

[Neutral Citation]

[July 19, 2019]

IN THE MATTER OF THE SECURITIES LEGISLATION OF ONTARIO, QUEBEC, BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA, NOVA SCOTIA, NEW BRUNSWICK, PRINCE EDWARD ISLAND, NEWFOUNDLAND AND LABRADOR, NORTHWEST TERRITORIES, NUNAVUT AND YUKON
(the Jurisdictions)

AND

IN THE MATTER OF THE PROCESS FOR EXEMPTIVE RELIEF 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 a qualified party be engaged to conduct an independent systems review in respect of the Nasdaq Fixed Income System (**NFI System**) operated by the Filer's U.S. affiliate Execution Access, LLC (**EA**) to which the Filer provides access to certain Canadian permitted clients, and prepare a report in accordance with established audit standards (collectively, an **ISR**) for 2019 and 2020 (the **Exemptive Relief Sought**).

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

- (a) the Ontario Securities Commission (**OSC**) 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* and National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) 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. The Filer is a corporation formed under the laws of Canada and is an indirect wholly-owned subsidiary of Nasdaq, Inc., a global holding company listed and publicly traded on NASDAQ;
2. The head office of the Filer is located in Toronto, Ontario;
3. The Filer is a recognized exchange in Ontario pursuant to a recognition order issued by the OSC on December 21, 2017, as most recently varied and amended on February 8, 2019 (the **Recognition Order**).
4. The Filer is exempt from recognition as an exchange in all the Jurisdictions other than Ontario pursuant to an exemption order issued by Québec's Autorité des marchés financiers on February 19, 2018 (the **Exemption Order**). The Filer operates an exchange (the **Nasdaq Canada Exchange**) in the Jurisdictions pursuant to the Recognition Order and Exemption Order;
5. EA is a Delaware limited liability company registered with the U.S. Securities and Exchange Commission (**SEC**) as a broker-dealer and is a member organization of the Financial Industry Regulatory Authority (FINRA). EA operates the Nasdaq Fixed Income trading system (**NFI System** or the **Fixed Income System**), a platform for the trading of fixed income securities in the United States. The NFI System is registered as an alternative trading system (**ATS**) with the SEC;
6. Pursuant to the Recognition Order, the Filer separately provides Canadian "permitted clients" as that term is defined in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**Canadian Fixed Income Customers**) access to the NFI System operated by EA for purposes of trading non-Canadian fixed income securities, as described in the Filer's Form 21-101F1 – *Information Statement - Exchange or Quotation and Trade Reporting System*, as amended from time to time;
7. Orders transmitted by a Canadian Fixed Income Customer for a fixed income security traded in the United States are routed by the Filer to the NFI System. EA is responsible for the execution of such trades on the NFI System. The Filer does not execute these trades or operate the NFI System;
8. The OSC is the Filer's principal regulator pursuant to subsection 3.6(3)(b) of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* because the Filer's head office is located in Ontario;
9. Nasdaq, Inc. is the ultimate parent company of EA and of the Filer;
10. EA and the NFI System are subject to robust regulation in their home jurisdiction;
11. For each of the NFI System systems that support order entry, order execution, trade reporting, trade comparison, data feeds, market surveillance, and trade clearing (collectively, the **Specified Systems**), EA 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, change

management, problem management, network support, and system software support;

12. For each system (**Auxiliary System**) that shares network resources with one or more of the NFI System Specified Systems that, if breached, would pose a security threat to one or more of the Specified Systems, EA has developed and maintains an adequate system of information security controls that relate to the security threats posed to any Specified System;
13. In accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually, in respect of the NFI System, EA:
 - 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 Fixed Income System and data centre operations to internal and external threats including physical hazards and natural disasters;
14. The current trading and order entry volumes in the Fixed Income System are less than 25 percent of the current design and peak capacity of the Fixed Income System and neither the Filer nor EA has experienced any failure of the Fixed Income System;
15. The estimated cost of an annual independent systems review of the NFI System, including NFI Auxiliary Systems, by a qualified third party would represent a significant portion of EA's annual net income derived from Canadian Fixed Income Customers;
16. The Fixed Income System is monitored 24 hours a day, 7 days a week to ensure that all components continue to operate and remain secure;
17. The Filer shall promptly notify the OSC of any failure to comply with the representations set out herein;
18. The cost of an ISR is prejudicial to EA and represents a disproportionate impact on EA's revenue; and
19. The Filer is not in default of the Legislation.

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. The Filer shall promptly notify the OSC of any material changes to the representations set out herein, including any material changes to EA's annual net income or to the market share or daily transaction volume of the Fixed Income System; and
2. The Filer shall, in the years 2019 and 2020, cause the Nasdaq Independent Audit Department to complete a review of the Fixed Income System and of its controls, including

Auxiliary Systems, similar in scope to that which would have applied had an independent systems review been conducted in respect of the Fixed Income System, for ensuring it continues to comply with the representations set out herein and shall prepare written reports of the Nasdaq Independent Audit Department's reviews which shall be filed with staff of the OSC no later than (i) 30 days after such reports are provided to the Filer's board of directors or audit committee, or (ii) the 60th day after the calendar year end.

"Susan Greenglass"

Susan Greenglass
Director, Market Regulation
Ontario Securities Commission