



## Exemption Order

### Norexeco ASA

#### Section 33(1) of the *Securities Act*, R.S.B.C. 1996

#### ¶ 1 Background

Norexeco ASA (the Filer) has filed an application (the Application) with the British Columbia Securities Commission (the Commission) under:

- (a) section 33 of the *Securities Act* (British Columbia) (the Act) for an exemption from the requirements of section 25 of the Act;
- (b) section 33 of the Act for an exemption from the requirements of National Instrument 21-101 *Marketplace Operation* (NI 21-101); and
- (c) section 33 of the Act for an exemption from the requirements of National Instrument 23-101 *Trading Rules* (NI 23-101).

#### ¶ 2 Interpretation

Terms defined in the Act, National Instrument 14-101 *Definitions*, NI 21-101, NI 23-101 and Multilateral Instrument 91-101 *Derivatives: Product Determination* have the same meaning if used in this decision, unless otherwise defined.

In this decision,

“BC Member” means a Member that has its head office or principal place of business in British Columbia; and

“Member” means a member approved by the Filer that has access to the Exchange in accordance with the rules of the Exchange, provided that such access has not been terminated.

#### ¶ 3 Representations

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

1. The information provided by the Filer in support of the Application is not false or misleading.
2. The Filer is a corporation formed under the laws of Norway.

3. The head office of the Filer is located in Kongsvinger, Norway.
4. The Filer is not, and has no current intention of becoming, a registrant under the securities laws of the Province of British Columbia (the Legislation).
5. The Filer is not in default under the Legislation.
6. The Filer operates a platform for the trading of financially settled commodity derivatives (the Exchange) – in particular derivatives relating to renewable resources such as forestry products, recycled fibres, biomass and pulp.
7. The Filer has been granted approval from the Norwegian Ministry of Finance to operate the Exchange as a “regulated market” in Norway, under the *Stock Exchange Act* in Norway (Norwegian Act).
8. The Exchange commenced operations on September 15, 2015.
9. The Exchange meets the definition of a “regulated market” for the purposes of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (MiFID).
10. The Exchange is registered in the ESMA database for Regulated Markets with the Market Identifier Code of ‘NEXO’.
11. The Filer wishes to make the Exchange available to persons who wish to become Members, including BC Members.
12. Members include non-financial companies active in the underlying commodity markets as well as financial institutions.
13. The Exchange is accessible to Members by way of secure electronic access supplemented by telephone based support by Exchange representatives. This support will be available to BC Members, in English and Norwegian during the hours when the Exchange offers trading services.
14. All trading will be conducted on the Exchange with representatives assisting Members to become familiar with the operation of the Exchange. This assistance will be available to BC Members, in English and Norwegian, during the hours when the Exchange offers trading services.
15. To become a Member, a person must meet the admission criteria set out in the rules of the Exchange. A Member must also inform the Filer if any of these criterion are no longer met. These rules include requirements that the Member:
  - (a) qualify as a “professional client” within the meaning of the MiFID;

- (b) be a clearing member or a non-clearing member of the European Commodity Clearing AG (the ECC);
  - (c) have relevant:
    - (i) experience trading derivatives;
    - (ii) risk management routines;
    - (iii) payment and settlement capabilities;
  - (d) have capital in excess of 50,000 euros;
  - (e) have audited financial statements; and
  - (f) be based in a jurisdiction approved by the Filer.
16. When accessing the Exchange, BC Members will be subject to the same requirements and will have access to the same trading services, on equivalent terms, as Members resident in other jurisdictions.
17. A BC Member must be a non-clearing member of the ECC, which requires that its participants must comply with all of the membership requirements of the ECC for non-clearing members.
18. The Filer does not and will not have physical operations in Province of British Columbia and the Filer will deal with BC Members on a cross-border basis (both in marketing the access to the Exchange to the BC Members and dealing with any BC Members once they have become members).
19. The Filer may make occasional visits to BC Members either to market access to the Exchange or thereafter once BC Members are trading on the Exchange.
20. The Filer's only physical office is located in Norway.
21. The outsourcing of the Exchange technology will be done in compliance with Norwegian requirements, such as Norway's *Regulations on Use of Information and Communication Technology*, applicable to technology outsourcing by the Filer.
22. All transactions taking place on the Exchange will be standardised and price and other key terms are non-negotiable.
23. The Exchange will offer a central order book recording the key terms of transactions concluded on the Exchange. The orders in the central order book will be visible to all Members and other persons that have access to the Exchange's data.

24. Members trading on the Exchange will not see the identity of the counterparty to the trade before or after trade execution. All transactions will be cleared through the ECC.
25. The Filer and the Exchange will be regulated by the Norwegian Financial Supervisory Authority (the NFSA). The NFSA has adopted MiFID, as amended from time to time, as a regulatory requirement of the NFSA and will apply MiFID to its regulation of the Filer, the Exchange and, where applicable, the Members.
26. The NFSA has the authority and procedures for oversight of the Filer and the Exchange. This will include regular, periodic oversight reviews of the Filer and the Exchange by the NFSA.
27. The market surveillance function of the Filer is designed to ensure effective oversight of Members and to ensure compliance with the by-laws, rules and policies of the Exchange (the Exchange Rules), the Norwegian Securities Trading Act and other legislation, regulations and rules relating to trading securities in Norway, each as enacted and implemented from time to time (collectively, the Trading Rules).
28. If the Filer identifies breaches of Exchange Rules it will impose appropriate sanctions in accordance with the procedures described in Section 17 of the Exchange Rules.
29. If the Filer identifies violations of Trading Rules, other than Exchange Rules, it will refer the matter to the NFSA, or another appropriate regulator in accordance with the provisions of the applicable legislation, regulation or rules.
30. The Board of Directors of the Filer (the Board), includes non-executive individuals that have significant and relevant industry experience. All Board members are elected by the General Assembly of the Filer and are subject to approval by the NFSA.
31. The shareholders of the Filer constitute the General Assembly.
32. The Board has the ultimate responsibility for the management of the Filer, including the management of the operation of the Exchange. The Board is responsible for ensuring that the Filer's activities are soundly organised, that internal controls, plans and budgets are in place and that accounts and assets are subject to adequate control and supervision.
33. The Board leads strategic planning for the Filer, including strategic planning relating to the Exchange, and makes decisions that form the basis for the executive management's day-to-day operation of the Filer and the Exchange. The Board is also responsible for hiring the Chief Executive Officer and for

proposing the overall compensation policy of the Exchange to the General Assembly.

34. The Filer has adopted a Code of Ethics that applies to all employees, including the executive officers. The provisions of the Code of Ethics address potential and actual conflicts of interest. On an annual basis, employees are trained with regards to the Code of Ethics.
35. The Board will set high standards for the operation of the Exchange including standards for sound corporate governance.
36. The Filer has sufficient financial resources for the proper performance of its functions and to meet its responsibilities including those of the Exchange.
37. To facilitate the NFSA's ongoing monitoring of the Filer, the Filer reports regularly on its financial stability and capital requirements.
38. The products traded on the Exchange and any changes thereto will be reviewed by the NFSA and will be either approved by the NFSA or subject to requirements established by the NFSA that must be met before implementation of a product or changes to a product.
39. Members are subject to scrutiny and review by the ECC as part of their qualification to become a clearing or non-clearing member with the ECC. As part of a Member's approval by the Exchange, its ECC application is reviewed by the Filer.
40. The Filer has also established appropriate written standards for trading access to the Exchange's services (the Access Standards) including requirements to ensure:
  - (a) Members are appropriately registered as applicable under local securities laws or local commodity futures laws, or exempted from these requirements;
  - (b) the competence, integrity and authority of Members;
  - (c) each Members has a viable organization with adequate functions and capacity to conduct derivatives trading and is a viable client; and
  - (d) Members are adequately supervised.
41. The application process will be transparent and a current version of the Access Standards will be posted by the Filer on the Exchange website hosted and maintained by the Filer.

42. The Access Standards and the process for obtaining, limiting and denying access to the Exchange are fair, transparent and applied reasonably. In applying these access standards, the Filer, on behalf of the Exchange, will not:
- (a) unreasonably prohibit, condition or limit access by a person to services offered by it;
  - (b) permit unreasonable discrimination among Members; or
  - (c) impose any burden on competition that is not reasonably necessary and appropriate.
43. The Filer will have the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions associated with the operation of the Exchange, including setting requirements governing the conduct of its Members, monitoring their conduct, and appropriately disciplining them for violations of Exchange Rules.
44. The Trading Rules:
- (a) are designed to appropriately govern the operations and activities of Members;
  - (b) will permit the denial or limitation of a Member's access to the Exchange or products, and require the reporting of the Member to the NFSA or the Commission, if appropriate.
  - (c) will be supervised by the Filer's internal compliance department;
  - (d) are not contrary to the public interest and are designed to:
    - (i) ensure compliance with applicable legislation;
    - (ii) prevent fraudulent and manipulative acts and practices;
    - (iii) promote just and equitable principles of trade;
    - (iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in products traded on the Exchange;
    - (v) ensure that a Member's order or trade information are not disclosed to any persons unless:
      - (1) the Member has consented to the release of the information in writing;

- (2) the release is required under law applicable to the operations of the Exchange. Prior to complying with such a requirement the Filer will assert all appropriate legal exemptions or privileges that may be available for the information;
  - (3) the information has been publicly disclosed by another person and the disclosure was lawful; or
  - (4) the Filer has entered into an agreement with the person receiving the information that provides that the information will be used solely for capital markets research and that the person will not disseminate information that discloses the identity, trading strategy, transactions or market positions of a BC Member;
- (vi) provide a framework for disciplinary and enforcement actions; and
  - (vii) ensure a fair and orderly market.
45. For any decision made by the Filer in connection with the operation of the Exchange that affects a Member, or an applicant to be a Member, including a decision in relation to access, exemptions, or discipline, the Filer will ensure that:
- (a) parties are given an opportunity to be heard or make representations; and
  - (b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.
46. Members will also have an appeal right to the Norwegian Exchange Appeals Committee, a committee appointed by the Norwegian Ministry of Finance to adjudicate any complaints regarding the Filer's Exchange access standards or decisions made by the Filer in respect of the Exchange.
47. To the extent it is consistent with the laws of Norway, the operation of the Exchange will adhere to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the "Principles for the Regulation and Supervision of Commodity Derivatives Markets" (2011). The NFSA is an ordinary member of IOSCO and is a signatory to Appendix A of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMOU).
48. With respect to clearing and settlement of transactions on the Exchange:

- (a) the Filer has appropriate arrangements for clearing and settlement of transactions on the Exchange through the ECC;
  - (b) the ECC has established appropriate written standards for access to its services;
  - (c) the Filer has assured itself that the information technology used by the ECC has been adequately reviewed and tested and provides at least the same level of safeguards as will be required of the Filer with respect to the Exchange;
  - (d) the Filer has assured itself that the ECC has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.
49. The Filer has appropriate internal controls to ensure completeness, accuracy, integrity and security of information within the Exchange's critical systems, and that these critical systems have sufficient capacity and are subject to business continuity plans that are reasonably designed to enable the Filer to properly operate the Exchange. Critical systems are those that support the following functions:
- (a) order entry;
  - (b) order routing;
  - (c) execution;
  - (d) trade reporting;
  - (e) trade comparison;
  - (f) data feeds;
  - (g) market surveillance;
  - (h) trade clearing; and
  - (i) financial reporting.
50. The Filer has procedures in place to reasonably ensure that the Exchange's critical systems are regularly subject to appropriate testing.
51. The Filer will have adequate arrangements to allow the Exchange to record and publish accurate and timely trade and order information for the Exchange. This information is provided to all Members on an equitable basis.
52. The Filer will have and maintain adequate systems in place for the keeping of books and records with respect to the Exchange, including, but not limited to,



those concerning the operations of the Exchange, audit trail information on all orders and transactions, and compliance with, and violations of, Exchange requirements.

53. Where the Filer has outsourced any of the key services or systems of the Exchange to a service provider, it has appropriate and formal arrangements and processes in place that are designed to ensure that the Filer and the Exchange meet their obligations with respect to the operation of the Exchange, including applicable regulatory requirements.
54. With respect to fees applicable to transactions completed on the Exchange:
  - (a) all fees imposed by the Filer will be volume based, reasonable and equitably allocated and will not have the effect of creating unreasonable conditions or limits on access by Members to the services offered by the Exchange;
  - (b) the process for setting fees will be fair and appropriate, and the fee model transparent;
  - (c) an equal trade fee is charged to the buyer and seller in each transaction; and
  - (d) trading fees are collected by the ECC and remitted to the Filer. The Filer does not have custody of any derivatives or other financial instruments and does not directly collect trading fees.

#### **¶ 4 Order**

Based on the representations that the Filer provided and considering that to do so would not be prejudicial to the public interest, the Commission orders under: (i) section 33(1) of the Act that the Filer is exempt from the recognition requirement in section 25 of the Act, (ii) section 33(1) of the Act that the Filer is exempt from the requirements of NI 21-101 and (iii) section 33(1) of the Act that the Filer is exempt from the requirements of NI 23-101, on the following terms and conditions:

1. The Filer will promptly provide the Commission when requested either directly or through the NFSA, as the case may be, any information in the custody or control of the Filer, relating to BC Members, the operations of the Exchange and compliance with this decision.
2. The Filer will promptly notify the Commission of any of the following:
  - (a) any material change to its business or operations or the information provided in the Application, including, but not limited to:
    - (i) changes to the regulatory oversight of the Filer or the Exchange by the NFSA;

- (ii) the corporate governance structure of the Filer;
  - (iii) the access model, including eligibility criteria, for BC Members;
  - (iv) critical systems and technology; and
  - (v) the clearing and settlement arrangements;
- (b) any change that may materially affect the accuracy of the representations;
- (c) any condition or change in circumstances that make the Filer unable to meet the regulatory requirements of the NFSA;
- (d) any revocation or suspension of the Filer's ability to operate the Exchange in Norway or in any other jurisdiction;
- (e) any known investigations of, or disciplinary action against, the Filer by the NFSA or any other securities regulatory authority;
- (f) any matter known to the Filer that may affect its financial or operational viability, including, but not limited to, any significant system failure or interruption; and
- (g) any default, insolvency, or bankruptcy of any Member known to the Filer that the Filer reasonably believes may have a material, adverse impact upon the Exchange, the ECC clearing system or any BC Member.
3. The Filer will provide, in a manner and form acceptable to the Commission, on a quarterly basis (within 45 days of the end of each calendar quarter), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of BC Members;
  - (b) a list of all BC Members against whom disciplinary action has been taken in the last quarter by the Filer;
  - (c) a list of all British Columbia persons who applied for status as a Member that were denied such status during the quarter;
  - (d) a list of all instruments available for trading during the quarter, identifying any additions, deletions or changes since the prior quarter;
  - (e) for each instrument available for trading on the Exchange:
    - (i) the total trading volume and value originating from each BC Member; and

- (ii) the proportion of worldwide trading volume and value on the Exchange conducted by BC Members; and
  - (f) a list outlining each incident of a significant system outage that occurred at any time during the quarter for any system impacting BC Members, including trading, routing or data, specifically identifying the date, duration and reason for the outage, and noting any corrective action taken.
4. The Filer will promptly provide staff of the Commission copies of all Exchange Rules, and material amendments to those rules or by-laws, that it files with the NFSA.
  5. The Filer will provide to its BC Members, prior to the first trade being executed through the facilities of the Exchange by that BC Member, disclosure that states that:
    - (a) rights and remedies against the Filer may only be governed by the laws of Norway and may be required to be pursued in Norway;
    - (b) the rules applicable to trading on the Exchange will be governed by the laws of the Norway; and
    - (c) the Exchange is regulated by the NFSA, rather than the Commission.
  6. The NFSA complies with its obligations to the Commission under the IOSCO MMOU.
  7. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Filer or the operation of the Exchange, the Filer will submit to the non-exclusive jurisdiction of the courts of British Columbia and the Commission.
  8. The Filer will file with the Commission an appointment of an agent for service in British Columbia upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or proceeding relating to the Commission's regulation and oversight of the Filer's activities and the Exchange's operations in British Columbia.

September 15, 2017

Brenda Leong  
Chair