

Headnote

Mutual Reliance Review System for Exemptive Relief Applications – Electronic trading system specializing in natural gas contracts and natural gas and electricity swap contracts are exempted from the prohibitions in securities and commodity futures legislation from carrying on business as an exchange in Alberta and trading in exchange contracts unless the form of exchange contract has been accepted by the Commission and relief from the registration and prospectus requirements for trades in exchange contracts made by the trading system and its participants through the trading system.

Applicable Alberta Statutory Provisions

Securities Act, R.S.A., 2000, c.S-4, ss. 62, 75, 105, 106, 110, 144(1) and 213

Citation: Natural Gas Exchange Inc., 2004 ABASC 1159

Date: 20041201

In the Matter of
the Securities Legislation
of Alberta, Saskatchewan and Manitoba (the Jurisdictions)

and

In the Matter of
the Mutual Reliance Review System for Exemptive Relief Applications

and

In the Matter of Natural Gas Exchange Inc.

MRRS Decision Document

Background

1. The local securities regulatory authority or regulator (the Decision Maker) in each of Alberta, Saskatchewan and Manitoba (the Jurisdictions) has received an application from Natural Gas Exchange Inc. (the Filer) for a decision pursuant to the applicable securities and commodity legislation of the Jurisdictions (the Legislation) that the Filer be exempt from:
 - 1.1 the prohibition in the Legislation against carrying on business as an exchange unless recognized as an exchange (the Recognition Requirement);
 - 1.2 the prohibition in the Legislation against trading exchange contracts or commodity futures contracts on an exchange not recognized or unless the form of contract has been accepted in the Jurisdictions (the Contract Approval Requirement); and

- 1.3 the requirement in the Legislation to be registered or file a prospectus or other disclosure document in connection with trades in natural gas exchange contracts or natural gas commodity futures contracts and swap contracts related to natural gas or electricity by the Filer or any contracting party through the electronic trading and clearing system operated by the Filer (the Registration and Prospectus Relief);

(collectively referred to as the “Requested Relief)
2. Under the Mutual Reliance Review System for Exemptive Relief Applications (the MRRS):
 - 2.1 the Alberta Securities Commission is the principal regulator for this application, and
 - 2.2 this MRRS decision document evidences the decision of each Decision Maker.

Interpretation

3. Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision unless they are defined in this decision.

Representations

4. This decision is based on the following facts represented by the Filer:
 - 4.1 The Filer operates an electronic trading and clearing system (the "Trading System") in Calgary, Alberta for trades of natural gas exchange contracts, natural gas commodity futures contracts, and swap contracts relating to natural gas and electricity (“Commodity Contracts”) by contracting parties (“Contracting Parties”);
 - 4.2 The Filer has operated the Trading System since 1993 in accordance with the terms and conditions of prior orders of the Decision Makers;
 - 4.3 Access to the Trading System is limited to Contracting Parties, each of which has, or is a wholly-owned subsidiary of a business entity that has, a net worth exceeding \$5,000,000 or total assets exceeding \$25,000,000;
 - 4.4 The Filer is capable of complying with the operating principles listed in Appendix A and will comply with the operating principles for the duration of this decision;
 - 4.5 The Filer has undertaken to keep trading, financial and other records sufficient to demonstrate compliance with the operating principles listed in Appendix A, make them available and submit data promptly to the Decision Makers on request.

Decision

5. Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met;
6. The decision of the Decision Makers in the Jurisdictions pursuant to the Legislation is that the Requested Relief is granted in that:
 - 6.1 the Recognition Requirement in the Legislation shall not apply to the Trading System;
 - 6.2 the Contract Approval Requirement in the Legislation shall not apply to the Trading System or Contracting Parties that contract with the Filer; and
 - 6.3 the Registration and Prospectus Requirements in the Legislation shall not apply to trades in Commodity Contracts by the Filer or a Contracting Party through the Trading System operated by the Filer;

for so long as:

- (a) the Filer complies with the operating principles listed in Appendix A and keeps trading, financial and other records sufficient to demonstrate compliance with the operating principles listed in Appendix A;
- (b) the Filer immediately informs the Principal Regulator of any event, circumstance or situation that materially affects the Filer's ability to comply with the operating principles listed in Appendix A;
- (c) the Filer files with the Principal Regulator any revisions to the contracting party's agreement within 2 business days of the effective date of the revision; and
- (d) the Filer immediately informs the Principal Regulator of any material change in the operation of the Trading System or in the beneficial ownership of the securities of the Filer.

“original signed by”

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

“original signed by”

Stephen R. Murison, Vice-Chair
Alberta Securities Commission

APPENDIX A

OPERATING PRINCIPLES

1. **Financial Resources** - Maintain adequate financial, operational and managerial resources to operate the Trading System and support its trade execution and clearing functions.
2. **Operational information relating to trading system and contracts** - Provide public disclosure of information about contract terms and conditions, trading conventions, mechanisms and practices, financial integrity protections and other information relevant to participants.
3. **Market oversight** - 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; and maintain authority to collect or capture and retrieve all necessary information and to intervene as necessary to ensure an orderly market.
4. **Rule Enforcement** - Maintain adequate arrangements and resources for the effective monitoring and enforcement of the rules of the facility and for resolution of disputes and 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** - Establish and maintain:
 - a program of oversight and risk analysis to ensure automated order entry and clearing systems function properly and have adequate capacity and security, including emergency procedures and a plan for disaster recovery to ensure daily processing, clearing and settlement of transactions.
 - a program of periodic objective system testing and risk review to assess the adequacy and effectiveness of the Trading System's internal control systems and financial integrity protections, including a risk review of every new service and significant enhancement to existing services.
6. **Transparency** - Make information on settlement prices, price range, trading volume, open interest and other related market information available daily to participants.
7. **Record keeping** - 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.
8. **Risk management** - Identify and manage the risks associated with clearance and settlement through the use of appropriate tools and procedures such as risk analysis tools and procedures, collateral, margin and credit limits.
9. **Settlement procedures** - Prescribe standards and procedures to protect and safeguard participants' funds and limit concentration of risk, including the safekeeping of funds in accounts in depositories or with custodians, that meet industry standards.