

[Translation]

Order n° 2018-SMV-0006

This February 19, 2018

IN THE MATTER OF

the Securities Legislation of

**Québec
Alberta
British Columbia
Manitoba
New Brunswick
Newfoundland and Labrador
Northwest Territories
Nova Scotia
Nunavut
Prince Edward Island
Saskatchewan
Yukon**

(Individually a “Jurisdiction” and collectively the “Jurisdictions”)

and

the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

Ensoleillement Inc. (“CXCH”) and Nasdaq CXC Limited (“Nasdaq Canada”)

(CXCH and Nasdaq Canada are collectively referred to as the “Filers”)

DECISION

PREAMBLE

The securities regulatory authority or regulator in each of the Jurisdictions (individually an “Exempting Regulator” and collectively the “Exempting Regulators”) has received from Nasdaq Canada on November 30, 2016, as amended as at October 13, 2017 an application on behalf of the Filers for an exemption from the requirement to be recognized as a stock exchange or an exchange (the “Exemptive Relief Application”) under the securities legislation of the Exempting Regulators (respectively, the “Legislation” and the “Exemptive Relief Sought”), the whole as set out in Schedule A. Such application is made for coordinated relief under National Policy 11-203 - *Process for Exemptive Relief Applications in Multiple Jurisdictions* (or, in Québec, *Policy Statement 11-203 respecting Process for Exemptive Relief Applications in Multiple Jurisdictions*) (“NP 11-203”).

For the purposes of a coordinated review application and in accordance with NP 11-203:

- (a) The Autorité des marchés financiers (the “AMF” or the “Principal Exempting Regulator”, as the case may be) is the principal exempting regulator for the Exemptive Relief Application; and
- (b) This decision is the decision of the Principal Exempting Regulator and evidences the decision of each other Exempting Regulator.

INTERPRETATION

Terms defined in National Instrument 14-101 – *Definitions* (or, in Québec, *Regulation 14-101 respecting Definitions*, CQLR, c. V-1.1, r. 3) have the same meaning if used in this decision, unless otherwise defined hereinafter.

In this decision,

“Nasdaq Canada Member” means a member approved by Nasdaq Canada to access the “Exchange Systems” (as such term is defined in the Rules), provided such access has not been terminated.

“Rule” means a rule, policy, or other similar instrument of Nasdaq Canada, including but not limited to, trading policies.

BACKGROUND

The *Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems* among Alberta Securities Commission, AMF, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission (the “OSC”) and Financial and Consumer Affairs Authority of Saskatchewan came into effect on January 1, 2010 (the “MOU”).

On February 1st, 2016, Chi-X Global Holdings, LLC sold Chi-X Canada ATS Limited (“Chi-X ATS”) to CXCH. Chi-X ATS was subsequently renamed Nasdaq CXC Limited.

On October 2nd, 2017, CXCH and Nasdaq Canada filed with the OSC an application requesting recognition of each of CXCH and Nasdaq Canada as an exchange.

On October 19, 2017, the AMF published the Exemptive Relief Application in the Bulletin of the Autorité des marchés financiers [(2017) Vol. 14, No. 41, B.A.M.F., section [7.3]] and invited interested parties to make comments in writing. This publication evidenced the fulfillment of all requirements for publication pursuant to the Legislation.

On January 4, 2018, the OSC issued an order dated December 21st, 2017 recognizing each of CXCH and Nasdaq Canada as an exchange, subject to the terms and conditions set out in the recognition order (the “Recognition Order”). The Recognition Order will be effective as of March 1st, 2018.

On January 8, 2018, Nasdaq Canada filed a Form 21-101F4 *Cessation of Operations Report for Alternative Trading System* and informed the Jurisdictions that it will cease to be carrying on business as an ATS on March 1st, 2018.

Under the MOU, the OSC is designated lead regulator for the Filers.

REPRESENTATIONS

This decision is based on the following representations of the Filers:

- Nasdaq Canada will be carrying on exchange activities in Canada and CXCH will be the holding company for Nasdaq Canada;
- CXCH is a corporation incorporated under the New Brunswick *Business Corporations Act* (SNB 1981, c. B-9.1) on December 9, 2015. CXCH is currently and will continue to be the sole shareholder of Nasdaq Canada on the exemption date;
- Nasdaq, Inc. is a Delaware USA corporation incorporated on January 12, 1976 and is the sole shareholder of CXCH;
- Nasdaq Canada has offices in Toronto, Ontario and does not have offices in any of the Jurisdictions;
- Nasdaq Canada agrees to be subject to the oversight program established by the OSC from time to time in accordance with the provisions set forth in the MOU and to comply with the terms and conditions of the Recognition Order;
- Nasdaq Canada will communicate and offer a wide range of services in English and in French to Nasdaq Canada Members; such services will be of equivalent quality; and
- The Filers are neither in default of the Legislation in any Jurisdiction nor of the securities legislation of Ontario.

DECISION

Each of the Exempting Regulators is satisfied that the decision meets the test set out in the Legislation for each Exempting Regulator to render this decision.

The decision of the Exempting Regulators under the Legislation is that the Exemptive Relief Sought is granted provided that:

1. CORPORATE GOVERNANCE

- a) The Filers will ensure fair, meaningful and diverse representation on the governing body (the "Board") and any committees of the Board, including:
 - (i) Appropriate representation of independent directors; and
 - (ii) A proper balance among the interests of the different persons or companies using the services and facilities of Nasdaq Canada.

2. CONTINUING RECOGNITION

The Filers will continue to be recognized as an exchange by the OSC and to comply with the terms and conditions of the Recognition Order.

3. OVERSIGHT OF THE EXCHANGE

Nasdaq Canada shall be subject to the oversight program established by the OSC from time to time in accordance with the provisions of the MOU or any superseding MOU among the parties thereto or successor regulators to the parties thereof.

4. REVIEW AND APPROVAL OF RULES

- a) The review and approval of the Rules will be subject to the following procedure:
 - (i) All proposed amendments to the Rules filed with the OSC by Nasdaq Canada will be concurrently filed with the Principal Exempting Regulator;
 - (ii) All proposed amendments to the Rules that are made public for comments will be concurrently made public in English and in French by Nasdaq Canada; and
 - (iii) The final versions of the Rules will be filed with the Principal Exempting Regulator and be approved by the OSC in English and in French.
- b) The Rules will be available in English and in French on the website of Nasdaq Canada.

5. ADDITIONAL INFORMATION

- a) The Filers shall file with the Principal Exempting Regulator any related information concerning Nasdaq Canada that is required pursuant to National Instrument 21-101 - *Marketplace Operation* (or, in Québec, *Regulation 21-101 respecting Marketplace Operations*, CQLR, c. V-1.1, r. 5).
- b) Nasdaq Canada shall concurrently file with the Principal Exempting Regulator copies of the following documents filed with the OSC:
 - (i) On a quarterly basis, reports summarizing all exemptions or waivers granted pursuant to the Rules to any Nasdaq Canada Member during the period. This summary must include the following information:
 - a. The name of the Nasdaq Canada Member;
 - b. The type of exemption or waiver granted during the period;
 - c. The date of the exemption or waiver; and
 - d. A description of Nasdaq Canada staff's reasons for the decision to grant the exemption or waiver.

6. ACTIVITIES

- a) Nasdaq Canada will communicate and offer a wide range of services in English and in French to Nasdaq Canada Members; such services will be of equivalent quality.
- b) Nasdaq Canada must publish concurrently in English and in French each document issued to the public at large or generally to any Nasdaq Canada Member and must provide the document to the Principal Exempting Regulator immediately upon publication, including forms, releases, notices and other documents issued to Nasdaq Canada Members or to the public.
- c) The French version of the Web site of Nasdaq Canada must be updated at the same time as the English version and must be comprised solely of French documents.

7. ACCESS TO INFORMATION

- a) Subject to the terms of the MOU, Nasdaq Canada will promptly provide the Exempting Regulators when requested either directly or through the OSC, as the case may be, any information relating to Nasdaq Canada Members, Nasdaq Canada's shareholders, the market operations of Nasdaq Canada, and compliance with this decision including but not limited to, member lists, products, trading information and disciplinary decisions, the whole in accordance with the provisions set out in the Legislation, privacy legislation, as well as in any other laws pertaining to the collection, use and disclosure of information and the protection of personal information applicable in the Jurisdictions.
- b) The Filers shall protect the confidentiality of the information provided to them in connection with their operations, in accordance with applicable laws in the Jurisdictions.

8. LISTINGS

Except with the prior approval of the Alberta Securities Commission, the British Columbia Securities Commission and the Superintendent, Securities Markets, of the AMF, no securities or derivatives shall be listed on Nasdaq Canada.

If the Filers fail to comply with one or more of the conditions set forth in this decision applicable to them, the Exempting Regulators may review or revoke this decision.

This decision will become effective as of March 1st, 2018.

Gilles Leclerc
Superintendent, Securities Markets
Autorité des marchés financiers

SCHEDULE A

Exempting Regulators	Sections in Legislation: (a) Exemptive Relief Sought (b) Exempting provisions
Alberta Securities Commission	(a) Section 62(1) (b) Section 213
Autorité des marchés financiers	<i>Securities Act</i> , CQLR, c. V-1.1 (a) Title VI, section 169 (b) Section 263
British Columbia Securities Commission	(a) Section 25 (b) Section 33(1)
Financial and Consumer Affairs Authority of Saskatchewan	(a) Section 21.1 (b) Section 160
Financial and Consumer Services Commission (New-Brunswick)	(a) Section 36 (b) Section 44.02(1) a)
Manitoba Securities Commission	(a) Part XIV, section 139(1) (b) Section 20(1)
Newfoundland and Labrador Superintendent of Securities	(a) Part VIII, section 24(1) (b) Sections 138.19 and 142.1
Northwest Territories Superintendent of Securities	(a) Section 70 (b) Section 16(1)
Nova Scotia Securities Commission	(a) Section 30J (b) Section 151A
Nunavut Superintendent of Securities	(a) Part 7, section 70 (b) Part 2, section 16(1)
Prince Edward Island Registrar of Securities	(a) Part 7, section 70 (b) Section 16(1)
Yukon Superintendent of Securities	(a) Part 7, Division 1, section 70 (b) Part 2, Division 2, section 16(1)