

DECISION

May 3, 2017

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA, ALBERTA, MANITOBA, NOVA SCOTIA, QUÉBEC AND ONTARIO (the Jurisdictions) AND IN THE MATTER OF THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS IN MULTIPLE JURISDICTIONS AND IN THE MATTER OF NASDAQ CXC LIMITED (the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for relief from the requirements in the Legislation that the Filer provide to the Decision Makers by March 1, 2017 an independent systems review report prepared by a qualified party in accordance with established audit standards (collectively, an "ISR") for the year 2016 (the **Exemptive Relief Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- (a) the Ontario Securities Commission ("**Commission**") is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

1. Nasdaq CXC Limited ("**NCXL**") is a corporation established under the laws of Canada and its principal business is to operate an alternative trading system ("**ATS**") as defined in National Instrument 21-101 *Marketplace Operation*;
2. The head office of NCXL is located in Toronto, Ontario;
3. NCXL is a member of the Investment Industry Regulatory Organization of Canada, the Canadian Investor Protection Fund and is registered in each of the Jurisdictions in the category of investment dealer;
4. NCXL offers three trading books, Nasdaq CXC ("**CXC**"), Nasdaq CX2 ("**CX2**") and Nasdaq CXD ("**CXD**");
5. NCXL has adopted a plan to migrate by June 5, 2017 NCXL's legacy Chi-X Global technology platform to Nasdaq, Inc.'s technology platform for CXC, CX2 and CXD (the "**Migration Plan**");
6. NCXL wishes to synchronize the periods covered by the 2016 ISR with the technology migration dates set out in the Migration Plan;
7. The independent systems review report prepared for CX2 in respect of the period March 6, 2017 to June 4, 2017 will be conducted by the Nasdaq Internal Audit department on a basis consistent with the scope which would have applied had the report been prepared by an external auditor;

8. The cost of retaining an external auditor to prepare the independent systems review for CX2 in respect of the period of March 6, 2017 to June 4, 2017 would be excessively high given the short period of time being sampled;

9. For each of its systems that supports order entry, order execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, NCXL has developed and maintains:

- reasonable business continuity and disaster recovery plans;
- an adequate system of internal control over those systems; and
- adequate information technology general controls, including without limitation, controls relating to information systems operations, information security (including cyber security), change management, problem management, network support and system software support.

10. In accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually, NCXL:

- makes reasonable current and future capacity estimates;
- conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
- tests its business continuity and disaster recovery plans; and
- reviews the vulnerability of the NCXL trading facilities and data centre operations to internal and external threats including physical hazards, and natural disasters;

11. NCXL's current trading and order entry volumes in the NCXL trading facilities are less than 20% of the current design and peak capacity of the NCXL trading facilities and NCXL has not experienced any failure of its trading facilities;

12. The NCXL trading facilities are monitored 24 hours a day, 7 days a week to ensure that all components continue to operate and remain secure; and

13. NCXL is currently up to date on all of its regulatory filings, and other than section 12.2 of NI 21-101 which is the subject of the Exemptive Relief Sought, NCXL is in compliance with applicable securities legislation;

14. NCXL shall promptly notify the Commission of any failure to comply with the representations set out herein.

Decision

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted provided that:

1. NCXL shall promptly notify the Commission of any material changes to the representations set out herein; and
2. NCXL shall provide no later than July 31, 2017, an independent systems review report prepared by a qualified party in accordance with established audit standards in respect of the following periods:
 - a. For CXC: February 1, 2016 to June 4, 2017 (to be conducted by an external auditor);
 - b. CX2: February 1, 2016 to March 5, 2017 (to be conducted by an external auditor) and March 6, 2017 to June 4, 2017 (to be conducted by the Nasdaq Internal Audit department on a basis

consistent with the scope which would have applied had the report been prepared by an external auditor); and

- c. For CXD: November 1, 2016 to June 4, 2017 (to be conducted by an external auditor)

DATED this 3rd day of May, 2017

"Tracey Stem"

Manager, Market Regulation
Ontario Securities Commission