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Headnote

Exemption from recognition as an exchange for NASDAQ US and the NASD – relief from some requirements of NI 21-101 and NI 23-101

Exemption Order

**The NASDAQ Stock Market, Inc. (NASDAQ US)
and NASDAQ Canada Inc. (NASDAQ Canada)**

**Section 33(1) of the *Securities Act*, R.S.B.C. 1996, c. 418, Section 15.1 of
National Instrument 21-101 *Marketplace Operation* and
Section 12.1 of National Instrument 23-101 *Trading Rules***

Background

- ¶ 1 NASDAQ US and NASDAQ Canada applied for an exemption from the requirement to be recognized as an exchange in section 25 of the Act (the recognition requirement) and from some requirements of National Instrument 21-101 *Marketplace Operation* (NI 21-101) and National Instrument 23-101 *Trading Rules* (NI 23-101).

Representations

- ¶ 2 NASDAQ US and NASDAQ Canada represent that:
1. The National Association of Securities Dealers, Inc. (NASD) is the parent company of NASDAQ US and is a registered securities association under section 15A of the United States *Securities Exchange Act of 1934*;
 2. the NASD is also the parent company of NASD Regulation, Inc. (NASDR);
 3. NASDR provides regulation services to NASDAQ US;
 4. NASDAQ US is a corporation incorporated under the law of Delaware and operates under a Plan of Allocation and Delegation of Functions by the NASD to its subsidiaries, as approved by the United States Securities and Exchange Commission (SEC);

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5. under the Plan of Allocation and Delegation of Functions, the NASD has delegated certain authority and functions to NASDAQ US;
6. NASDAQ US actions taken under the delegated authority remain subject to review, ratification or rejection by the NASD board;
7. NASDAQ US is a registered securities information processor under United States securities law and has applied to the SEC to become a national securities exchange in the United States;
8. NASDAQ Canada is a corporation incorporated under the *Canada Business Corporations Act* and is a subsidiary of NASDAQ US with no independent trading or marketplace operations;
9. NASDAQ US is subject to NI 21-101 and NI 23-101;
10. the United States securities regulatory structure to which the NASD and NASDAQ US are subject is consistent with IOSCO principles.

Order

- ¶ 3 Because it is not prejudicial to the public interest, the Commission orders:
1. under section 33(1) of the Act, NASDAQ US and the NASD are exempt from the recognition requirement;
 2. under section 15.1 of NI 21-101, NASDAQ US and the NASD are exempt from sections 11.2, 11.3, 11.4 and 11.5 and from Parts 7 and 12 of NI 21-101; and
 3. under section 12.1 of NI 23-101, NASDAQ US and the NASD are exempt from Parts 5 and 6 of NI 23-101,

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provided that NASDAQ US and NASDAQ Canada comply with the applicable terms and conditions set out in Schedule A.

¶ 4 November 12, 2003

Brent W. Aitken
Vice Chair

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Schedule A

Terms and Conditions

General

1. NASDAQ US is subject to the oversight of the SEC and complies with all applicable US securities regulatory requirements.
2. NASDAQ US attorns to the jurisdiction of the Commission.
3. Without the Commission's prior consent, neither NASDAQ US nor NASDAQ Canada will trade Canadian securities in Canadian dollars.
4. NASDAQ US will advise the Commission if it or NASDAQ Canada intends to have an office in British Columbia.

Filing requirements

5. Within 10 days after the end of each quarter, NASDAQ US or NASDAQ Canada will file with the Commission a list of any NASD affiliate of an investment dealer registered in BC (BC NASD member):
 - (a) against whom public disciplinary action has been taken; or
 - (b) who has been denied access by NASDAQ US in that quarter.

Access

6. NASDAQ US will not provide access to BC NASD members unless they are registered or exempted from registration under the Act.
7. On request from the Commission, NASDAQ US will advise the Commission and Market Regulation Services Inc. (RS) of its reasons for differences in actions taken by it and RS relating to the interruption of trading of securities that are both listed on an exchange in Canada and quoted on a NASDAQ US marketplace.
8. NASDAQ US and NASDAQ Canada provide the Commission, when requested, with information about:
 - (a) any bylaw, rule or other regulatory instrument or policy, or direction, decision, order or ruling made under a bylaw, rule or other regulatory instrument or policy of NASDAQ US, NASDAQ Canada or the NASD;
 - (b) the procedures or practices of NASDAQ US or NASDAQ Canada;
 - (c) the manner in which NASDAQ US carries on business;

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- (d) the trading of securities on or through NASDAQ US; and
- (e) issuers, whose securities are listed or quoted on NASDAQ US.