may restrict that Participant from entering into additional transactions on the trading platforms 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.

#### Default remedies and procedures

As noted above, NGX does not mutualize risk among its Participants. Rather, each Participant provides collateral covering its own positions. As discussed below, NGX alone bears the risk of loss in the unlikely event of a default. In no event would another clearing Participant be required to make additional contributions to NGX to cover losses associated with the default of another Participant. The steps that NGX would take in the event of a default and the financial resources that NGX maintains to address potential losses are discussed below.

A Participant will be deemed to be in default under the CPA if it fails to make or take delivery when required under a contract, fails to make payments required under a contract, fails to deposit collateral when required or an "Event of Default" as defined in the CPA is continuing. Under Section 3.9 of the CPA, an Event of Default includes a number of events, including, failure of the Participant or any credit support provider to comply or perform in respect of any collateral-related agreement, the withdrawal or lapse of any credit support document related to the CPA, a material misrepresentation by the participant or its guarantor,

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<sup>8</sup> See footnote 5; daily settlement will provide Participants with the ability to settle variations marked to market amounts T+2 and for offsets to close out obligations in advance of final settlement.

<sup>9</sup> The Risk Management Policy is Schedule C of the CPA.



bankruptcy of the participant or its guarantor and merger of the participant or its guarantor without the assumption by the surviving entity of the Participant's obligations or the obligations of such credit support provider under the CPA or any credit support document.

In response to a default, NGX may take the following actions:<sup>10</sup>

- Request additional collateral.
- Suspend the Participant's rights to enter into Transactions through NGX until the default is remedied.
- Accelerate, terminate and net existing Transactions.
- Enter into liquidation or close out Transactions to offset obligations of the defaulting Participant.
- Realize upon the Participant's collateral.
- Terminate the CPA with the Participant.

Upon NGX's exercise of any of these remedies, any amount payable under any contract by the defaulting Participant becomes immediately due and payable. If NGX determines to offset, in whole or in part, obligations of the defaulting Participant, it may enter into liquidation or close out Transactions for the account of the defaulting Participant and offset these against other outstanding positions.<sup>11</sup> Following such allocation, NGX determines a net settlement amount owing to or by such Participant, which becomes due and payable immediately. If any net settlement amount is owed to the defaulting Participant, NGX pays such amount and assumes all of the rights of such Participant under the offsetting Transactions.

NGX guarantees deliveries and financial settlement. Therefore, NGX is entitled to specified damages in the case of a failure to make or take delivery or a failure to pay under physically settled contracts.<sup>12</sup> In the event of a failure to deliver by a seller, for example, the seller is obligated to pay to NGX an amount equal to the reasonable direct costs and damages incurred by NGX as a result of the seller's failure to deliver, including the cost of purchasing a replacement quantity of the relevant commodity, costs imposed by the pipeline or hub as a result of the failure, interest and, in certain cases, for example during a system constraint period (defined as a potential constraint at a particular hub, determined by NGX in its sole discretion), additional liquidated damages. Similar damage calculations apply in the event of a failure to pay or a failure to take by the buyer. In the event that NGX defaults on any of its obligations, Participants may recoup damages as specified in the CPA.<sup>13</sup> These are similar to those described above.

In the event of a failure to pay by NGX which is not rectified within one business day, NGX will file a direction to pay with its escrow agent (currently CIBC Mellon Trust), and the escrow agent shall immediately draw down on the Guarantee Fund and pay the failure amount to the Participant.

If NGX has not performed by the fifth day following a failure to deliver or failure to take, the Participant may make a demand upon the Guarantee Fund. Either party may initiate mediation or arbitration proceedings which will stay an award from the Guarantee Fund for specified periods. In the case of NGX's insolvency, the Participant is entitled to accelerate, terminate and net all outstanding Transactions under procedures specified in the CPA.

Since 2001, NGX has experienced four material Participant defaults in response to which NGX successfully exercised its available remedies. Several other Participant defaults were successfully addressed short of liquidating their positions.

## 7. *Systems and Technology*

NGX uses its own custom-built software and some third party technology solutions to support the NGX Clearing System. Ownership or control of hardware and software, as well as responsibility for storage and management of data, resides with NGX with respect to clearing and settlement.

TMX system and technology policies and standards are used as a guideline in the creation of NGX policies and procedures. Development standards are generated by NGX in accordance with industry standards and subject to review by TMX and third-party audits.

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<sup>10</sup> NGX's rights exercisable upon the occurrence of a default with respect to a physically settled contract are provided for in Section 5.5 of the CPA and in Section 8.2 of the CPA with respect to financials.

<sup>11</sup> See CPA, Article 5.6 and 8.3.

<sup>12</sup> CPA Articles 5.1-5.3.

<sup>13</sup> CPA Articles 5.1- 5.3.

NGX's internal IT staff address any issues that arise with the NGX Clearing System, including any necessary enhancements, in accordance with NGX policies and procedures. Annual TMX and third-party audits are conducted to assess whether changes to technology have been properly authorized and documented, including a review of relevant policies and standards for compliance purposes.

NGX has established an oversight and risk analysis program for its clearing systems to ensure proper functioning and the maintenance of adequate capacity and security. NGX conducts periodic testing of key system functions and has emergency procedures and a disaster recovery plan. If a material systems failure were to occur, and impact NGX's ability to comply with the Recognition Orders (as defined below), NGX is required to immediately report such an event to the ASC. NGX reports systems availability to the ASC in its annual self-assessment report to the ASC.

Oversight/Risk Analysis Program

NGX has designed its computer systems with target availability in excess of 99% during trading hours.

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. 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. 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.

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

NGX has developed a Business Continuity Plan and a Disaster Recovery Plan designed to ensure the continued functioning of 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.

#### 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 clearing services. NGX conducts quality assurance and system testing for both the clearing services.

#### 8. *Financial Viability and Reporting*

The primary financial resources that NGX uses to support its activities consist of (a) the collateral NGX collects from its participants (the "Participants") in accordance with its risk management policy, as described in the CPA, (b) a credit facility maintained by NGX, and (c) a guarantee fund maintained by NGX. With the acquisition of NetThruPut Inc ("NTP") by NGX's parent company TMX Inc. ("TMX"), NGX added crude oil products to its product list, however, these new products did not require amendments to NGX's financial resource management.

#### 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. The accounts receivable margin is typically the largest factor in setting collateral requirements at NGX.

#### Credit Facility

NGX maintains a daylight overdraft credit facility with its clearing and settlement bank to facilitate movements of funds on settlement days, and a line of credit from the bank to cover overnight imbalances.<sup>14</sup>

As part of its obligation under the Credit Agreement, NGX must meet financial viability standards by maintaining at all times a certain asset to liability ratio, as well as a minimum net worth.

#### Guarantee Fund

NGX maintains a \$U.S.100 million fund which only Participants may access in the event of NGX defaults on its obligations under the CPA. The Guarantee Fund is in the form of a letter of credit issued by its clearing and settlement bank under the Credit Facility and deposited with an independent trustee (currently CIBC Mellon Trust) pursuant to a deposit agreement. NGX's reimbursement obligation to its clearing and settlement 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. NGX also maintains credit insurance on the backstop fund with Export Development Canada which insures TMX Group for any draw downs on the fund in excess of \$U.S.30 million resulting from a failure to pay by a Participant.

#### 9. *Operational Reliability*

NGX employs a team of Margin and Risk Analysts overseen by a Clearing Manager and a Vice-President of Clearing (the "Clearing Group"). The Clearing Group is responsible for oversight of day-to-day clearing operations, including tracking of current market price information, used to resolve trades in error and assist with end-of-day settlement prices in NGX contracts, and monitoring for Participant compliance with NGX's Risk Management Policy.

#### 10. *Protection of Assets*

As discussed above, all Participants are self-clearing. Accordingly, no Participants have customers for whom funds must be segregated.

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<sup>14</sup> This facility is in the amount of \$U.S.300 million.

NGX itself segregates the collateral of Participants from its own proprietary funds and there is no mutualization of risk among clearing Participants. Moreover, there is no commingling of the cash collateral of the respective Participants, such amounts are deposited and maintained in separate accounts.

The Bank Collateral Agreement between NGX and its clearing and settlement bank provides that the property of the relevant Participant may only be applied in accordance with the terms of the CPA and confirms that the clearing and settlement bank may only have access to and use the collateral (a) for the purpose of carrying out NGX instructions with respect to the acceptance or release of collateral under the CPA, (b) for the processing and payment of amounts owing under the CPA, and (c) as a permitted assignee of NGX's rights under the CPA (as security for NGX's obligations under the Credit Facility), subject to the terms of the CPA.

NGX holds cash collateral in segregated NGX bank accounts for the relevant Participant. Such cash collateral remains the Participant's property unless applied by or on behalf of NGX in accordance with CPA, Section 3.2(d). Cash posted as collateral is deposited in an interest-bearing account at its clearing and settlement bank, and the interest earned on such cash collateral is remitted to the Participant quarterly.<sup>15</sup>

11. *Outsourcing*

NGX does not outsource any of its key clearing functions.

12. *Information Sharing and Regulatory Cooperation*

NGX is required by its Recognition Orders (as defined below) to enter into and abide by the terms of all appropriate information sharing agreements. As such, NGX has mechanisms in place to ensure that it is able to, and will cooperate, by sharing information or otherwise, with the OSC and its staff, and other appropriate regulatory bodies. Pursuant to Schedule "D" of the 2009 Order, NGX provides the OSC with copies of all notices and reports it provides to or files with the ASC.

13. *Regulatory Regime*

NGX is a recognized clearing agency by the Alberta Securities Commission (the "**ASC**") and is a registered U.S. derivatives clearing organization ("**DCO**"). It was registered by the Commodity Futures Trading Commission ("**CFTC**") as a DCO on December 12, 2008.<sup>16</sup>

Alberta Recognition and Variation Orders

In 2008, NGX applied to the ASC for a change in its status from an exempt exchange to recognition under the *Securities Act* (Alberta) both as an exchange and a clearing agency with respect to its trading, clearing and settlement of natural gas, electricity and related contracts and received such recognition pursuant to an exchange recognition order and a clearing recognition order issued by the ASC as of October 9, 2008 (the "**Recognition Orders**"). Subsequently, NGX applied to the ASC for and, on April 14, 2009, received a variation of such Recognition Orders to allow NGX to offer crude oil commodity contracts on the NGX Trading and Clearing Systems as those terms are defined therein, and, in turn, allow NGX's Participants to transact in crude oil contracts on the NGX Trading and Clearing Systems (the "**Variation Order**").

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. Pursuant to the Recognition Orders, NGX has undertaken (1) to comply with applicable securities legislation, (2) to operate the NGX Trading System and Clearing System in accordance with specified "Operating Principles", (3) to operate the NGX Clearing System in accordance with specified "Clearing Principles," (4) to report to the ASC in accordance with specified "Reporting Requirements," (5) to take reasonable steps to ensure the fitness and reasonable conduct of its officers and directors, (6) to maintain proper conflicts of interest policies, (7) to notify the ASC in advance of (a) its outsourcing any key Trading System functions or key Clearing System functions, (b) any significant change in the operating of the Trading System or the Clearing System and (c) any change in the beneficial ownership of NGX, (8) to seek the ASC's prior approval of any significant changes to the NGX Sophistication Thresholds, (9) to seek the ASC's acceptance of, or any exemption for, any new or revised contract that differs significantly from the contracts that have already been exempted by the ASC, (10) to notify the ASC immediately upon NGX becoming aware that any of its representations in the Recognition Orders are no longer true and accurate or if NGX becomes unable to fulfill any of its undertakings set out in the Recognition Orders; and (11) to comply with any request from the

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<sup>15</sup> See CPA, Article 3.2(g).

<sup>16</sup> The DCO registration order was conditioned on NGX clearing physically delivered or financially settled contracts based on energy products that could qualify as exempt commodities under section 1(a)(14) of the Act, contracts that are over-the-counter derivative instruments, as that term is defined in section 408(2) of the Federal Deposit Insurance Corporation Act, 12 U.S.C. 4421(2) and spot contracts not subject to the Act. Further information describing NGX's regulatory structure is provided under "Regulatory Regime" below.

Executive Director of the ASC for electronic or any other form of access to the NGX Trading System or the NGX Clearing System to assist the ASC in its oversight of NGX as an exchange and/or as a clearing agency.

Operating Principles

NGX as part of its exchange Recognition Order is required to meet on a continuing basis eight Operating Principles that are similar to the Core Principles with which U.S. Designated Contract Markets must comply. These Operating Principles establish the basic regulatory requirements that NGX as an exchange must meet. They include all of the material requirements applicable to U.S. designated contract markets. The Operating Principles mandate that NGX meet the following requirements:

- Financial Resources – the exchange must maintain financial, operational and managerial resources to operate the Trading System and support its trade execution functions.
- Operational Information – the exchange must disclose to participants information about contract terms and conditions, trading conventions, trading volume and other relevant information.
- Market Oversight – the exchange must establish minimum standards for participants and a program for ongoing monitoring of financial status or credit worthiness of participants, monitoring trading to ensure an orderly market; maintain authority to collect or capture all necessary information; and to intervene in the market as necessary to ensure an orderly market.
- Rule enforcement – the exchange shall monitor the market and enforce its rules.
- System safeguards – the exchange must establish a program to oversee the integrity and proper functioning of its systems, including adequate capacity and security and a disaster recovery plan, and a risk review of every significant new service or enhancement.
- Record keeping – the exchange must maintain books and records.
- Risk management – the exchange shall identify and manage risks through risk analysis.
- Governance and conflict of interest – the exchange must have rules to minimize conflict of interest in its decision-making process.

As part of its clearing Recognition Order, NGX is required to meet on a continuing basis thirteen Clearing Principles, which are similar in substance and effect to the core principles which apply to NGX under its registration as a U.S. DCO. They include immediate reporting to ASC of the following:

- 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.
- 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.
- 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.
- 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.
- Treatment of Funds – The clearing agency shall maintain standards and procedures designed to protect and ensure the safety of member or participant funds.
- 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.

- 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.
- 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.
- 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.
- 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 allegations or complaints it receives concerning instances of suspected fraud or manipulation in clearing activity.
- 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.
- 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.
- 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.

NGX must comply with a significant number and variety of reporting requirements. These are an important tool by which the ASC ensures its ability to carry out its oversight functions, oversees the continued operations of NGX and ensures that NGX complies with NGX's regulatory obligations. These reporting requirements are applicable to NGX through the clearing Recognition Order. They include immediate reporting to ASC of the following:

- Any event, circumstance or situation that renders, or is likely to render, NGX unable to comply with applicable securities legislation or the ASC order
- Any default by NGX, including details of the default and an explanation of its impact on NGX
- Any order, sanction or directive from a regulatory or governmental body
- Any investigation of NGX by a regulatory or governmental body
- Any criminal or quasi government charges brought against NGX
- Any civil suits brought against NGX that are likely to have a significant impact on NGX

ASC requires that other events be reported to it within two days. These include changes of directors, changes to senior management, any significant change to the CPA (which acts in many instances as the rules of the exchange and clearing agency), and any default under the terms of the CPA. In addition, NGX is required to provide the ASC on a quarterly basis with a list of Participants, a description of any significant margin requirement exceptions during the quarter, and interim financial statements.

On an annual basis, NGX must provide audited financial statements and a self- assessment which includes a summary of new products introduced and expansion plans, a report detailing the testing undertaken to ensure adequacy of system safeguards, including risk management methodologies, emergency procedures and disaster recovery plans, and a summary of staffing changes.

The Executive Director of the ASC may require further information from NGX as provided under the securities legislation.

Memorandum of Understanding

Pursuant to a Memorandum of Understanding among the ASC and the Securities Commissions of the Provinces of Saskatchewan, Manitoba, Ontario, Quebec and British Columbia (the "Exempting Regulators") which became effective on January 1, 2010 (the "MOU"), the ASC serves as the lead regulator for the NGX exchange, responsible for its oversight. The "Oversight Program" required to be carried out by ASC with respect to NGX pursuant to the MOU is required to include the following items, at a minimum: (1) review of information filed by NGX on critical financial and operational matters, risk management and significant changes to operations, including information filed that relates to corporate governance, rules, systems and operations, access, listing criteria and/or financial instrument development, fees, financial viability and regulation; (2) review and approval, if necessary of the bylaws, rules, policies and other similar instruments of NGX under the procedures established by the ASC from time to time; and (3) periodic oversight of NGX's (a) corporate finance policies, (b) policies with respect to trading suspensions and de-listings, (c) coordination with the markets of the underlying securities, (d) monitoring of trading and position limits, (e) surveillance and enforcement, (f) access, (g) information transparency, (h) corporate governance, (i) risk management and (j) systems and technology.

The ASC has discretion concerning the manner in which to carry out the Oversight Program, but must review the aforementioned functions of NGX at least every three years. The ASC is required to send the final report of any oversight review that it performs with respect to NGX and any responses thereto from NGX to each Exempting Regulator. An Exempting Regulator is permitted, pursuant to the MOU, to require that NGX provide it with copies of filings that it makes with the ASC as well as any bylaws, rules, policies or other similar instruments that it is required to provide to the ASC and other similar documentation. An Exempting Regulator is also permitted to request that the ASC perform an oversight review of NGX specifically related to the jurisdiction of the Exempting Regulator, in which circumstance the ASC could determine to conduct a review of the office of NGX in the jurisdiction of the applicable Exempting Regulator or of a specific function performed by NGX in such jurisdiction. If the ASC determines not to perform any review after being requested to do so by an Exempting Regulator, the Exempting Regulator shall have the authority to perform such a review on its own.

Other Provinces

NGX has obtained exemptive relief from regulators in extra-provincial jurisdictions in which it has a Participant located, including Ontario.

Manitoba

NGX applied for exemptive relief in Manitoba pursuant to Sections 36(3), 38(4) and 66(1) of the Commodity Futures Act (Manitoba). Order #5897 was granted on April 22, 2009. The order exempts NGX from the requirement to be recognized as an extraprovincial commodity futures exchange in Manitoba, to have the form of contracts approved and exempts NGX Contracting Parties from applicable registration requirements. This order superseded an earlier MRRS Order No. 1662761 dated December 1, 2004 granting NGX exemptive relief as an exchange from applicable laws in Alberta, Saskatchewan and Manitoba.

British Columbia and Quebec

NGX 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 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, and as further revised on April 29, 2009, to include crude oil products), 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.

Ontario

The OSC granted NGX exemptive relief pursuant to Sections 38 and 80 of the Commodity Futures Act (Ontario) and pursuant to Section 147 of the OSA on March 31, 2009. The order exempts NGX from the requirement to be recognized as an extra-provincial commodity futures exchange and stock exchange and exempts NGX Contracting Parties located in Ontario from applicable registration requirements.

U.S.

NGX operates the Marketplace pursuant to an exemption under Section 2(h)(3) of the U.S. Commodity Exchange Act (“CEA”) (“**Exempt Commercial Market**” or “**ECM**” status). 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 was 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. The DCO order is attached hereto as Appendix “P”. In order to be registered as a DCO, a clearing organization must demonstrate that it complies with the thirteen core principles set forth in Section 5b(c)(2) of the CEA, which relate to the following subjects: (1) financial, operational and managerial resources, (2) member and product eligibility, (3) risk management, (4) settlement procedures, (5) treatment of funds, (6) default rules and procedures, (7) rule enforcement, (8) system safeguards, (9) reporting, (10) recordkeeping, (11) public information, (12) information sharing, and (13) antitrust considerations. NGX conducts its operations in compliance with each of these core principles.

**4. OSC Orders Sought**

NGX is seeking an order under Section 144 of the OSA varying the 2009 Order to reflect that NGX’s clearing agency functions meet the criteria for clearing agencies as set out in OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*.

**5. Specific Relief Requested**

Based on this Application, recognition by the ASC of NGX as a clearing agency and the materials attached hereto, NGX submits that it would not be contrary to the public interest for the Commission to grant an order pursuant to section 144 of the OSA, varying the 2009 Order to reflect that NGX’s clearing agency functions meet the criteria set out in OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies*.

**6. Enclosures**

Attached are the following:

- A. Draft exemptive relief order; and
- B. a cheque payable to the Ontario Securities Commission in the amount of \$5,000 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 & Regulatory Compliance Officer  
Natural Gas Exchange Inc.

Enclosures

cc. Peter Krenkel, President, Natural Gas Exchange Inc.



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

**AND**

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

**VARIATION TO EXEMPTION ORDER  
(Section 144 of the Act)**

**WHEREAS** the Commission issued an order dated March 31, 2009 (2009 Order), exempting:

- (a) NGX from the requirement to be registered as a commodity futures exchange under section 15 of the Commodity Futures Act (CFA);**
- (b) certain trades by NGX participants in Ontario in contracts on NGX from the registration requirement under section 22 of the CFA;**
- (c) certain trades by participants in Ontario in contracts from the requirements under section 33 of the CFA; and**
- (d) NGX from the requirement to be recognized as a stock exchange under section 21 of the OSA;**

**AND WHEREAS** NGX is an exchange that also engages in certain clearing agency functions;

**AND WHEREAS** subsection 21.2(0.1) of the Act will, commencing on March 1, 2011, prohibit a clearing agency from carrying on business in Ontario unless it is recognized by the Commission as a clearing agency or is exempt from the requirement to be recognized by order of the Commission;

**AND WHEREAS** the Commission has determined that it is not prejudicial to the public interest to issue this order that varies and restates the 2009 Order to confirm that NGX satisfies the criteria applicable to exchanges and clearing agencies;

**IT IS ORDERED**, pursuant to section 144 of the Act, that the 2009 Order be varied and restated as follows:

**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 ~~had~~ filed an application dated January 9, 2009 (2009 Application) with the Ontario Securities Commission (Commission) requesting:

- (a) an order pursuant to section 80 of the Commodity Futures Act (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 the Commission had granted such order dated March 31, 2009 (2009 Order);

**AND WHEREAS** NGX has filed an application dated November 30, 2010 (2010 Application) pursuant to section 144 of the OSA requesting an amendment to the 2009 Order confirming that it engages in certain clearing agency functions and satisfies the criteria for clearing agencies attached as Schedule "E" to this order;

**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), and a clearing and settlement system (Clearing System), based in Calgary, Alberta, for the trading, and/or clearing and settlement, respectively, of Contracts in natural gas, electricity, and heat rate and crude oil products related to the gas and electricity markets, and anticipates introducing Contracts in oil and renewable energy certificates in the future.
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 aligns with either standard over-the-counter market settlement conventions for settlement or with futures-style settlement conventions.
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, varied by an order dated April 9, 2009 (Exchange Recognition Order, and Clearing Agency Recognition Order, and Variation Order, set out in Schedules "A", and "B" and "C", respectively) and is subject to regulatory oversight by the ASC pursuant to the ASA.
5. The ASC is NGX's lead regulator pursuant to the Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems.
- ~~5.6.~~ 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 and the Clearing 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 and Clearing System (if applicable) 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 either 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.~~
- ~~16.15.~~ 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** subsection 21.2(0.1) of the OSA will, commencing on March 1, 2011, prohibit a clearing agency from carrying on business in Ontario unless it is recognized by the Commission as a clearing agency or is exempt from the requirement to be recognized by order of the Commission;

**AND WHEREAS** the definition of clearing agency in the OSA does not include a stock exchange;

**AND WHEREAS** NGX is an exchange that also engages in certain clearing agency functions;

**AND WHEREAS** based on the 2009 Application and the 2010 Application and the representations NGX has made to the Commission, the Commission has determined that NGX satisfies the criteria set out in Schedule "CD" relating to its activities as an exchange and the criteria set out in Schedule "E" relating to its clearing agency activities 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 "DF".

**DATED** ~~March 31, 2009.~~

**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"

ALBERTA SECURITIES COMMISSION

VARIATION ORDER

Natural Gas Exchange Inc.

Background

1. Natural Gas Exchange Inc. (NGX) has applied to the Alberta Securities Commission (Commission) for an order under sections 63(1)(b) and 67(3)(b) of the Securities Act (Alberta) (Act) to vary two orders dated October 9, 2008 recognizing NGX as a clearing agency and as an exchange (the Recognition Orders, cited respectively as Natural Gas Exchange Inc., 2008 ABASC 583 and Natural Gas Exchange Inc., 2008 ABASC 584).

Interpretation

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

Representations

3. NGX represents that:
- (a) the variation would allow NGX to offer crude oil commodity contracts (Crude Oil Contracts) on the NGX Trading and Clearing Systems and, in turn, allow NGX's Contracting Parties to transact in Crude Oil Contracts on the NGX Trading and Clearing Systems;
  - (b) the addition of Crude Oil Contracts will not impact NGX's ability to comply with the terms and conditions of the Recognition Orders; and
  - (c) NGX will continue to comply with all terms and conditions of the Recognition Orders, including the Operating Principles and Clearing Principles.

Decision

4. Based on the above representations, the Commission, considering that it would not be prejudicial to the public interest to do so, orders pursuant to section 214(1) of the Act that paragraph 5(a) of the clearing agency Recognition Order and paragraph 4(a) of the exchange Recognition Order are varied by deleting "natural gas, electricity and related contracts" and substituting "natural gas, electricity, crude oil and related contracts".

"original signed by"  
Glenda A. Campbell, QC

"original signed by"  
Stephen R. Murison

## SCHEDULE “CD”

### 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 "E"**

**Criteria for Recognition and Exemption from Recognition as a Clearing Agency**

**PART 1 GOVERNANCE**

- 1.1 The governance structure and governance arrangements of the clearing agency ensures:
- (a) effective oversight of the clearing agency;
  - (b) the clearing agency's activities 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 owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities (settlement services) of the clearing agency;
  - (e) the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;
  - (f) each director or officer of the clearing agency, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the clearing agency is a fit and proper person; and
  - (g) there are appropriate qualifications, limitation of liability and indemnity provisions for directors and officers of the clearing agency.

**PART 2 FEES**

- 2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.
- 2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

**PART 3 ACCESS**

- 3.1 The clearing agency has appropriate written standards for access to its services.
- 3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. A clearing agency keeps records of
- (a) each grant of access including, for each participant, the reasons for granting such access, and
  - (b) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

**PART 4 RULES AND RULEMAKING**

- 4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and
- (a) are not inconsistent with securities legislation,
  - (b) do not permit unreasonable discrimination among participants, and
  - (c) do not impose any burden on competition that is not necessary or appropriate.
- 4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.
- 4.3 The clearing agency monitors participant activities to ensure compliance with the rules.
- 4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

**PART 5 DUE PROCESS**

5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:

- (a) an applicant or a participant is given an opportunity to be heard or make representations; and
- (b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.

**PART 6 RISK MANAGEMENT**

6.1 The clearing agency's settlement services are designed to minimize systemic risk.

6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.

6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:

- 1. Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.
- 2. The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.
- 3. Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.
- 4. Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.
- 5. Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.
- 6. If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlements.

6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

**PART 7 SYSTEMS AND TECHNOLOGY**

7.1 For its settlement services systems, the clearing agency:

- (a) develops and maintains,
  - (i) reasonable business continuity and disaster recovery plans,
  - (ii) an adequate system of internal control,
  - (iii) adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;
- (b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,
  - (i) makes reasonable current and future capacity estimates,
  - (ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

(iii) tests its business continuity and disaster recovery plans; and

(c) promptly notifies the regulator of any material systems failures.

7.2 The clearing agency ensures a qualified party conducts an independent systems review and prepares a report regarding its compliance with section 7.1(a).

**PART 8 FINANCIAL VIABILITY AND REPORTING**

8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

**PART 9 OPERATIONAL RELIABILITY**

9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

**PART 10 PROTECTION OF ASSETS**

10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

**PART 11 OUTSOURCING**

11.1 Where the clearing agency 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. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

**PART 12 INFORMATION SHARING AND REGULATORY COOPERATION**

12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

## SCHEDULE "DF"

### 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, as amended from time to time, or any successor order to such orders.
3. ~~NGX will continue to meet the criteria for exemption from registration as an exchange~~ Criteria for Exemption from Recognition of a Derivatives Exchange Recognized in Another CSA Jurisdiction, as set out in Schedule "CD".
4. ~~NGX will continue to meet the Criteria for Recognition and Exemption from Recognition as a Clearing Agency~~, as set out in Schedule "E".

#### ACCESS

- ~~4.5.~~ Each Participant is a sophisticated party that meets the NGX Sophistication Thresholds.
- ~~5.6.~~ All orders for Contracts transmitted to the Trading System by an Ontario Participant pursuant to the relief herein will be solely as principal.

#### PRODUCTS

- ~~6.7.~~ 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

- ~~7.8.~~ 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.
- ~~8.9.~~ 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, and
  - 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; and
  - (e) any material problem with the clearance and settlement of transactions in contracts cleared by NGX that could materially affect the financial viability of NGX.

**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.