

B.2.5 Nasdaq CXC Limited and Ensoleillement Inc. – ss. 21, 144

Headnote

Subsection 144(1) of the Securities Act (Ontario) – application for order varying the Commission’s order recognizing Nasdaq CXC Limited as an exchange – variation required to replace references to IIROC – requested order granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21, 144(1).

May 12, 2023

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

AND

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

ORDER

(Sections 21 and 144 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated December 21, 2017, which was varied on April 20, 2018, February 8, 2019, August 31, 2020, December 2, 2021, and March 7, 2022, recognizing Ensoleillement Inc. (**CXCH**) and Nasdaq CXC Limited (**Nasdaq Canada**) as exchanges pursuant to section 21 of the Act (**Recognition Order**);

AND WHEREAS CXCH is the sole shareholder of Nasdaq Canada and Nasdaq, Inc. (**Nasdaq**) is the sole shareholder of CXCH;

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

AND WHEREAS CXCH, Nasdaq Canada and Nasdaq have agreed to the applicable terms and conditions set out in the Schedules to the Recognition Order;

AND WHEREAS the Commission has received an application under section 144 of the Act to vary and restate the Recognition Order to reflect the legal name change of Investment Industry Regulatory Organization of Canada to Canadian Investment Regulatory Organization (**CIRO**) (**Application**);

AND WHEREAS based on the Application, the Commission has determined that:

- (a) CXCH and Nasdaq Canada continue to satisfy the recognition criteria set out in Schedule 1 to the Recognition Order,
- (b) it is in the public interest to continue to recognize each of CXCH and Nasdaq Canada as an exchange pursuant to section 21 of the Act, and
- (c) it is not prejudicial to the public interest to vary and restate the Recognition Order pursuant to section 144 of the Act;

IT IS ORDERED, pursuant to section 144 of the Act, that the Application to vary and restate the Recognition Order is granted.

IT IS ORDERED, pursuant to section 21 of the Act, that:

- (a) CXCH continues to be recognized as an exchange, and
- (b) Nasdaq Canada continues to be recognized as an exchange,

provided that CXCH, Nasdaq Canada and Nasdaq comply with the terms and conditions set out in the Schedules to this Recognition Order, as applicable.

DATED this 12th day of May 2023, to take effect June 1, 2023.

“Susan Greenglass”
Director, Market Regulation

**SCHEDULE 1
CRITERIA FOR RECOGNITION**

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

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

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

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

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

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

2.2 Fitness

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

PART 3 ACCESS

3.1 Fair Access

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

PART 4 REGULATION OF PARTICIPANTS ON THE EXCHANGE

4.1 Regulation

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

PART 5 RULES AND RULEMAKING

5.1 Rules and Rulemaking

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

PART 6 DUE PROCESS

6.1 Due Process

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

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

PART 7 CLEARING AND SETTLEMENT

7.1 Clearing and Settlement

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

PART 8 SYSTEMS AND TECHNOLOGY

8.1 Information Technology Risk Management Procedures

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

PART 9 FINANCIAL VIABILITY

9.1 Financial Viability

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

PART 10 FEES

10.1 Fees

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

PART 11 INFORMATION SHARING AND REGULATORY COOPERATION

11.1 Information Sharing and Regulatory Cooperation

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

SCHEDULE 2
TERMS AND CONDITIONS APPLICABLE TO NASDAQ CANADA

1. Definitions and Interpretation

(a) For the purposes of this Schedule:

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

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

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

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

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

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

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

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

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

“CIRO” means the Canadian Investment Regulatory Organization;

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

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

“Nominating Committee” means the committee established by CXCH pursuant to section 26 of Schedule 3;

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

“Regulatory Oversight Committee” means the committee established by Nasdaq Canada pursuant to section 0 of this Schedule;

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

“shareholder” means a person or company that holds any class or series of voting shares of CXCH;

“significant shareholder” means:

- (i) a person or company that beneficially owns or controls directly more than 10% of any class or series of voting shares of CXCH or Nasdaq; or
- (ii) a shareholder whose nominee is on the Board, for as long as the nominee of that shareholder remains on the Board; and

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

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

- (b) For the purposes of this Schedule, an individual is independent if the individual is “independent” within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*, as amended from time to time, but is not independent if the individual:
- (i) is a partner, officer, director or employee of a Nasdaq Canada marketplace participant, or of an affiliated entity of a Nasdaq Canada marketplace participant, who is responsible for or is actively engaged in the day- to-day operations or activities of that Nasdaq Canada marketplace participant;
 - (ii) is an officer or an employee of CXCH or any of its affiliated entities;
 - (iii) is a partner, officer or employee of Nasdaq, Inc. or an associate of that partner, officer or employee;
 - (iv) is a director of Nasdaq or an associate of that director;
 - (v) is a person who owns or controls, or is the officer or employee of a person or company that owns or controls, directly or indirectly, more than 10% of the shares of CXCH;
 - (vi) is a director of a person or company that beneficially owns or controls, directly or indirectly, more than 10% of any class or series of voting shares of Nasdaq; or
 - (vii) has any relationship with Nasdaq or a person or company that owns or controls, directly or indirectly, more than 10% of the shares of CXCH, that could, in the view of the Nominating Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment as a director of CXCH or Nasdaq Canada.
- (c) For the purposes of paragraph (b), the Nominating Committee may waive the restrictions set out in subparagraphs (b)(iv) and (b)(vi) provided that:
- (i) the individual being considered does not have, and has not had, any relationship with Nasdaq, Inc. that could, in the view of the Nominating Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgement as a director of Nasdaq Canada or CXCH;
 - (ii) Nasdaq Canada publicly discloses the use of the waiver with reasons why the particular candidate was selected;
 - (iii) Nasdaq Canada provides advance notice to the Commission, at least 15 business days before the public disclosure in sub-paragraph (c)(ii) is made, and
 - (iv) the Commission does not object within 15 business days of its receipt of the notice provided under sub-paragraph (c)(iii) above.

2. Public Interest Responsibilities

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

3. Share Ownership Restrictions

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

4. Recognition Criteria

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

5. Fitness

To ensure that Nasdaq Canada operates with integrity and in the public interest, Nasdaq Canada will take reasonable steps to ensure that each director or officer of Nasdaq Canada is a fit and proper person. As part of those steps, Nasdaq Canada will consider whether the past conduct of each director or officer of Nasdaq Canada affords reasonable grounds for the belief that the director or officer will perform their duties with integrity and in a manner that is consistent with Nasdaq Canada's public interest responsibilities.

6. Board of Directors

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

7. Regulatory Oversight Committee

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

8. Conflicts of Interest and Confidentiality Procedures

- (a) Nasdaq Canada must establish, maintain and require compliance with policies and procedures that:
 - (i) require that confidential information regarding marketplace operations, regulation functions, or a Nasdaq Canada marketplace participant that is obtained by a partner, director, officer or employee of

a significant shareholder through that individual's involvement in the management or oversight of marketplace operations or regulation functions of Nasdaq Canada:

- (A) be kept separate and confidential from the business or other operations of the significant shareholder and its affiliated entities, except with respect to information regarding marketplace operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of marketplace operations and the individual can and does exercise due care in his or her disclosure of the information, and
 - (B) not be used to provide an advantage to the significant shareholder or its affiliated entities.
- (b) Nasdaq Canada must regularly review compliance with the policies and procedures established under (a) and must document each review, and any deficiencies, and how those deficiencies were remedied.

9. Access

Nasdaq Canada's requirements must provide access to the facilities of Nasdaq Canada only to properly registered investment dealers that are members of CISO and satisfy reasonable access requirements established by Nasdaq Canada.

10. Regulation of Nasdaq Canada Marketplace Participants

- (a) Nasdaq Canada must establish, maintain and require compliance with policies and procedures that effectively monitor and enforce the Rules against Nasdaq Canada marketplace participants, either directly or indirectly through a regulation services provider.
- (b) Nasdaq Canada has retained and will continue to retain CISO as a regulation services provider to provide, as agent for Nasdaq Canada, certain regulation services that have been approved by the Commission.
- (c) Nasdaq Canada must perform all other regulation functions not performed by CISO, and must maintain adequate staffing, systems and other resources in support of those functions. Nasdaq Canada must obtain prior Commission approval before outsourcing such regulation functions to any party, including affiliated entities or associates of Nasdaq Canada.
- (d) Nasdaq Canada must notify the Commission of any violations of Ontario securities law of which it becomes aware in the ordinary course of its business or otherwise.

11. Fees, Fee Models and Incentives

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

- (c) Except with the prior approval of the Commission, Nasdaq Canada must not require another person or company to purchase or otherwise obtain products or services from Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders as a condition of Nasdaq Canada supplying or continuing to supply a product or service.
- (d) If the Commission considers that it would be in the public interest, the Commission may require Nasdaq Canada to submit for approval by the Commission a fee, fee model or incentive that has previously been submitted to and/or approved by the Commission.
- (e) Where the Commission decides not to approve the fee, fee model or incentive submitted under (d), any previous approval for the fee, fee model or incentive must be revoked, if applicable, and Nasdaq Canada will no longer be permitted to offer the fee, fee model or incentive.

12. Order Routing

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

13. Financial Reporting

Nasdaq Canada must deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days from the commencement of each fiscal year.

14. Financial Viability Monitoring

- (a) Nasdaq Canada must maintain sufficient financial resources for the proper performance of its functions and to meet its responsibilities.
- (b) Nasdaq Canada must calculate the following financial ratios monthly:
 - (i) a current ratio, being the ratio of current assets to current liabilities;
 - (ii) a debt to cash flow ratio, being the ratio of total debt (including any line of credit draw downs, and the current and long-term portions of any loans, but excluding accounts payable, accrued expenses and other liabilities) to EBITDA (earnings before interest, taxes, stock-based compensation, depreciation and amortization) for the most recent 12 months; and
 - (iii) a financial leverage ratio, being the ratio of total assets to shareholders' equity,in each case following the same accounting principles as those used for the unaudited non-consolidated financial statements of Nasdaq Canada.
- (c) Nasdaq Canada must report quarterly in writing to the Commission the monthly calculations for the previous quarter of the financial ratios as required to be calculated under 0.
- (d) If Nasdaq Canada determines that it does not have, or anticipates that, in the next twelve months, it will not have sufficient financial resources for the proper performance of its functions and to meet its responsibilities, it will immediately notify the Commission along with the reasons and any impact on the financial viability of Nasdaq Canada.
- (e) Upon receipt of a notification made by Nasdaq Canada under (d), the Commission may, as determined appropriate, impose additional terms and conditions on Nasdaq Canada.

15. Additional Information

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

16. Governance Review

- (a) At the request of the Commission, Nasdaq Canada must engage an independent consultant, or independent consultants acceptable to the Commission to prepare a written report assessing the governance structure of Nasdaq Canada (Governance Review).

- (b) The written report must be provided to the Board of Nasdaq Canada promptly after the report's completion and then to the Commission within 30 days of providing it to the Board.
- (c) The scope of the Governance Review must be approved by the Commission.

17. Provision of Information

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

18. Compliance with Terms and Conditions

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

19. Listings

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

APPENDIX A

Additional Reporting Obligations

1. Ad Hoc

- (a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding or other similar agreement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, data subscription agreements, etc.), or (v) relates to a business line other than exchange services.
- (b) Immediate notification if Nasdaq Canada:
 - (i) becomes the subject of any order, directive or similar action of a governmental or regulatory authority;
 - (ii) becomes aware that it is the subject of a criminal or regulatory investigation; or
 - (iii) becomes, or it is notified in writing that it will become, the subject of a material lawsuit.
- (c) Any strategic plan for Nasdaq Canada, within 30 days of approval by the Board.
- (d) Any information submitted by Nasdaq Canada to a Canadian securities regulatory authority under a requirement of a recognition order, exemption order or NI 21-101, provided concurrently.
- (e) Copies of all notices, bulletins and similar forms of communication that Nasdaq Canada sends to the Nasdaq Canada marketplace participants.
- (f) Prompt notification of any application for exemption or waiver from Nasdaq Canada requirements received from a significant shareholder or any of its affiliated entities.

2. Quarterly Reporting

- (a) A quarterly report summarizing all exemptions or waivers granted during the period pursuant to the Rules to any Nasdaq Canada marketplace participant, which must include the following information:
 - (i) the name of the Nasdaq Canada marketplace participant;
 - (ii) the type of exemption or waiver granted during the period;
 - (iii) the date of the exemption or waiver; and
 - (iv) a description of the recognized exchange's reason for the decision to grant the exemption or waiver.
- (b) A quarterly report summarizing instances where conflicts of interest or potential conflicts of interest with respect to Competitors have been identified by Nasdaq Canada and how such conflicts were addressed.

3. Annual Reporting

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

SCHEDULE 3
TERMS AND CONDITIONS APPLICABLE TO CXCH

20. DEFINITIONS AND INTERPRETATION

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

21. PUBLIC INTEREST RESPONSIBILITIES

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

22. SHARE OWNERSHIP RESTRICTIONS

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

23. RECOGNITION CRITERIA

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

24. FITNESS

In order to ensure that CXCH and Nasdaq Canada operate with integrity and in the public interest, CXCH will take reasonable steps to ensure that each director or officer of CXCH is a fit and proper person. As part of those steps, CXCH will consider whether the past conduct of each director or officer of CXCH affords reasonable grounds for belief that the director or officer will perform their duties with integrity and in a manner that is consistent with CXCH's and Nasdaq Canada's public interest responsibilities.

25. BOARD OF DIRECTORS

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

26. NOMINATING COMMITTEE

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

- (a) is made up of at least three directors, a majority of whom must be independent, and has an independent Chair;
- (b) confirms the status of a nominee to the Board as independent before the individual is appointed to the Board or the name of the individual is submitted to shareholders as a nominee for election to the Board, whichever comes first;
- (c) confirms, on an annual basis, that the status of the directors that are independent has not changed;
- (d) assesses and approves all nominees of management to the Board; and
- (e) has a requirement that the quorum consist of a majority of the Nominating Committee members, a majority of whom must be independent.

27. CONFIDENTIALITY PROCEDURES

- (a) CXCH must establish, maintain and require compliance with policies and procedures that:
 - (i) require that confidential information regarding marketplace operations, regulation functions, or a Nasdaq Canada marketplace participant that is obtained by a partner, director, officer or employee of CXCH or Nasdaq through that individual's involvement in the management or oversight of the marketplace operations or regulation functions of Nasdaq Canada:
 - (A) be kept separate and confidential from the business or other operations of the partner, director, officer or employee of CXCH or Nasdaq, except with respect to information regarding marketplace operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of marketplace operations and the individual can and does exercise due care in his or her disclosure of the information, and
 - (B) not be used to provide an advantage to the partner, director, officer or employee of CXCH or Nasdaq or Nasdaq's affiliated entities,
- provided that nothing in (a)(i) will be construed to limit CXCH or Nasdaq Canada from providing to Nasdaq necessary information.
- (b) CXCH must regularly review compliance with the policies and procedures established under (a) and must document each review and any deficiencies and how those deficiencies were remedied.

28. ALLOCATION OF RESOURCES

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

29. FEES, FEE MODELS AND INCENTIVES

- (a) CXCH must ensure that its affiliated entities, including Nasdaq Canada, do not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person, significant shareholder or company, provide:
 - (ii) any discount, rebate, allowance, price concession or other similar arrangement on any services or products offered by Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders that is conditional upon the purchase of any other service or product provided by the affiliated entity; or
 - (iii) any discount, rebate, allowance, price concession or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies,
- unless prior approval has been granted by the Commission.
- (b) CXCH must ensure that Nasdaq Canada does not require a person or company to purchase or otherwise obtain products or services from Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders as a condition of Nasdaq Canada supplying or continuing to supply a product or service unless prior approval has been granted by the Commission.
- (c) CXCH must ensure that Nasdaq Canada or Nasdaq and its affiliated entities and significant shareholders do not require another person, significant shareholder or company to obtain products or services from Nasdaq Canada as a condition of the affiliated entity supplying or continuing to supply a product or service.

30. ORDER ROUTING

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

31. FINANCIAL REPORTING

CXCH must deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days from the commencement of each fiscal year.

32. PRIOR COMMISSION APPROVAL

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

33. REPORTING REQUIREMENTS

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

34. GOVERNANCE REVIEW

- (a) At the request of the Commission, CXCH must engage an independent consultant, or independent consultants, acceptable to the Commission to prepare a written report assessing the governance structure of CXCH (CXCH Governance Review).
- (b) The written report must be provided to the Board of CXCH promptly after the report's completion and then to the Commission within 30 days of providing it to the Board.
- (c) The scope of the CXCH Governance Review must be approved by the Commission.

35. PROVISION OF INFORMATION

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

36. COMPLIANCE WITH TERMS AND CONDITIONS

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

APPENDIX B

Additional Reporting Obligations

1. Ad Hoc

- (a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding or other similar agreement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, data subscription agreements, etc.), or (v) relates to a business line other than exchange services.
- (b) Immediate notification if CXCH:
 - (i) becomes the subject of any order, directive or similar action of a governmental or regulatory authority;
 - (ii) becomes aware that it is the subject of a criminal or regulatory investigation; or
 - (iii) becomes, or it is notified in writing that it will become, the subject of a material lawsuit.
- (c) Immediate notification if Nasdaq becomes, or it is notified in writing that it will become, the subject of a criminal, administrative or regulatory proceeding.
- (d) Any strategic plan for CXCH, within 30 days of approval by the Board.
- (e) Any information submitted by CXCH to a Canadian securities regulatory authority under a requirement of a recognition order, exemption order or NI 21-101, provided concurrently.

2. Annual Reporting

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

SCHEDULE 4
TERMS AND CONDITIONS APPLICABLE TO NASDAQ

37. Definitions and Interpretation

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

38. Public Interest Responsibilities

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

39. Allocation of Resources

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

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

1. Purpose

This Protocol sets out the procedures a recognized exchange (Exchange) must follow for any Rule or Change, both as defined in section 2 below, and describes the procedures for their review by Commission Staff (Staff) and approval by the Commission or the Director. This Protocol also establishes requirements regarding the time at which an Exchange may begin operations following recognition by the Commission.

2. Definitions

For the purposes of this Protocol:

- (a) *Change* means a Fee Change, a Housekeeping Change or a Significant Change.
- (b) *Director* means "Director" as defined in subsection 1(1) of the Securities Act (Ontario).
- (c) *Fee Change* means any new fee or fee model of the Exchange and any amendment to a fee or fee model.
- (d) *Fee Change subject to Public Comment* means a Fee Change that, in Staff's view, may have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets or otherwise raises regulatory or public interest concerns and should be subject to public comment.
- (e) *Housekeeping Change* means an amendment to the information in Form 21-101F1 that
 - (i) does not have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets, or
 - (ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.
- (f) *Housekeeping Rule* means a new Rule or an amendment to a Rule that
 - (i) does not have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets, or
 - (ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.
- (g) *Public Interest Rule* means a Rule or an amendment to a Rule that is not a Housekeeping Rule.
- (h) *Rule* includes a rule, policy and other similar instrument of the Exchange.
- (i) *Significant Change* means an amendment to the information in Form 21-101F1 other than
 - (i) a Housekeeping Change,
 - (ii) a Fee Change, or
 - (iii) a Rule,and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101 CP.
- (j) *Significant Change subject to Public Comment* means a Significant Change that
 - (i) is listed in paragraphs 6.1(4)(a) or (b) of Companion Policy 21-101 CP, or
 - (ii) in Staff's view, may have a significant impact on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets or otherwise raises regulatory or public interest concerns and should be subject to public comment.

3. Scope

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

4. Board Approval

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

5. Waiving or Varying the Protocol

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

6. Commencement of Exchange Operations

The Exchange must not begin operations until a reasonable period of time after the Exchange is notified that it has been recognized by the Commission.

7. Materials to be Submitted and Timelines

- (a) Prior to the implementation of a Fee Change, Public Interest Rule or Significant Change, the Exchange will provide Staff with the following materials:
 - (i) a cover letter that, together with the notice for publication submitted under paragraph (a)(ii), if applicable, fully describes:
 - (A) the proposed Fee Change, Public Interest Rule or Significant Change;
 - (B) the expected date of implementation of the proposed Fee Change, Public Interest Rule or Significant Change;
 - (C) the rationale for the proposal and any relevant supporting analysis;
 - (D) the expected impact, including the quantitative impact, of the proposed Fee Change, Public Interest Rule or Significant Change on the market structure, members and, if applicable, on investors, issuers and the capital markets;
 - (E) the expected impact of the Fee Change, Public Interest Rule or Significant Change on the Exchange's compliance with Ontario securities law requirements and in particular requirements for fair access and maintenance of fair and orderly markets;
 - (F) a summary of any consultations, including consultations with external parties, undertaken in formulating the Fee Change, Public Interest Rule or Significant Change, and the internal governance process followed to approve the Rule or Change;
 - (G) for a proposed Fee Change:
 - 1. the expected number of marketplace participants likely to be subject to the new fee, along with a description of the costs they will incur; and
 - 2. if the proposed Fee Change applies differently across types of marketplace participants, a description of this difference, how it impacts each class of affected marketplace participant, including, where applicable, numerical examples, and any justification for the difference in treatment.
 - (H) if the Public Interest Rule or Significant Change will require members or service vendors to modify their systems after implementation of the Rule or Change, the expected impact of the Rule or Change on the systems of members and service vendors together with an estimate of the amount of time needed to perform the necessary work and how the estimated amount of time was deemed reasonable in light of the expected impact of the Public Interest Rule or Significant Change on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets;

- (I) where the proposed Significant Change is not a Significant Change subject to Public Comment, the rationale for why the proposed Significant Change is not considered a Significant Change subject to Public Comment;
 - (J) a discussion of any alternatives considered; and
 - (K) if applicable, whether the proposed Fee Change, Significant Change or Public Interest Rule would introduce a fee model, feature or Rule that currently exists in other markets or jurisdictions;
 - (ii) for a proposed Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, a notice for publication that generally includes the information required under paragraph (a)(i), except information that, if included in the notice, would result in the public disclosure of sensitive information or confidential or proprietary financial, commercial or technical information;
 - (iii) for a proposed Public Interest Rule, the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules, and if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and
 - (iv) for a proposed Fee Change or Significant Change, blacklined and clean copies of Form 21-101F1 showing the proposed Change.
- (b) The Exchange will submit the materials set out in subsection (a)
- (i) at least 45 days prior to the expected implementation date of a proposed Public Interest Rule or Significant Change; and
 - (ii) at least fifteen business days prior to the expected implementation date of a proposed Fee Change.
- (c) For a Housekeeping Rule, the Exchange will provide Staff with the following materials:
- (i) a cover letter that fully describes the Rule and indicates that it was classified as a Housekeeping Rule and provides an analysis of the rationale for the classification, and the date or proposed date of implementation of the Rule;
 - (ii) the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules;
 - (iii) if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and
 - (iv) a notice for publication on the OSC website or in the OSC Bulletin that contains the information in paragraph (ii) as well as the implementation date for the Rule and indicates that the Rule has been classified as a Housekeeping Rule and was not published for comment.
- (d) For a Housekeeping Change, the Exchange will provide Staff with the following materials:
- (i) a cover letter that indicates that the change was classified as a Housekeeping Change and, for each Housekeeping Change, provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and
 - (ii) blacklined and clean copies of Form 21-101F1 showing the Change.
- (e) The Exchange will submit the materials set out in subsection (d) by the earlier of
- (i) the Exchange's close of business on the 10th calendar day after the end of the calendar quarter in which the Housekeeping Change was implemented; and
 - (ii) the date on which the Exchange publicly announces a Housekeeping Change, if applicable.

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

- (a) Within 5 business days of the receipt of the notice and materials submitted by the Exchange relating to a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, in accordance with subsection 7(a), Staff will review the notice and materials to ensure that they contain an

adequate level of detail, analysis and discussion to elicit meaningful public comment, and will promptly notify the Exchange of any deficiency requiring a resubmission of the notice and/or materials.

- (b) Where the notice and/or materials are considered by Staff to be deficient, the Exchange will amend and resubmit the notice and/or materials accordingly, and the date of resubmission will serve as the submission date for the purposes of this Protocol.
- (c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 9.

9. Publication of a Public Interest Rule, Significant Change Subject to Public Comment or Fee Change Subject to Public Comment

- (a) As soon as practicable after the receipt of the notice and materials submitted by the Exchange relating to a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, in accordance with subsection 7(a), Staff will publish in the OSC Bulletin and/or on the OSC website, the notice prepared by the Exchange, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the Exchange within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.
- (b) If public comments are received
 - (i) the Exchange will forward copies of the comments promptly to Staff; and
 - (ii) the Exchange will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

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

- (a) Staff will use their best efforts to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change within
 - (i) 45 days from the date of submission of a proposed Public Interest Rule or Significant Change; and
 - (ii) fifteen business days from the date of submission of a proposed Fee Change.
- (b) Staff will notify the Exchange if they anticipate that their review of the proposed Fee Change, Public Interest Rule or Significant Change will exceed the timelines in subsection (a).
- (c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change, Staff will use best efforts to provide the Exchange with a comment letter promptly by the end of the public comment period for a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, and promptly after the receipt of the materials submitted under section 7 for all other Changes.
- (d) The Exchange will respond to any comments received from Staff in writing.
- (e) Unless Staff agree to an extension of time, if the Exchange fails to respond to Staff's comments within 120 days after the receipt of Staff's comment letter, the Exchange will be deemed to have withdrawn the proposed Fee Change, Public Interest Rule or Significant Change. If the Exchange wishes to proceed with the Fee Change, Public Interest Rule or Significant Change after it has been deemed withdrawn, the Exchange will have to re-submit it for review and approval in accordance with this Protocol.
- (f) Upon completion of Staff's review of a Fee Change, Public Interest Rule or Significant Change, Staff will submit the Change or Rule to the Director or, in the circumstances described in subsection (g), to the Commission, for a decision within the following timelines:
 - (i) for a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the Exchange;
 - (ii) for any other Significant Change, the later of 45 days from the date of submission of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange; or

- (iii) for any other Fee Change, the later of fifteen business days from the date of submission of the change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange.
- (g) A Fee Change, Public Interest Rule or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection (f),
 - (i) if the proposed Fee Change, Public Interest Rule or Significant Change introduces a novel feature to the Exchange or the capital markets;
 - (ii) if the proposed Fee Change, Public Interest Rule or Significant Change raises significant regulatory or public interest concerns; or
 - (iii) in any other situation where, in Staff's view, Commission approval is appropriate.
- (h) Staff will promptly notify the Exchange of the decision.
- (i) If a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and/or on the OSC website promptly after the approval:
 - (i) a notice indicating that the proposed Rule or Change is approved;
 - (ii) the summary of public comments and responses prepared by the Exchange, if applicable; and
 - (iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the Exchange and a blacklined copy of the revised Rule or Change highlighting the revisions made.

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

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

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

- (a) A Public Interest Rule or Significant Change will be effective on the later of:
 - (i) the date that the Exchange is notified that the Change or Rule is approved;
 - (ii) if applicable, the date of publication of the notice of approval on the OSC website;
 - (iii) if applicable, the implementation date established by the Exchange's Rules, agreements, practices, policies or procedures; and
 - (iv) the date designated by the Exchange.
- (b) The Exchange must not implement a Fee Change unless the Exchange has provided marketplace participants with notice of the Fee Change at least five business days prior to implementation.
- (c) Where a Significant Change involves a material change to any of the systems, operated by or on behalf of the Exchange, described in section 12.1 of National Instrument 21-101, the Significant Change will not be effective until a reasonable period of time after the Exchange is notified that the Significant Change is approved.

- (d) In determining what constitutes a reasonable period of time for purposes of implementing a Significant Change under paragraph (c), Staff will consider how the Significant Change will impact the Exchange, its market structure, members, issuers, investors or the Canadian capital markets or otherwise raises regulatory or public interest concerns.
- (e) The Exchange must notify Staff promptly following the implementation of a Public Interest Rule, Significant Change or Fee Change that becomes effective under subsections (a) and (b).
- (f) Where the Exchange does not implement a Public Interest Rule, Significant Change or Fee Change within 180 days of the effective date of the Fee Change, Public Interest Rule or Significant Change, as provided for in subsections (a) and (b), the Public Interest Rule, Significant Change or Fee Change will be deemed to be withdrawn.

13. Significant Revisions and Republication

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

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

- (a) If the Exchange withdraws a Fee Change, Public Interest Rule or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.
- (b) If the notice of withdrawal relates to a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and/or on the OSC website as soon as practicable.
- (c) If a Public Interest Rule, Significant Change subject to Public Comment or Fee Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 10(e), Staff will prepare and publish a notice informing market participants that the Exchange did not proceed with the Rule or Change.

15. Effective Date of a Housekeeping Rule or Housekeeping Change

- (a) Subject to subsections (c) and (d), a Housekeeping Rule will be effective on the later of
 - (i) the date of the publication of the notice to be published on the OSC website or in the OSC Bulletin, in accordance with subsection (e), and
 - (ii) the date designated by the Exchange.
- (b) Subject to subsections (c) and (d), a Housekeeping Change will be effective on the date designated by the Exchange.
- (c) Staff will review the materials submitted by the Exchange for a Housekeeping Change or Housekeeping Rule to assess the appropriateness of the categorization of the Rule or Change as housekeeping within five business days from the date that the Exchange submitted the documents in accordance with subsections 7(c) and 7(d). The Exchange will be notified in writing if there is disagreement with respect to the categorization of the Rule or Change as housekeeping.
- (d) If Staff disagree with the categorization of the Rule or Change as housekeeping, the Exchange will immediately repeal the Change, if applicable, submit the proposed Rule as a Public Interest Rule or the proposed Change as a Significant Change, and follow the review and approval processes described in this Protocol as applying to a Public Interest Rule or Significant Change, including those processes applicable to a Significant Change subject to Public Comment, if applicable.
- (e) If Staff do not disagree with the categorization of the Rule, Staff will publish a notice to that effect in the OSC Bulletin or on the OSC website as soon as is practicable.

16. Immediate Implementation of a Public Interest Rule or Significant Change

- (a) The Exchange may need to make a Public Interest Rule or Significant Change effective immediately where the Exchange determines that there is an urgent need to implement the Rule or Change to maintain fair and orderly markets, or because of a substantial and imminent risk of material harm to the Exchange, its members, other market participants, issuers or investors.
- (b) When the Exchange determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible, but in any event, at least five business days prior to the proposed implementation of the Public Interest Rule or Significant Change. The written notice will include the expected effective date of the Public Interest Rule or Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must follow within five business days following the Exchange receiving notice that Staff agree with immediate implementation of the Public Interest Rule or Significant Change.
- (c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the Exchange, in writing, of the disagreement no later than the end of the third business day following submission of the notice under subsection (b). If the disagreement is not resolved, the Exchange will submit the Public Interest Rule or Significant Change in accordance with the timelines in section 7.

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

A Public Interest Rule or Significant Change that has been implemented immediately in accordance with section 16 will be published, if applicable, and reviewed and approved by the Director or by the Commission in accordance with the procedures set out in section 10, with necessary modifications. If the Director or the Commission does not approve the Public Interest Rule or Significant Change, the Exchange will immediately repeal the Rule or Change and inform its members of the decision.

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

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