

Alberta Securities Commission (the Commission)

In the Matter of the *Securities Act*,  
R.S.A. 2000, c. S-4 (the Act)

-and-

In the Matter of Canadian Trading and Quotation System Inc.

Order  
(Section 213)

## **Background**

1. The Canadian Trading and Quotation System Inc. (CNQ) has applied to the Alberta Securities Commission (the Commission) for an exemption from recognition as an exchange under subsection 62(1) of the Act;

## **Representations**

2. CNQ has represented to the Commission that:
  - 2.1 CNQ is carrying on business in Alberta;
  - 2.2 the Ontario Securities Commission (the OSC) has recognized CNQ as a stock exchange under section 21.2.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S-5 as amended (the Ontario Act) by order dated May 7, 2004 (the OSC Recognition Order);
  - 2.3 CNQ is currently subject to the regulatory oversight of the OSC;
  - 2.4 CNQ is aware that the Commission has entered into a Memorandum of Understanding About the Oversight of Exchanges and Quotation and Trade Reporting Systems (the Master MOU);
  - 2.5 the OSC has confirmed that it will act as the lead regulator for CNQ;
  - 2.6 under the terms of the Master MOU, the OSC is the lead regulator for CNQ and is responsible for conducting an oversight program of CNQ to ensure that CNQ meets appropriate standards for market operation and regulation;
  - 2.7 under the OSC Recognition Order, CNQ must file with the OSC each new or amended rule, policy or other similar instrument (Regulatory

Instruments) adopted by its board of directors and must comply in all other respects with the rule review process outlined in Appendix “B” to the OSC Recognition Order;

- 2.8 CNQ will provide the Commission with:
  - 2.8.1 copies of all Regulatory Instruments at the same time CNQ files them with the OSC for review and approval; and
  - 2.8.2 copies of all Regulatory Instruments approved by the OSC;
- 2.9 CNQ has adopted certain amendments to its corporate finance policies in the form attached as Appendix “A” to this order, as may be amended from time to time, that require that CNQ listed issuers that are not reporting issuers in Alberta and have a “significant connection to Alberta” make application to the Commission and become reporting issuers in Alberta;
- 2.10 CNQ has agreed to the terms and conditions set out in this order;

### **Decision**

- 3. The Commission is satisfied that to grant this Order would not be prejudicial to the public interest.
- 4. It is ordered pursuant to section 213 of the Act that CNQ is exempted from recognition as an exchange provided CNQ meets and continues to meet the following terms and conditions:
  - 4.1 CNQ continues to be recognized by the OSC as an exchange or a stock exchange under the Ontario Act;
  - 4.2 the OSC continues to be the lead regulator of CNQ under the Master MOU or any amended or similar agreement and CNQ continues to be subject to the regulatory oversight of the OSC under the oversight program established by the OSC from time to time;
  - 4.3 neither the Commission nor the OSC has terminated the Master MOU or any amended or similar agreement;
  - 4.4 CNQ concurrently provides to the Commission copies of all Regulatory Instruments that it files with the OSC for review and approval, and all final Regulatory Instruments approved by the OSC;
  - 4.5 when requested by the Commission through the OSC, CNQ provides to the Commission any information in the possession of CNQ relating to CNQ Issuers and CNQ Dealers as defined in the OSC Recognition Order and the market operations of CNQ, including, but not limited to,

information regarding securities or products traded and quoted on CNQ, trading and quotation information and actions or proceedings taken by CNQ to enforce its Regulatory Instruments; and

- 4.6 CNQ will not make any changes to the policies referred to in clause 2.9 above without the prior consent of the Commission;
5. It is further ordered pursuant to section 213 of the Act that CNQ is deemed to be in compliance with paragraphs 4.4 and 4.5 above unless the Commission provides CNQ with written notice of non-compliance and CNQ fails to provide the documents or information within 10 business days following receipt of the notice.

“original signed by”

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

“original signed by”

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Stephen R. Murison, Vice-Chair  
Alberta Securities Commission

**APPENDIX “A”**  
**CNQ Polices Relating to Issuer with a  
 Significant Connection to Alberta**

**The following definitions will be added to Policy 1:**

“beneficial holders” means those security holders of an issuer that are included in either:

- (a) a Demographic Summary Report available from the International Investors Communications Corporation; or
- (b) a non-objecting beneficial owner list for the issuer under National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer;

“registered holders” means the registered security holders of an issuer that are beneficial owners of the equity securities of that issuer. For the purposes of this definition, where the beneficial owner controls or is an affiliate of the registered security holder, the registered security holder shall be deemed to be the beneficial owner;

“significant connection to Alberta” exists where an issuer seeking to become listed on or that is listed on CNQ has:

- (a) registered holders and beneficial holders resident in Alberta who beneficially own more than 20% of the total number of equity securities beneficially owned by the registered holders and beneficial holders of the issuer; or
- (b) mind and management principally located in Alberta and has registered holders and beneficial holders resident in Alberta who beneficially own more than 10% of the total number of equity securities beneficially owned by the registered holders and beneficial holders of the issuer.

For the purposes of item (b), the residence of the majority of the directors in Alberta or the residence of the president or chief executive officer in Alberta may be considered determinative in assessing whether the mind and management of the issuer is principally located in Alberta.

**The following provisions will be added to Policy 2.**

1. Effective January 1, 2005, all CNQ listed issuer and applicants for listing that are not reporting issuers in Alberta must immediately assess whether they have a significant connection to Alberta.
2. Where it appears to CNQ that an issuer making an initial application for listing on CNQ has a significant connection to Alberta, CNQ will, as a condition of its acceptance or approval of the listing application, require the issuer to provide to CNQ evidence that

it has made a *bona fide* application to the Alberta Securities Commission to become a reporting issuer in Alberta.

3. Where a CNQ listed issuer that is not a reporting issuer in Alberta becomes aware that it has a significant connection to Alberta as a result of complying with section 2 above or otherwise, the issuer must immediately notify CNQ and promptly make a *bona fide* application to the Alberta Securities Commission to be deemed to be a reporting issuer in Alberta. The issuer must become a reporting issuer in Alberta within six months of becoming aware that it has a significant connection to Alberta.

4. All CNQ listed issuers that are not reporting issuers in Alberta must assess, on an annual basis, in connection with the delivery of their annual financial statements to securityholders, whether they have a significant connection to Alberta. All issuers must obtain and maintain for a period of three years after each annual review referenced in this section, evidence of residency of their registered holders and beneficial holders.

5. If requested, issuers must provide to CNQ evidence of the residency of their non-objecting beneficial owners (as defined in National Policy 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* or its successor instruments).

**The following provisions will be added to Policy 3:**

CNQ may suspend from qualification for listing a CNQ listed issuers' securities where the issuer fails to comply with a direction from CNQ or CNQ requirement to make application for and obtain reporting issuer status in Alberta where the issuer has a significant connection in Alberta.

**The following provisions will be added to Part 3 of Policy 4:**

Where a CNQ listed issuer has a significant connection to Alberta, CNQ may refuse to accept any director, officer or insider, or revoke, amend or impose conditions in connection with CNQ acceptance of any such application until such time as the issuer has complied with a direction from CNQ or CNQ requirement to make application to the Alberta Securities Commission and to become a reporting issuer in Alberta.