



April 9, 2021

**VIA CFTC PORTAL**

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

**Re: ICE NGX Self-Certification of Rule Amendments: Contracting Party Agreement - Submission Pursuant to Section 5c(c)(1) of the Commodity Exchange Act and Commission Regulation 40.6(a)**

Dear Mr. Kirkpatrick:

In accordance with Section 5c(c)(1) of the Commodity Exchange Act, as amended (“Act”), and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), ICE NGX Canada Inc. (“ICE NGX”) is submitting this self-certification to amend the ICE NGX Contracting Party Agreement (“CPA”). The CPA functions as the rulebook for ICE NGX’s exchange and clearinghouse operations and is a “rule” as that term is defined under Commission Regulation 40.1(j). ICE NGX intends to implement the amendments on May 3, 2021, or such later date as ICE NGX may designate.

**1. Overview**

ICE NGX is making certain amendments (the “Amendments”) to the CPA to

- (a) strengthen the guarantee of a Contracting Party with respect to the Obligations of its Contracting Party Affiliates,
- (b) strengthen ICE NGX’S authority to net, set-off and recoup amounts payable to ICE NGX by a Contracting Party and payable from ICE NGX to the Contracting Party,
- (c) establish a positive requirement for a Contracting Party to provide annual financial statements,
- (d) broaden the cross-default prong in the definition of “Event of Default”, and
- (e) make certain other non-significant changes.

The text of the amended CPA provisions is attached as the Appendix to this submission.



## 2. Details of Rule Changes

### ***CP Affiliates***

A Contracting Party Affiliate is a Contracting Party that (i) is affiliated with another Contracting Party, and (ii) nets collateral and exposure with that other Contracting Party under the same “clearing account”. Under the CPA, a Contracting Party is liable for the Obligations (as defined in the CPA) of its Contracting Party Affiliate, and ICE NGX has the right to set-off Obligations of a Contracting Party against the Obligations of its Contracting Party Affiliate.

The amendments specify that a Contracting Party guarantees to ICE NGX the payment and performance of the Obligations of its Contracting Party Affiliate, to more explicitly state that the Obligations of the Contracting Party Affiliate are the Obligations of the Contracting Party itself under the CPA.

### ***Set-off***

The amendments enhance and update the definition of “Set-off”.

### ***Contracting Party Financial Statements***

As part of its ongoing monitoring of the credit risk and financial situation of Contracting Parties, ICE NGX requests and reviews Contracting Parties’ financial statements on an annual and, where practical, on a quarterly basis.

The proposed amendments reflect ICE NGX’s practice to request each Contracting Party’s annual financial statements each year, by changing from a requirement to provide upon request to a positive requirement for each Contracting Party to provide its annual financial statements to ICE NGX within the same prescribed period.

### ***Cross-Default***

The amendments broaden the cross-default provision in the “Event of Default” definition in the CPA, to include the declaration of an event of default in respect of the Contracting Party, any affiliate of the Contracting Party or any Credit Support Provider of the Contracting Party, at any other clearinghouse, as “event of default” is defined in the respective rulebook of that other clearinghouse.

### ***Non-significant changes***

In addition to the above, ICE NGX is making certain non-substantive and non-significant changes to the CPA.

## 3. Compliance with the Act and Regulations

ICE NGX reviewed the Amendments and determined that they comply with the requirements of the Act and the rules and regulations promulgated by the Commission in implementing the Act. In this regard, ICE NGX reviewed the derivatives clearing organizations core principles (“Core Principles”) and determined that the amendments are potentially relevant to the following Core Principles and the applicable regulations of the Commission thereunder.



Participant and Product Eligibility (Core Principle C): The Amendments facilitate ICE NGX's compliance with Core Principle C - Participant and Product Eligibility and Commission Regulation 39.12, as the Amendments relating to Contracting Party Financial Statements enhance ICE NGX's ongoing monitoring of participants' ongoing compliance with participation requirements.

Risk Management (Core Principle D): The Amendments facilitate ICE NGX's compliance with Core Principle D - Risk management and Commission Regulation 39.13, as the Amendments enhance ICE NGX's ability to manage the risks associated with discharging ICE NGX's responsibilities as a derivatives clearing organization. Specifically, the amendments strengthen ICE NGX's authority to take appropriate action to manage risks in respect of a Contracting Party, and enhance ICE NGX's authority to take action to protect the clearinghouse and its other participants against a potential default by a Contracting Party where an event of default has been declared at another clearinghouse in respect of that Contracting Party Affiliate, or any of its affiliates or Credit Support Providers.

Default Rules and Procedures (Core Principle G): The Amendments facilitate ICE NGX's compliance with Core Principle G - Default Rules and Procedures and Commission Regulation 39.16, as the Amendments relating to Contracting Party Affiliates, Set-off and Cross-Default enhance ICE NGX's rules designed to allow for the efficient, fair and safe management of a default by a Contracting Party or Contracting Party Affiliate.

#### **4. Certifications**

ICE NGX hereby certifies that the Amendments to the CPA discussed in this submission comply with the Act and the rules and regulations promulgated by the Commission thereunder. ICE NGX is not aware of any substantive opposing views expressed regarding the Amendments. ICE NGX further certifies that, concurrent with this filing, a copy of the submission was posted on ICE NGX's website and may be accessed at <https://www.theice.com/ngx>.



\* \* \* \* \*

Please do not hesitate to contact me (403-974-1701) or our General Counsel and CCO, Martin McGregor (403-974-1740) for any further information the Commission or its staff may require in connection with this notice.

Yours truly,

A handwritten signature in black ink, appearing to read 'Greg Abbott'.

Greg Abbott  
President & COO

Encls.

## APPENDIX

### AMENDMENTS TO THE ICE NGX CONTRACTING PARTY AGREEMENT

#### TERMS AND CONDITIONS

[Note: Insertions are underlined, deletions are struck through.]

#### 1.2 Definitions

“Event of Default” ~~means the occurrence of any of the events~~ has the meaning set forth ~~out~~ in Section 3.9;

“Failure to Pay” means the failure of a Contracting Party or Exchange to make payment of any amount under any Invoice issued in accordance with this Agreement ~~or under Section 5.13~~;

“Set-Off” means set-off, offset, combination of accounts, right of retention or deducting, netting, recouping, withholding or similar right or requirement to which a party is entitled or subject (whether arising under this Agreement, any Transaction, applicable law or otherwise) that is exercised by, or imposed on, such party;

...

#### 2.4 Of Exchange: General

Exchange represents and warrants that: (a) Exchange is a corporation duly and validly incorporated and subsisting under the laws of ~~Alberta~~ Canada; ...

...

#### 3.2 Agreements of the Contracting Party

...

##### d. Exchange Information –

(i) ~~The Contracting Party will from time to time during the term of this Agreement on the request of Exchange file with Exchange the following: (i) Contracting Party's audited or, if audited are not available, unaudited consolidated financial statements for its fiscal year within 140 days of the end of fiscal year and,~~

(ii) On request of Exchange, the Contracting Party will file with Exchange (A) unaudited consolidated financial statements for each of the Contracting Party's first three fiscal quarters within 60 days of the end of such fiscal quarter or such substitutional financial information as may be acceptable to Exchange and such Contracting Party; (#B) such reasonable additional



financial or other information as may be requested by Exchange from time to time and which is reasonably necessary for the administration or prudent operation of the ICE NGX Trading System or the ICE NGX Clearing System; and ~~(iii)~~ reasonable confirmation in respect of the representations and warranties of the Contracting Party provided in Sections 2.1 and 2.3 and of the Credit Support Provider provided in Section 2.2;

~~(iii) The Contracting Party and, in addition,~~ agrees to file a notice with Exchange in respect of any material adverse change in the financial condition of the Contracting Party or the Credit Support Provider, or of any material change to any of the information provided to Exchange in the Application or pursuant to any inquiry by Exchange;

~~(iv) The Contracting Party and~~ agrees to Exchange making such further investigations, inquiries or credit checks as Exchange may deem reasonably necessary and agrees to provide such documentation or information as is requested by Exchange in the conduct of such investigation or inquiry.

...

### 3.3.1 Contracting Party Affiliates

- a. Set-Off – The Contracting Party hereby agrees that Exchange shall be entitled to Set-Off all Obligations payable or to be performed by Exchange to the Contracting Party or, except as Exchange may otherwise agree, any of its Contracting Party Affiliates, under any Transaction or this Agreement (or any Transaction or any Contracting Party Agreement entered into between Exchange and any Contracting Party Affiliate), whether under Sections 5.5, 5.6, 8.2 or 8.3 or otherwise and whether or not matured or contingent and irrespective of the currency or place of payment, against any Obligations payable or to be performed by the Contracting Party or any of its Contracting Party Affiliates to Exchange under any Transaction or this Agreement (or any Transaction or any Contracting Party Agreement entered into between Exchange and any Contracting Party Affiliate). The contractual right of Set-Off hereby granted is in addition to any legal or equitable right of set-off granted at law, and does not require for its exercise any mutuality or connection, other than that hereby created, between the Obligations Set-Off. If an obligation or right is unascertained at the time of any such Set-Off, Exchange may in good faith estimate the amount or value of such obligation or right, in which case Set-Off will be effected on the basis of such estimate and the relevant party shall account to the other party if such obligation or right at any time thereafter is ascertained.
- b. Guarantee of Contracting Party Affiliate and Letter of Credit— The Contracting Party hereby unconditionally and irrevocably guarantees (the “Guarantee”) the due and punctual payment and performance in full when due, whether in the ordinary course, by termination, acceleration or otherwise, of all Obligations of its Contracting Party Affiliates to Exchange under the Contracting Party Agreements entered into by such Contracting Party Affiliates. Except as Exchange may



~~otherwise agree, the Contracting Party agrees that a~~ All Collateral provided by a Contracting Party to Exchange hereunder (including without limitation all letters of credit) is provided not only to secure the performance of the Contracting Party's Obligations hereunder, but also to secure the Contracting Party's performance of the Guarantee~~the performance of the Obligations of all of its Contracting Party Affiliates to Exchange under the Contracting Party Agreements entered into by such Contracting Party Affiliates.~~ Except as Exchange may otherwise agree, ~~for the purpose of allowing the Contracting Party acknowledges and agrees that~~ Exchange ~~to may~~ realize on the Collateral provided by it to Exchange hereunder (including without limitation drawing upon any all letters of credit) to pay and perform the Contracting Party's Guarantee. ~~to pay any of its Contracting Party Affiliates' Obligations, the Contracting Party hereby unconditionally guarantees (the "Guarantee") the prompt and complete payment and performance when due, whether in the ordinary course, by termination, acceleration or otherwise, of all Obligations of its Contracting Party Affiliates.~~ This Guarantee is one of payment and not of collection. This Guarantee is irrevocable and shall remain in full force and effect and be binding upon the Contracting Party, its successors and assigns during the term of this Agreement and until all of the Obligations of its Contracting Party Affiliates have been satisfied in full. Upon the occurrence of a Default with respect to any Contracting Party or, except as Exchange may otherwise agree, any Contracting Party Affiliate, Exchange shall be entitled to draw upon any letter of credit provided to it by the Contracting Party ~~up to the amount of~~ to pay the Obligations and the Guarantee that are due.

- c. Suretyship Waiver – The Obligations of Contracting Party and its Contracting Party Affiliates and the grant of security in respect of this Agreement under Section 3.3 shall not be affected by any circumstance of any kind, including circumstances which might otherwise constitute a legal or equitable discharge of or defence of a guarantor or surety (other than payment in full).
- d. Collateral of Contracting Party Affiliate – Except as Exchange may otherwise agree in writing with the Contracting Party, for the purpose of securing the payment and performance of both the Contracting Party's Obligations and the Contracting Party's Guarantee, any Collateral provided by any Contracting Party and any Contracting Party Affiliate will be allocated between the Contracting Party and such Contracting Party Affiliate at any time and from time to time by Exchange to the extent required by the Risk Management Policy, the Liquidation Procedure pursuant to Section 5.6, the Close-out Procedure pursuant to Section 8.3, or as may be otherwise necessary to comply with the terms and conditions of this Agreement.

...

### **3.9 Events of Default**

Exchange may declare an Event of Default to have occurred in respect of the Contracting Party on the occurrence and continuation of the following events:



...

- e. Cross-Default - An event of default is declared in respect of the Contracting Party, any affiliate of the Contracting Party or any Credit Support Provider of the Contracting Party, at ~~a any other clearinghouse that is affiliated with Exchange~~, as “event of default” is defined in the respective rulebook of the ~~affiliated other~~ clearinghouse.

### **3.9.1 Notice of Event of Default**

The Contracting Party is required to, and agrees to and acknowledges the requirement to, notify Exchange promptly upon

- a. the occurrence of ~~an Event of Default~~ any event listed in paragraph 3.9.c, in respect of the Contracting Party or any Credit Support Provider or any Specified Entity;

...

### **5.8 Limitations on Liability**

...

- e. Limit of Liability – The aggregate liability of Exchange, including in respect of any Collateral, shall be limited to an aggregate amount of \$10,000 for a single claim and an aggregate amount of \$1,000,000 for all claims of Contracting Parties on a single day and where if all claims cannot be satisfied for a single day because of the dollar limitation on recoveries, all such claims shall be limited to a pro rata share of the maximum per day amount. This limit of liability does not apply to the liability of Exchange for a Failure to Pay, Failure to Deliver or Failure to Take, in the case of a Transaction, and in respect of Exchange’s agreement to indemnify the Contracting Party for infringement as set forth in Section 3.4.