



November 30, 2022

VIA CFTC PORTAL

Christopher J. Kirkpatrick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St., N.W.
Washington, D.C. 20581

Re: Amendment to ICE NGX Canada Inc. Rules - Submission Pursuant to Section 5c(c)(1) of the Commodity Exchange Act and CFTC Regulation § 40.6(a): Same-Day Guarantee Fund and Change in Escrow Agent (CPA and RMF Amendments)

Dear Mr. Kirkpatrick:

Pursuant to 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 relating to changes to

- 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(i); and
- the ICE NGX Risk Management Framework (“RMF”) - the RMF is a “rule” as that term is defined under Commission Regulation 40.1(i).

ICE NGX intends to implement the amendments to the CPA (the “CPA Amendments”) and the amendments to the RMF (the “RMF Amendments”) and, together with the CPA Amendments, the “Amendments”) on or about December 15, 2022.

On September 20, 2022, ICE NGX submitted a self-certification of CPA and RMF amendments relating to changing the deadline for making settlement payments to ICE NGX, to noon Mountain Prevailing Time (the “Noon Settlement Payment Deadline Amendments”). As the noon settlement payment deadline is a necessary component of the same-day availability for the ICE NGX guarantee fund, ICE NGX is hereby updating the Commission that it intends to implement the Noon Settlement Payment Deadline Amendments concurrently with the Amendments described herein.

1. Overview

ICE NGX’s default fund comprises:

- a US \$200 million letter of credit (the “ICE NGX Letter of Credit”) issued for the benefit of the Escrow Agent (as defined in the CPA) and held in escrow for all ICE NGX Contracting Parties under the terms of an agreement between ICE NGX and the Escrow Agent (the

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“Deposit Agreement”), backed by default insurance in the same amount provided by Export Development Canada, and

- US \$15 million held as restricted cash to fund the first loss amount under the default insurance.

ICE NGX is making this submission to implement the following changes relating to the ICE NGX default fund:

- a change in the Escrow Agent, to Royal Trust Corporation,
- an amended and restated Deposit Agreement governing the ICE NGX Letter of Credit, entered into with the new Escrow Agent and replacing the current Deposit Agreement, and
- an additional process for drawing on the ICE NGX Letter of Credit, to facilitate same-day availability of the proceeds of the ICE NGX Letter of Credit.

The Amendments are designed to enhance ICE NGX’s liquidity resources, thereby further mitigating settlement and liquidity risk.

The text of the amended CPA provisions is attached as the Appendix to this letter. Concurrently with this submission, ICE NGX is submitting the text of the RMF Amendments, for which ICE NGX has respectfully requested confidential treatment. Finally, ICE NGX is also providing the Commission with a copy of the new Deposit Agreement with the new Escrow Agent, a copy of which will also be provided to each Contracting Party prior to implementation of the Amendments.

2. Details of Rule Changes

The CPA describes the Deposit Agreement and sets out the two current types of draw-downs on the ICE NGX Letter of Credit. No changes are contemplated to the two current draw-down types.

The additional draw-down type to facilitate same-day availability of the ICE NGX Letter of Credit is reflected in the CPA Amendments and is described in more detail in the amended and restated Deposit Agreement.

The RMF Amendments reflect the change in Escrow Agent and the re-classification of the ICE NGX Letter of Credit as a liquid resource.

ICE NGX intends to implement the Amendments on or about December 15, 2022.

3. Compliance with Core Principles

ICE NGX reviewed the Amendments and determined that they comply with the rules and regulations of the Commission. In this regard, ICE NGX reviewed the derivatives clearing organization (“DCO”) core principles (each a “Core Principle”) and determined that the



Amendments are potentially relevant to the following Core Principles and applicable regulations of the Commission thereunder.

Compliance (Core Principle A): The Amendments are consistent with Core Principle A - Compliance and Commission Regulation 39.10, as the Amendments clarify and enhance ICE NGX's policies and procedures for complying with Commission regulations and internal policies.

Financial Resources (Core Principle B): The Amendments are consistent with Core Principle B - Financial Resources and Commission Regulations

- § 39.11(e)(1)(i), as the Amendments and the new Deposit Agreement minimize the risk of delay in accessing ICE NGX's liquid resources;
- § 39.11(e)(1)(iii), as the Amendments and the new Deposit Agreement facilitate re-classifying the ICE NGX Letter of Credit as a liquid resource, increasing ICE NGX's overall liquid resources; and
- § 39.11(e)(3), as the ICE NGX Letter of Credit is allocated to meeting ICE NGX's obligations as a central counterparty during a one-day settlement cycle, and not to meeting ICE NGX's operating expenses.

Risk Management (Core Principle D): The Amendments are consistent with Core Principle D - Risk Management and Commission Regulations

- § 39.13(a), as the Amendments further mitigate ICE NGX's liquidity risk on settlement days; and
- § 39.13(b), as the RMF Amendments update ICE NGX's risk management framework to reflect the enhanced liquidity resources.

4. Certifications

ICE NGX certifies that the proposed Amendments discussed in this submission comply with the Commodity Exchange Act, including the Core Principles and the Regulations of the Commission thereunder. ICE NGX is not aware of opposing views expressed regarding the Amendments. ICE NGX further certifies that, concurrent with this filing, a copy of this submission was posted to ICE NGX's website.

Yours truly,

A handwritten signature in black ink, appearing to read 'Greg Abbott', is written over a horizontal line.

By: Greg Abbott
Title: President & COO
Date: November 30, 2022

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APPENDIX

AMENDMENTS TO THE ICE NGX CONTRACTING PARTY AGREEMENT

TERMS AND CONDITIONS

[Note: Insertions are underscored; deletions are struck through.]

ARTICLE 1 - INTERPRETATION

1.2 Definitions

...

“Deposit Agreement” means the agreement ~~amended and restated as of December 11, 2008~~ made effective December 15, 2022 between Exchange and the Escrow Agent, as amended or restated from time to time;

...

ARTICLE 5 - RECOURSE AND LIABILITY

...

5.11 Deposit Agreement

a. Failure to Pay by Contracting Party –

(i) In the event of a Failure to Pay by a Contracting Party, Exchange may immediately file with the Escrow Agent a Direction to Pay Same-Day pursuant to, and as defined in, the Deposit Agreement, for the sole purpose of satisfying one or more Invoices owing by Exchange to one or more Contracting Parties that would otherwise be subject to a Failure to Pay by Exchange.

(ii) Upon verification of the Direction to Pay Same-Day, the Escrow Agent will forthwith provide sufficient proceeds from the Exchange Letter of Credit to Exchange to, and Exchange will forthwith use such proceeds solely to, satisfy the Invoice(s) that would otherwise be subject to a Failure to Pay by Exchange.

b.a. Exchange Failure to Pay ~~by Exchange~~ – In the event of an Exchange Failure to Pay ~~by Exchange which that~~ is not rectified by Exchange within three (3) Business Days from receipt of a notice of Failure to Pay by Exchange, Exchange shall immediately file with the Escrow Agent a Direction to Pay pursuant to, and as defined in, the Deposit Agreement and shall notify Contracting Party Payee(s) (as defined in the Deposit Agreement) of such Direction to Pay having been filed.

c.b. ~~Exchange Failure to Pay Resulting from a Failure to Deliver, Failure to Take or Exchange Default~~Contracting Party's Demand – The Contracting Party will be entitled in the event of an Exchange Failure to Pay resulting from ~~an a~~ Failure to Take, Failure to Deliver or Exchange Default to file with the Escrow Agent the Contracting Party's Demand pursuant to, and as defined in, the Deposit Agreement after the expiry of five (5) Business Days from the occurrence of such event.

d. Exchange Notice Not To Pay – In the event that the Contracting Party files with the Escrow Agent the Contracting Party's Demand, Exchange will be entitled to file with the Escrow Agent ~~the a~~ Notice Not To Pay pursuant to, and as defined in, the Deposit Agreement in the event that:

- (i) five (5) Business Days have not elapsed from the occurrence of the Exchange Default, as the case may be;
- (ii) either the Contracting Party or Exchange has initiated Mediation in respect of a dispute, controversy, difference or question in respect of the Exchange Default, as the case may be, and twenty (20) days have not expired from the date of initiation of such Mediation;
- (iii) either the Contracting Party or Exchange has initiated Arbitration in respect of a dispute, controversy, difference or question in respect of the Exchange Default, as the case may be, and the Arbitrator or the Arbitral Tribunal, as the case may be, has not issued a decision in respect of such matter; or
- (iv) the amount in respect of the Contracting Party's Demand has been satisfied.

e. Contracting Party May Re-File – In the event that Exchange files with the Escrow Agent ~~the a~~ Notice Not To Pay, the Contracting Party is entitled to refile with the Escrow Agent the Contracting Party's Demand with:

- (i) a statement indicating the passage of five (5) Business Days;
- (ii) if Mediation is agreed to, a statement from the mediator as to the passage of twenty (20) days from the initiation of Mediation or a joint direction from the Contracting Party and Exchange as to the resolution of the Mediation; or
- (iii) if Arbitration is agreed to, a statement from the Arbitrator or the Arbitral Tribunal, as the case may be, as to the decision in respect of the matter.

f. Escrow Agent Undertaking – Exchange hereby agrees to provide the Escrow Agent with the Contracting Party's name ~~and address for notices from the Escrow Agent~~ and will provide the Contracting Party with an executed copy of the Escrow Agent's ~~cause the Escrow Agent to give the~~ Undertaking ~~to the Contracting Party~~ in respect of the Deposit Agreement.



~~e.e.~~ [Deposit Agreement Prevails](#) – In the event of any conflict between the provisions of this Agreement and the Deposit Agreement, the rights of Exchange and the Contracting Party under this Agreement will be deemed to be amended and interpreted in accordance with the provisions of the Deposit Agreement.