

Headnote

Mutual Reliance Review System for Exemptive Relief Applications - Decision under section 186 of the Act to vary a previously granted order of the Commission to reflect the addition of swap contracts to the instruments currently traded through the electronic trading system and changes to the trading system's Contracting Party eligibility criteria and risk management system.

Applicable Alberta Statutory Provisions

Securities Act, S.A., 1981, c.S-6.1, as amended, s. 54, 81, 116(1), 186 and 192(5) and Parts 5 and 7.1.

IN THE MATTER OF THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN AND MANITOBA

AND

IN THE MATTER OF
THE MUTUAL RELIANCE REVIEW SYSTEM FOR
EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF NATURAL GAS EXCHANGE INC.
AND NGX FINANCIAL INC.

1 WHEREAS the Canadian 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. ("Exchange") and NGX Financial Inc. ("Financial") (together, (the "Filer")) for a decision pursuant to the securities legislation and, where applicable, the commodities legislation of the Jurisdictions (the "Legislation") amending certain previous orders and decisions of the Decision Makers (the "Previous Orders") that, in connection with the Filer's business, that the Filer be exempt from the requirements in the Legislation:

1.1 for carrying on business as an exchange in the Jurisdictions;

1.2 relating to trading an exchange contract on an exchange not recognized by the Commissions or unless the form of exchange contract has been accepted by the Commissions for swap contracts entered into through its electronic trading system (the "Trading System") provided by the Filer; and

- 1.3 for registration or filing a prospectus or other disclosure document as prescribed by the Legislation in respect of swap contracts entered into by the Filer or any contracting party and all acts, advertisements, solicitations, conduct or negotiations made directly or indirectly in furtherance thereof;
- 2 AND WHEREAS THE Previous Orders comprise Order No. 96/06/218 dated June 5, 1997 (the "Alberta Order") of the Alberta Securities Commission (the "Alberta Commission") which expires June 8, 2002, ruling Order dated October 2, 1997 of the Saskatchewan Securities Commission (the "Saskatchewan Order") which expires concurrently with the Alberta Order or any renewal thereof and Order No. 2285 dated August 10, 1998 of the Manitoba Securities Commission originally expiring February 28, 2000 as extended from time to time;
- 3 AND WHEREAS pursuant to the Mutual Reliance Review System for Exemptive Relief Applications (the "System"), the Alberta Commission is the principal regulator for this application;
- 4 AND WHEREAS the Filer has represented to the Decision Makers that:
 - 4.1 OM Gruppen AB ("OM") headquartered in Stockholm, Sweden is principally involved in the ownership and operation of certain exchanges and in the provision of products and services to increase the efficiency of financial and energy exchanges throughout the world;
 - 4.2 OM holds all of the outstanding shares of NGX Canada Inc. ("NGX");
 - 4.3 Exchange and Financial were each incorporated on June 29, 1993 under the laws of the Province of Alberta, each has its head office in the Province of Alberta, neither is a reporting issuer under the Act and all of the outstanding shares of both companies are held directly by NGX;
 - 4.4 the Filer has established a business (the "Business") providing for the provision of an electronic system which allows certain persons (the "Contracting Parties"), each of whom will enter into an agreement (the "Contracting Party's Agreement") with the Filer to enter into a variety of standard form physical contracts with the Filer for the delivery of contracted quantities of gas in the future (the "Physical Contracts") and which will provide for standard form swap contracts which will settle financially based on a notional quantity of gas (the "Swap Contracts");
 - 4.5 access to the Trading System is limited to Contracting Parties, who satisfy certain criteria specified by the Filer including:

- 4.5.1 all Contracting Parties must have access to such capacity on the transportation system as may be required for delivery of gas under any Physical Contract;
- 4.5.2 all Contracting Parties must be a corporation, partnership, proprietorship, organization, trust or other business entity with net worth exceeding \$5,000,000 or total assets exceeding \$25,000,000 or a direct or indirect wholly-owned subsidiary of any such business entity; and
- 4.5.3 all Contracting Parties must be "qualified parties" as described on Schedule "A" to this Decision;
- 4.6 the Trading System provides confirmation of each Physical Contract and Swap Contract entered into by a Contracting Party, creates a record showing the time and all other relevant details of the transaction and provides access to the Contracting Party of details of such transactional information;
- 4.7 the principal provisions of the Contracting Party's Agreement relating to the relationship between the Filer and the Contracting Parties include:
 - 4.7.1 provisions for various restrictions on the rights of each of the Contracting Parties to enter into Physical Contracts and Swap Contracts based on the financial strength of the Contracting Party, which may require the deposit of collateral and which determines the margin requirements of the Contracting Party to the Filer;
 - 4.7.2 provisions for a risk management policy which calculates the margin requirements for each Contracting Party, which includes mark-to-market calculations, being an amount generally calculated as the difference between the market price of gas from time to time relative to the prices of gas under the Physical Contracts and the Swap Contracts;
 - 4.7.3 provisions for the assurances of the Filer, as counterparty to every Physical Contract and every Swap Contract, for the payment of the purchase price and for the delivery or receipt of gas under any Physical Contract or the payment of the swap clearing price under the Swap Contracts; and
 - 4.7.4 provisions for access by any Contracting Party in the event of a default under any Swap Contract by the Filer to a letter of credit deposited by NGX with a trustee pursuant to an agreement (the "Swap Deposit Agreement") among NGX, the Filer, or either of them, and an arm's length trustee (the "Trustee"), which Swap Deposit Agreement will provide for the filing by the Trustee with the Alberta Commission of any notices sent to the Contracting Parties;

- 4.8 the Contracting Party's Agreement defines Physical Instruments to mean the forms of Physical Contracts which may be available on the Trading System from time to time indicating the market centre, standard units, delivery dates and duration, thus enabling negotiation of the purchase price and daily contract quantity through entry of bids and offers for the purchase and sale of gas;
- 4.9 the Contracting Party's Agreement defines Swap Instruments to mean a fixed for floating swap instrument or a basis swap instrument based upon a notional quantity of gas which may be made available on the Trading System;
- 4.10 the forms of Instruments all have standard terms and conditions except in respect of quantities and prices which are negotiated on the Trading System by the Contracting Parties;
- 5 AND WHEREAS pursuant to the System, this MRRS Decision Document evidences the decision of each Decision Maker (collectively, the "Decision");
- 6 AND WHEREAS 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;
- 7 THE DECISION of the Decision Makers in the Jurisdictions pursuant to the Legislation to amend the Previous Orders is that, in connection with the Business, the Filer is exempt from the requirements of the Legislation relating to carrying on business as an exchange in the Jurisdictions, provided that:
- 7.1 The Filer files with the Alberta Commission and the Saskatchewan Commission any revisions to the Contracting Party's Agreement, the Swap Contracts and Swap Deposit Agreement within two business days of the date that such revision becomes effective pursuant to the provisions of the Contracting Party's Agreement or Swap Deposit Agreement;
- 7.2 The Filer continues to comply with any filing requirements under the Previous Orders of the Decision Makers.
- 8 AND IT IS FURTHER DECIDED pursuant to the Legislation to amend the Previous Orders that the entering into of the Swap Contracts by any Contracting Party or the Filer pursuant to the Contracting Party's Agreement is exempt from the application of the Legislation in respect of trading in exchange contracts on an exchange in the Jurisdictions;

- 9 AND IT IS FURTHER DECIDED pursuant to the Legislation to amend the Previous Orders that the entering into of the Swap Contracts by any Contracting Party or the Filer pursuant to the Contracting Party's Agreement are not subject to registration requirements or the prospectus requirements of or the filing of any other disclosure documents required by the Legislation provided that the Contracting Party and the Filer enter into the Swap Contracts as principal only;
- 10 AND IT IS FURTHER DECIDED pursuant to the Legislation to amend the Previous Orders, with the exception of the Alberta Order and the Saskatchewan Order, by deleting the expiry dates.
- 11 AND IT IS FURTHER DECIDED that the Previous Orders be confirmed except as amended hereby.

Dated this 31st day of August, 2001.

"signed by"
James E. Allard, Member

"signed by"
Walter B. O'Donoghue, Q.C., Member