

**EXHIBIT F – THE REGULATORY REGIME GOVERNING THE FOREIGN BOARD OF TRADE IN ITS HOME COUNTRY OR COUNTRIES**

- (1) A description of the regulatory regime/authority’s structure, resources, staff, and scope of authority; the regulatory regime/authority’s authorizing statutes, including the source of its authority to supervise the foreign board of trade; the rules and policy statements issued by the regulator with respect to the authorization and continuing oversight of markets, electronic trading systems, and clearing organizations; and the financial protections afforded customer funds.**
- (2) A description of and, where applicable, copies of the laws, rules, regulations and policies applicable to:<sup>1</sup>**
  - (i) The authorization, licensure or registration of the foreign board of trade.**
  - (ii) The regulatory regime/authority’s program for the ongoing supervision and oversight of the foreign board of trade and the enforcement of its trading rules.**
  - (iii) The financial resource requirements applicable to the authorization, licensure or registration of the foreign board of trade and the continued operations thereof.**
  - (iv) The extent to which the IOSCO Principles are used or applied by the regulatory regime/authority in its supervision and oversight of the foreign board of trade or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the applicable trading systems for compliance therewith.**
  - (v) The extent to which the regulatory regime/authority reviews and/or approves the trading rules of the foreign board of trade prior to their implementation.**
  - (vi) The extent to which the regulatory regime/authority reviews and/or approves futures, option or swap contracts prior to their being listed for trading.**
  - (vii) The regulatory regime/authority’s approach to the detection and deterrence of abusive trading practices, market manipulation, and other unfair trading practices or disruptions of the market.**
- (3) A description of the laws, rules, regulations and policies that govern the authorization and ongoing supervision and oversight of market intermediaries who may deal with members and other participants located in the United States participants, including:**
  - (i) Recordkeeping requirements.**
  - (ii) The protection of customer funds.**
  - (iii) Procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.**
- (4) A description of the regulatory regime/authority’s inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, and enforce rules applicable to the foreign board of trade.**
- (5) For both the foreign board of trade and the clearing organization (unless addressed in Supplement S-1), a report confirming that the foreign board of trade and clearing organization are in regulatory good standing, which report should be**

---

<sup>1</sup> To the extent that any such laws, rules, regulations or policies were provided as part of Exhibit A-5(1), they need not be duplicated. They may be cross-referenced.

prepared subsequent to consulting with the regulatory regime/authority governing the activities of the foreign board of trade and any associated clearing organization. The report should include:

- (i) Confirmation of regulatory status (including proper authorization, licensure and registration) of the foreign board of trade and clearing organization.
  - (ii) Any recent oversight reports generated by the regulatory regime/authority that are, in the judgment of the regulatory regime/authority, relevant to the foreign board of trade's status as a registered foreign board of trade.
  - (iii) Disclosure of any significant regulatory concerns, inquiries or investigations by the regulatory regime/authority, including any concerns, inquiries or investigations with regard to the foreign board of trade's arrangements to monitor trading by members or other participants located in the United States or the adequacy of the risk management controls of the trading or of the clearing system.
  - (iv) A description of any investigations (formal or informal) or disciplinary actions initiated by the regulatory regime/authority or any other self-regulatory, regulatory or governmental entity against the foreign board of trade, the clearing organization or any of their respective senior officers during the past year.
- (6) For both the foreign board of trade and the clearing organization (unless addressed in Supplement S-1), a confirmation that the regulatory regime/authority governing the activities of the foreign board of trade and the clearing organization agree to cooperate with a Commission staff visit subsequent to submission of the application on an "as needed basis," the objectives of which will be to, among other things, familiarize Commission staff with supervisory staff of the regulatory regime/authority; discuss the laws, rules and regulations that formed the basis of the application and any changes thereto; discuss the cooperation and coordination between the authorities, including, without limitation, information sharing arrangements; and discuss issues of concern as they may develop from time to time (for example, linked contracts or unusual trading that may be of concern to Commission surveillance staff).

## Introduction

1. ICE Endex Derivatives B.V. (the "**Exchange**") is subject to a comprehensive regulatory regime in the Netherlands and Europe. This regulatory structure includes: financial and other fitness criteria for the Exchange; reporting and record-keeping requirements; procedures governing the treatment of customer funds and property; conduct of business standards; provisions designed to protect the integrity of the markets; and statutory prohibitions on fraud, abuse and market manipulation. In addition, the Exchange must submit its members to a comprehensive framework of rules applicable to those members.
2. Responsibility for financial services legislation and broad policy in the Netherlands lies with the Dutch Ministry of Finance, which is answerable to Parliament. Responsibility for regulating the market conduct of investment business, providing investor protection and preventing market manipulation in the Netherlands rests with the Dutch Financial Markets Authority (*Autoriteit Financiële Markten*, the "**AFM**").
3. The applicable regulatory regime for the Netherlands is not dependent on the home country's classification of the product being traded on the Exchange as a future, option,

swap, which are all financial instruments, or otherwise, since leading will be whether the relevant product qualifies as a financial instrument according to Dutch regulatory law. The principal legal provisions with respect to the Dutch regulatory regime applying to the Exchange and its members are contained in, or derived from, the Dutch Financial Supervision Act (*Wet op het financieel toezicht*, “**DFSA**”) and the AFM fulfills its regulatory responsibilities within the framework established by the DFSA and related legislation.

4. Additional authority rests with the Fiscal Intelligence and Investigation Service (*Fiscale Inlichtingen en Opsporingdienst*, the “**FIOD**”) which investigates serious and complex fraud. The FIOD may decide for a criminal investigation in conjunction with the Public Prosecution Service. In the case of fiscal fraud the Tax and Customs Administration may also opt for a penalty order instead of a summons served by the public prosecutor. This means that the Tax and Customs Administration will impose a fine on the fraudster.

### **A description of the regulatory regime/authority’s structure**

5. The AFM is a foundation. As a result, it has no shareholders. It is registered with the Dutch Chamber of Commerce under number 41207759. The AFM has its registered office at Vijzelgracht 50, 1017 HS Amsterdam, the Netherlands.
6. The AFM has an executive board (Section 1:26 DFSA), as well as a supervisory board (Section 1:27 DFSA).
7. The AFM is managed by the executive board, which is responsible for setting the day-to-day policy and taking care of the day-to-day business of the AFM. The board consists by law of three to five members. Board members are appointed by the Minister of Finance for a period of four years which can be renewed twice (Section 1:26(1) DFSA).
8. On 24 June 2016 the board of executive directors had five members: Ir. M.W.L. van Vroonhoven (president), mr. drs. G.J. Everts, drs. H.W.O.L.M. Korte, Prof. mr. dr. F. de Vries and drs. F.J.J.G. van den Hurk. Details of the board members, of the division of the portfolios and of additional activities of the board members can be found via: <https://www.afm.nl/en/over-afm/organisatie/bestuurverzicht/bestuursleden>.
9. The supervisory board supervises the policy set by the executive board and daily business and advises the board when necessary (Section 1:27(2) DFSA). The supervisory board is also responsible for approving the AFM's annual plan and budget and adopting the annual accounts. Executive board resolutions of major strategic importance - e.g. to adopt or alter policy plans for the medium or long term, change the organizational structure, appoint or dismiss the external auditor, amend the Statutes or accept new tasks - are submitted to the supervisory board in advance for approval.
10. The Minister of Finance has the power to appoint and dismiss the members of the supervisory board. Members are appointed to the supervisory board based on nominations by the supervisory board. The board consists by law of three to five members. Board members are appointed by the Minister of Finance for a period of four years which can be renewed twice (Section 1:27(3) DFSA).

11. On 24 June 2016 the supervisory board had four members: P. Rosenmöller (president), D.C.C. van Everdingen (vice president), R. Becker and B. Koolstra. A list of the members of the supervisory board and of their additional activities of the members of the supervisory board can be found via: <https://www.afm.nl/en/over-afm/organisatie/rvt>.
  12. An organizational chart of the AFM can be found in Annex F-1.
- (1) A description of the regulatory regime/authority's structure, resources, staff, and scope of authority; the regulatory regime/authority's authorizing statutes, including the source of its authority to supervise the foreign board of trade; the rules and policy statements issued by the regulator with respect to the authorization and continuing oversight of markets, electronic trading systems, and clearing organizations; and the financial protections afforded customer funds.**

### **Resources**

13. The general powers of the AFM to raise fees are set out in Section 11-13 Financing of Financial Supervision Act (*Wet bekostiging financieel toezicht*, "FFSA"). The actual fees levied from market participants in 2016 have been laid down in the Rules on financing of financial supervision 2016 (*Regeling bekostiging financieel toezicht 2016*) and for the Exchange consist of a fixed amount of EUR 49,430 to be increased with an amount per transaction, which is dependent on the actual number of transactions concluded via the Exchange.

### **Scope of authority**

14. As mentioned above under 2, the AFM is the responsible authority for market conduct supervision (Section 1:25(2) DFSA). This supervision aims at ensuring an orderly and transparent market process and fair dealings between market parties and effective client protection (Section 1:25(1) DFSA). As part of this task, the AFM decides on the admittance of market parties to the Dutch financial markets. As a consequence of this the strategic goals of the AFM are: (1) ensuring meticulous financial services, (2) fair and efficient functioning of the capital markets and (3) contributing to the stability of the financial system. For this, we refer to the summary of the 2015 annual report of the AFM (Annex F-2).
15. The AFM uses a risk-based approach. The AFM sets its priorities in regulation in the areas it considers to be the most at risk. Each year the AFM presents multiple focus themes. On the basis of these focus themes it decides on the core themes of its supervision activities in a given year and how it will allocate its resources in such year.

### **Authorizing statutes**

16. As set out above under 3, the AFM's authority is based on the DFSA. The DFSA assigns the AFM as the entity responsible for market conduct supervision (Section 1:25 DFSA). The AFM derives most of its powers and functions from the DFSA, this includes the power to set rules for the Exchange.

## ICE ENDEX DERIVATIVES

17. The DFSA is for a large part composed of rules that originate from EU legislation, such as the MiFID Directive and the Prospectus Directive.
18. The Dutch Minister of Finance may, if he has been provided in the DFSA with such authority with regard to a specific topic, issue a governmental decree (*algemene maatregel van bestuur*). Such governmental decree generally sets more specific requirements based on the general requirements set out in the DFSA.
19. Furthermore, the AFM has been given the authority to set further rules with regard to various topics on financial supervision. This authority is provided for in specific provisions of the DFSA and further rules and regulations thereto.

### **Authority to supervise the foreign board of trade**

20. Based on Section 5:26(1) DFSA, it is prohibited to operate or manage a regulated market in the Netherlands without a license from the Dutch Minister of Finance. A regulated market is defined in Section 1:1 DFSA as:
  - a multilateral system;
  - which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments, in the system and in accordance with its nondiscretionary rules;
  - in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems; and
  - which is authorized and functions regularly and in accordance with the ongoing requirements.
21. A license application will be first assessed by the AFM, following which assessment the AFM will advise the Dutch Minister of Finance on whether or not the license should be granted.
22. The Exchange has obtained a license as referred to above. Please find attached as Annex F-3 a print of the license of the Exchange. This Annex F-3 also contains a print from the AFM register of trading platforms. The Exchange is listed as a licensed entity. The license was granted on 25 October 2004. At that time, the name of the Exchange was "Endex European Energy Derivatives Exchange N.V."
23. Furthermore, Based on Section 1:25(2) DFSA, the AFM has the task to exercise supervision on financial markets. There are several requirements set forth in the MiFID Implementing Regulation, the DFSA and delegated rules and guidelines thereto that apply to regulated markets such as the Exchange (i) when applying for a license and (ii) on an ongoing basis, the compliance with which is therefore supervised and enforced by the AFM. Also, the DFSA contains several rules that explicitly require the Exchange in certain circumstances to inform the AFM, for example if a change takes place with regard to the information that the Exchange had to provide in respect of its license application (Section) 5:27(4) DFSA).

### **The rules and policy statements issued by the regulator with respect to the authorization and continuing oversight of markets, electronic trading systems, and clearing organizations**

24. The AFM has published several interpretations and guidelines on the abovementioned topics, which are of relevance for the Exchange and/or its members in relation to their activities on the Exchange. We have included in Annex F-4 the rules and policy statements of the AFM that are available in English and see to:

- Market manipulation;
- Explanatory brochure on manipulative patterns;
- The Notification Requirement (reasonable suspicion of market abuse);
- Insider dealing;
- Quick Guide to Inside Information; and
- Inside information.

**The financial protections afforded customer funds**

25. Given that the Exchange itself does not hold customer funds, no rules aiming at the protection of such funds apply to the Exchange itself. However, as we will describe in more detail below:

- in paragraph (2)(i), on the basis of the Oversight Framework rules apply to Ice Clear in order to mitigate the risks of a default of one of the participants;
- in paragraph (3)(ii), detailed rules apply for the Exchange's members with respect to clients assets.

26. The ICE Endex markets are cleared by ICE Clear Europe a CFTC registered DCO.

**(2) A description of and, where applicable, copies of the laws, rules, regulations and policies applicable to:<sup>2</sup>**

**(i) The authorization, licensure or registration of the foreign board of trade.**

27. As set out above, Section 5:26(1) DFSA sets a license requirement for the Exchange. The Minister of Finance shall grant a license as referred to in Section 5:26(1) DFSA if the applicant demonstrates that the Exchange has its registered office in the Netherlands and that it will comply with the following provisions stated in Section 5:27(1) DFSA:

- Section 5:29 DFSA with regard to the suitability and integrity of the persons referred to in that section. For this, we also refer to Exhibit C.
- Sections 5:30 and 5:32(1) DFSA with regard to the rules of the Exchange;
- Section 5:30(f) DFSA with regard to the financial resources to promote the orderly operation of the Exchange;
- Section 5:32a(1)(a) DFSA with regard to the rules on the admission of financial instruments to trading on the Exchange; and
- Section 5:32b DFSA with regard to the rules on access to the Exchange.

28. Also, the Exchange must ensure that the rules referred to above, the manner in which these are applied and the monitoring of compliance with those rules will meet the

---

<sup>2</sup> To the extent that any such laws, rules, regulations or policies were provided as part of Exhibit A-5, they need not be duplicated. They may be cross-referenced.

## ICE ENDEX DERIVATIVES

standards necessary with a view to the interests which the DFSA seeks to protect (Section 5:27(3) DFSA).

29. For a more detailed description of the provisions stated above, we refer to Annex F-5, which contains a non-official translation of Chapter 5.2 of the DFSA.
30. Furthermore, as a condition of its license, it is stated that the Exchange must comply with the terms and conditions of the Oversight Framework Clearing and Settlement Endex ("**Oversight Framework**", Annex F-6). The Oversight Framework is an agreement on the basis of which - in the absence of statutory provisions dealing with supervision on clearing and settlement - the AFM and the Dutch Central Bank (which pursuant to the DFSA is entrusted with prudential supervision on the financial markets) supervise the Exchange and ICE Clear Europe Limited, "ICE Clear" with regard to clearing and settlement, to which the Exchange has agreed. Based on the Oversight Framework, the clearing and settlement systems (ICE Clear) rendering services to the Exchange, as well as the internal control by the Exchange on those systems are subject to the Oversight Framework. The Oversight Framework requires, in short, from the Exchange the following:
  - to ensure that the clearing and settlement systems meet the required standards; and
  - to ensure that the clearing and settlement systems have a well-founded, transparent and enforceable legal basis in the relevant jurisdictions.
31. The Oversight Framework requires ICE Clear to:
  - require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing and settlement systems;
  - measure counterparty risk exposures at least daily and management of exposures to potential losses;
  - identify sources of operational risk and minimize those risks; and
  - implementing governance arrangements to fulfill public interest requirements and to promote the objectives of the owners and the users.
32. Also, a Regulatory Co-Operation Agreement ("**Co-op Agreement**", Annex F-7) is applicable to ICE Clear and its parent companies. This agreement has been entered into between the AFM, the Dutch Central Bank, ICE Clear and its parent companies. Based on the Co-op Agreement, ICE Clear is also submitted to the provisions stated in (i) the license of the Exchange and (ii) the Oversight Framework. The parent companies agree in the Co-op Agreement to endeavor compliance by ICE Clear.
  - (ii) **The regulatory regime/authority's program for the ongoing supervision and oversight of the foreign board of trade and the enforcement of its trading rules.**
33. The license requirements continue to apply once the license has been obtained. The Exchange must notify the AFM of any changes with respect to the mandatory information that it has provided with the application (Section 5:27(4) DFSA). Also, the requirements stated in the Oversight Framework apply on an ongoing basis.

## ICE ENDEX DERIVATIVES

34. Furthermore, there are laws, rules, regulations and policies applicable to the AFM's program for the ongoing supervision and oversight of the Exchange and the enforcement of its trading rules. These rules can be found in the MiFID Implementing Regulation (No 1287/2006, "**MiFID Regulation**"), the DFSA and further rules and regulations thereto.

### *MiFID Implementing Regulation*

35. The MiFID Regulation, which is EU legislation with direct application, thus without the need for national implementation, in the Netherlands, contains several ongoing requirements for regulated markets. As far as relevant for the Exchange this consists of the following requirements with regard to admission of derivatives to trading (Section 37 MiFID Regulation):

- the terms of the contract establishing the financial instrument must be clear and unambiguous, and enable a correlation between the price of the financial instrument and the price or other value measure of the underlying;
- with regard to certain derivatives, the price or other value measure of the underlying must be reliable and publicly available;
- sufficient information of a kind needed to value the derivative must be publicly available;
- the arrangements for determining the settlement price of the contract must be such that the price properly reflects the price or other value measure of the underlying; and
- where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there must be adequate arrangements to enable market participants to obtain relevant information about that underlying as well as adequate settlement and delivery procedures for the underlying.

36. We refer to the MiFID Regulation attached as Annex F-8.

### *DFSA*

37. Chapter 5.2 DFSA contains several rules on ongoing supervision of the Exchange. These include the following:

#### *Access to the Exchange*

- Only investment firms, banks and certain qualified persons may be admitted as members or as participants in the Exchange (Section 5:32c DFSA);

#### *Outsourcing and control structure*

- If the Exchange delegates activities to a third party, it must ensure that such third party complies with the DFSA rules applicable with regard to those activities (Section 5:31(1) DFSA);
- The Exchange must not be affiliated with persons in a formal or actual control structure which is lacking transparency (Section 5:31(3) DFSA);
- The Exchange may not be affiliated with persons in a formal or actual control structure if the law of a non-member state of the European Economic Area, applicable to those persons, constitutes or may constitute an impediment to the adequate exercise of supervision of compliance with the DFSA by the Exchange (Section 5:31(4) DFSA);



### *Supervision on and enforcement of trading rules and procedures*

- The Exchange must monitor the transactions conducted by its members or participants, so as to be able to identify violations of its rules and procedures, as well as trading conditions disrupting the orderly operation of the market or actions indicative of market abuse (Section 5:32(2) DFSA);
- The Exchange must report serious violations referred to in Section 5:32(2) DFSA to the AFM (Section 5:32(3) 5:32(3) DFSA);
- The Exchange must, without delay, supply the applicable information to the AFM, the Public Prosecution Service (*Openbaar Ministerie*) or investigating officers competent under the Economic Offences Act (*Wet economische delicten*), and shall fully cooperate with the AFM, the Public Prosecution Service or these investigating officers in their investigation or prosecution of actions indicative of market abuse that have occurred in or via its systems (Section 5:32(4) 5:32(4) DFSA);
- The Exchange must ensure the effective enforcement of the rules on the admission of financial instruments to trading on the Exchange (Section 5:32a(2) DFSA);
- The Exchange may not suspend trading in a financial instrument or exclude a financial instrument from trading where that instrument no longer complies with the rules of the Exchange, if such a measure might seriously harm the interests of investors or the orderly operation of the Exchange (Section 5:32g(1) DFSA);
- The Exchange that suspends trading in a financial instrument or excludes a financial instrument from trading must disclose this decision and notify the AFM. The AFM shall notify the supervisory authorities of the other member states of the European Economic Area (Section 5:32g(2) DFSA);

### *Obligations to notify*

- The Exchange must notify the AFM of every intended change to the rules needed to have in place when applying for a license and which thus have been assessed by the AFM as part of the license application procedure, and of every intended change with regard to all information provided to the AFM during an application (Section 5:27(4) DFSA);
- The Exchange must supply the AFM with information on (changes to) its ownership structure and that of the Exchange it operates or manages (Section 5:32l(1)(a) DFSA);
- The Exchange must report to the AFM each transfer of ownership that causes a change in the circle of persons exerting a significant influence on the operation of the Exchange (Section 5:32l(1)(b) DFSA);
- The Exchange must periodically provide the AFM with a list of the members of and participants in the Exchange (Section 5:32l(2)DFSA); and
- If the Exchange intends to take measures in another member state of the European Economic Area in order to enable members or participants based in such member state to access and trade on the Exchange, it shall inform the AFM of such intention (Section 5:32f(1) DFSA).

38. We refer to Annex F-5, which contains a translation of Chapter 5.2 of the DFSA.

39. *MiFID II (2014/65/EU)*

## ICE ENDEX DERIVATIVES

On 2 July 2014, MiFID II entered into force and EU member states are required to implement MiFID II in their legislation prior to July 2017. With MiFID II entering into force, the rules and requirements that apply to, amongst others, regulated markets will change. Although the official Dutch legislative proposals for the implementation of MiFID II in the Netherlands are not available at this point, we have included an overview of the most important changes for regulated markets as a result of MiFID II. The overview below is based on the official text of MiFID II and MiFIR and is a non-exhaustive summary of the main amendments under the revised framework. Although MiFID II will be worked out in further detail in a level 2 regulation, the official text thereof is not yet available. The level 2 regulation is therefore not included in the below.

### *Organisational requirements*

Pursuant to Article 48 MiFID II, regulated markets are required to:

- have in place procedures, systems and arrangements to ensure that the trading systems are resilient and have adequate capacity to deal with peak order and message volumes, are able to ensure orderly trading under conditions of severe market stress, are fully tested to ensure such conditions are met and are subject to effective business continuity arrangements to ensure continuity of its services if there is any failure of its trading systems;
- have in place procedures, systems and arrangements to reject orders that exceed pre-determined volume and price thresholds or that are clearly erroneous;
- be able to temporarily halt or constrain trading if there is a significant price movement in a financial instrument on that (or a related) market during a short period, and, to be able to cancel vary or correct any transaction. Parameters determining the need to temporarily halt trading must take into account the liquidity of different asset classes and sub-classes, the nature of the market model and types of users and is sufficient to avoid significant disruptions to the orderliness of trading;
- have in place procedures, systems and arrangements to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market and to manage any disorderly trading conditions which do arise from such algorithmic trading system. Part of this requirement is to limit the ratio of unexecuted orders, to slow down the flow of orders if there is a risk of the system capacity being reached and to limit and enforce the minimum tick size that may be executed on the market;
- systems, procedures and arrangements, including requiring members or participants to carry out appropriate testing of algorithms and providing environments to facilitate such testing, to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions on the market and to manage any disorderly trading conditions which do arise from such algorithmic trading systems, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the system by a member or participant, to be able to slow down the flow of orders if there is a risk of its system capacity being reached and to limit and enforce the minimum tick size that may be executed on the market;
- set and apply appropriate criteria regarding the suitability of persons to whom direct electronic access may be provided. Appropriate standards regarding risk controls and thresholds on trading must also be installed, in addition to arrangements to suspend or terminate the provision of direct electronic access by a member or participant to a client in the case of non-compliance;

## ICE ENDEX DERIVATIVES

- ensure that its rules on co-location services are transparent, fair and non-discriminatory. Fee structures must in no event create incentive for disorderly trading conditions or market abuse; and
- identify orders generated by algorithmic trading, the different algorithmic used for the creation of orders and the relevant persons initiating orders. This information must be made available to the competent authorities upon request thereto.

### *Tick sizes (Article 49 MiFID II)*

- For the purpose of preventing the disorderly functioning of the European financial markets, MiFID II provides for the harmonization of tick size regimes. Per group of financial instruments with the same liquidity class (based on the average number of trades per day), a tick size regime will have to be developed and adapted if appropriate. Such a tick size regime will be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads.

### *Synchronisation of business clocks*

- All trading venues (regulated markets included) and their members/participants are required to synchronise their business clocks that are used to record date and time of any reportable event. (Article 50 MiFID II)

### *Requirements in connection to algorithmic trading*

- Pursuant to MiFID II, trading venues (regulated markets included) where market making activities are undertaken must meet certain requirements. In this respect, there are two main goals of MiFID II, namely (i) the introduction of an element of predictability to the liquidity in the order book and (ii) maintain the ability of market participants to transfer risks efficiently during stressed market conditions (Article 48(6) MiFID II).
- To fulfil the aims mentioned above, MiFID II includes several new/additional requirements for both investment firms that engage in algorithmic trading and for regulated markets where such investments firms trade.

### *Transparency requirements*

Under MiFID II, the following pre-trade transparency requirements will apply for trading venues in respect of equity and equity like financial instruments.

- In order to ensure uniform applicable conditions between regulated markets and MTF's, both types of trading venues have to comply with the same pre-trade transparency requirements. (article 4(6) MiFIR).
- The content of the pre-trade transparency requirements that are included in Table 1 of Annex II of the Implementing Regulation of MiFID (1287/2006) will under MiFID II apply to all trading venues, regardless the type of equity financial instrument traded. Under the current framework, this table only applies to shares admitted to trading on a regulated market.
- Under MiFID II, the same pre-trade transparency requirements for non-equity instruments would apply equally to regulated markets, OTF's and MTF's (article 9(5) MiFIR).

## ICE ENDEX DERIVATIVES

- The pre-trade transparency requirements for non-equity instruments will be based on the pre-trade transparency requirements for equity and equity-like financial instruments as included in Table 1 of Annex II of the Implementing Regulation of MiFID.
- Regulated markets are required to make public information in respect of transactions executed by or under the rules of the regulated markets. These post-trade transparency requirements apply both to transactions in equities and in equity-like instruments. Information that has to be provided contains, among others, trading day and time, instrument identification, unit price and trade venue identification (article 20 MiFIR).

### *Reporting*

- If commodity derivatives or emission allowances (or derivatives thereof) are traded on a regulated market, the market operator is obliged to produce and publish weekly position reports with the aggregate positions held by the different categories of persons divided by the different commodity derivative. In addition, a market maker must provide the competent authority with a complete breakdown of the positions held by all persons, including the members or participants and the clients thereof, at least on a daily basis (Article 58 MiFID II).

### *Clearing*

MiFIR contains obligations for regulated markets regarding the clearing of derivatives traded on regulated markets and timing of acceptance for clearing (Article 29 MiFIR).

- The regulated market is required to ensure that all these transactions are cleared in accordance with applicable regulation.
- This means that the regulated market has to install effective systems, procedures and arrangements in relation to cleared derivatives in order to ensure that the transactions in cleared derivatives are submitted and accepted for clearing as quickly as technologically practice using automatic systems.

### **(iii) The financial resource requirements applicable to the authorization, licensure or registration of the foreign board of trade and the continued operations thereof.**

40. According to Section 5:30(f) DFSA, the Exchange must have sufficient financial resources to promote the orderly operation of the market, in view of the nature and size of the transactions carried out on the market and the scope and level of the risks to which it is exposed.
41. The Exchange should maintain a minimum of 3 months OPEX as restricted cash; € 1.0 Million.
42. Also, shareholdings in the Exchange are regulated. According to Section 5:32d DFSA, no party may, except after obtaining a declaration of no objection, own, acquire or increase a qualifying holding or exercise any control relating to a qualifying holding in the Exchange. Such declaration of no objection will be rejected if: (i) the act might or would have the effect that the Exchange becomes affiliated to persons in a formal or actual control structure that is so lacking in transparency that it would constitute an impediment to the adequate exercise of supervision of compliance with the rules

applicable to the Exchange, (ii) the act might or would lead to an influence on the Exchange that is contrary to the interests which the DFSA seeks to protect, and (iii) the act might jeopardize the healthy and prudent management of the Exchange.

43. The Minister of Finance has published a policy on the declaration of non-objection (*Beleidslijn verklaring van geen bezwaar gekwalificeerde deelneming in een marktexploitant ex artikel 5:32d Wft*), which is available in English translation as Annex F-5(1).
- (iv) The extent to which the IOSCO Principles are used or applied by the regulatory regime/authority in its supervision and oversight of the foreign board of trade or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the applicable trading systems for compliance therewith.**
44. The AFM is a member of IOSCO and explicitly states on its website that it cooperates on an international level with its colleagues of IOSCO. It furthermore declares on its website that an extensive set of Objectives and Principles of Securities Regulation has been formulated, which it acknowledges as setting the benchmark for securities supervision. The content of this part of the website is unfortunately not available in English.
45. Furthermore, the minimum standards in the Oversight Framework (see Annex F-6, signed version under Annex A-5(2)), to which the Exchange and ICE Clear are subjected, are based on the international Recommendations for Securities Settlement Systems, which are developed by, amongst others, the Technical Committee of the IOSCO. We refer to Section 3.10 of the Oversight Framework.
46. Finally, as follows from Section 4(a) of the Co-op Agreement (see Annex F-7) the Principles for Financial Market Infrastructures have been issued in cooperation with the IOSCO, will be taken into account by the AFM and the Dutch Central Bank in exercising their supervisory powers.
- (v) The extent to which the regulatory regime/authority reviews and/or approves the trading rules of the foreign board of trade prior to their implementation.**
47. Based on Section 5:32a(1)(a) DFSA, the Exchange must have in place clear and transparent rules on the admission of the derivatives on the Exchange.
48. Also, Section 37 MiFID Regulation (see Annex F-8) requires that:
- the terms of the contract establishing the financial instrument must be clear and unambiguous, and enable a correlation between the price of the financial instrument and the price or other value measure of the underlying;
  - with regard to certain derivatives, the price or other value measure of the underlying must be reliable and publicly available;
  - sufficient information of a kind needed to value the derivative must be publicly available;
  - the arrangements for determining the settlement price of the contract must be such that the price properly reflects the price or other value measure of the underlying; and

## ICE ENDEX DERIVATIVES

- where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there must be adequate arrangements to enable market participants to obtain relevant information about that underlying as well as adequate settlement and delivery procedures for the underlying.
49. Furthermore, based on Section 5:30(a-e) DFSA, the Exchange must ensure that it has in place rules on the following topics:
- identifying and controlling potential negative consequences for the operation or proper functioning of the Exchange or for its participants of conflicts between the interests of the owners or the Exchange;
  - control of the risks to which it is exposed, in any case by having rules and regulations for identifying all significant risks to the operation and for taking effective measures to limit those risks;
  - a healthy management of the technical operation of the system and effective precautionary measures to eliminate risks relating to system breakdowns;
  - fair and orderly trading, as well as objective criteria for the efficient execution of orders; and
  - settling transactions carried out through its system efficiently and in time.
50. Having these rules in place is not only an ongoing requirement but also a requirement for obtaining a license to operate or manage a regulated market in the Netherlands (Section 5:27(1)(b, d) DFSA) and these rules will therefore be reviewed by the AFM as part of the license application.
51. After having obtained the license, the Exchange must notify the AFM of every intended change to these rules (Section 5:27(4) DFSA).
52. For these rules, we refer to Annex F-5.
- (vi) The extent to which the regulatory regime/authority reviews and/or approves futures, option or swap contracts prior to their being listed for trading.**
53. There is no legal provision that requires the Exchange to let the AFM evaluate the individual derivative contracts prior to such contracts being traded on the Exchange.
54. However, the Exchange and the AFM have agreed that the Exchange will submit a description of any new instrument to the AFM before listing it for trading. The Exchange will not list the instrument if the AFM objects thereto.
55. In addition, the Exchange is required to set clear and transparent rules on the admission of financial instruments on the Exchange (such as the derivative contracts traded) (Section 5:32a(1)(a) DFSA). This requirement is part of the requirements set for a license (Section 5:27(1)(d) DFSA) and amendments to such admittance rules should be disclosed to the AFM at any time after the license is obtained (Section 5:27(4) DFSA).
- (vii) The regulatory regime/authority's approach to the detection and deterrence of abusive trading practices, market manipulation, and other unfair trading practices or disruptions of the market.**

56. Per 3 July Regulation No 596/2014 on market abuse (“**MAR**”) is applicable repealing the Directive 2003/6/EC (“**MAD**”). The regulation is directly applicable in all EU member states and does not have to be implemented in national legislation. The MAR should ensure for a consistent anti-market abuse framework in the entire European Union. In general the MAR contains provisions on the prohibition of insider trading and market manipulation. Further it contains reporting requirements for investment firms.
57. Besides these prohibitive provisions, the MAR contains several other rules to prevent market abuse, i.e. the obligation for institutions to disclose inside information to the public as soon as possible, the obligation to draw up a list of persons who have access to inside information, the duty to notify certain transactions of persons within the higher management of the institution and the duty to report suspicious, potentially market-abuse related transactions to the regulator.
58. The AFM provided guidance on market manipulation (see Annex F-4).

**(3) A description of the laws, rules, regulations and policies that govern the authorization and ongoing supervision and oversight of market intermediaries who may deal with members and other participants located in the United States participants, including:**

59. Based on Section 2:96(1) DFSA, it is prohibited to provide investment services in the Netherlands without a license from the AFM, unless an exception or exemption applies. Investment services include, amongst others, executing orders with regard to financial instruments for the account of clients in the pursuit of a profession or business (Section 1:1 DFSA). An entity that provides such investment services qualifies as an investment firm.
60. In order to obtain such a license, an investment firm must, in short, comply with requirements on the following topics (Section 2:99(1) DFSA):
  - the suitability of the persons responsible for the day-to-day policy;
  - the integrity of the persons responsible for the day-to-day policy;
  - the policy on the sound conduct of business;
  - the minimum number of persons determining the day-to-day policy and the place from which they perform their activities;
  - the control structure;
  - the operational structure;
  - adequate measures to protect clients’ rights;
  - adequate policy in order to preclude the conflicts of interests;
  - the minimum equity capital; and
  - solvency.
61. For this requirement, we also refer to Annex F-9.

## ICE ENDEX DERIVATIVES

62. Admission of Members is governed by the Rules, clause I-4, (which can be found in Annex A-6(1)) and which is further explained in Exhibit B.
63. With respect to the provision of investment services, the AFM performs ongoing supervision on, in short, the following topics:
- classification of clients according to their financial expertise;
  - commercial communications (such as advertisements);
  - mandatory provision of information, before and during the provision of the investment services;
  - know-your-customer;
  - separation of assets;
  - conflicts of interest;
  - client files;
  - inducements;
  - order execution; and
  - administration.

### **(i) Recordkeeping requirements.**

64. According to Section 4:89 DFSA, the investment firm must keep a file of each client that contains a description of the mutual rights and obligations. Also, the investment firm must agree with the client on the mutual rights and obligations in an agreement in written form or on a durable medium.
65. Furthermore, an investment firm must retain all relevant data regarding the transactions in financial instruments it conducted for a minimum period of five years (Section 4:90e(1) DFSA).
66. We refer to Annex F-10 for these rules.

### **(ii) The protection of customer funds.**

67. The Dutch financial legislation provides several rules on separation of assets. Based on Section 4:87(1) DFSA, an investment firm that holds financial instruments belonging to a client must take adequate measures to protect the client's rights to those financial instruments and to prevent the use by the investment firm of those financial instruments for its own account, except with the client's express permission. These rules are further specified in the Further Regulations on the Supervision of the Conduct of Financial Undertakings DFSA ("**FR**", *Nadere Regeling Gedragstoezicht financiële ondernemingen Wft*). Based on Section 6:15 FR, the investment firm must ensure that:
- monies and financial instruments of a client are held with a credit institution (such as a bank) on an account in the name of the client;
  - when executing transactions, no accounts of the investment firm are used; and
  - the mandate from the client is explicitly limited to using the monies and financial instruments of the client in the performance of the services by the investment firm.



## ICE ENDEX DERIVATIVES

68. Also, the Oversight Framework demands from ICE Clear that it requires participants to have sufficient financial resources to meet obligations arising from participation in the clearing and settlement system (Section 3.2.2 Oversight Framework, Annex F-6).
- (iii) Procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.**
69. Based on Section 3.2.3 of the Oversight Framework, ICE Clear must manage its exposures to potential losses from defaults by the participants through margin requirements and other effective risk control mechanisms. The margin requirements should cover potential price movements in normal market conditions. Sufficient financial resources should be available in the clearing system to withstand a default by the participant which is responsible for the largest exposure under plausible market conditions. All financial resources should be held in such a manner that liquidity, market and credit risks are minimized. The default procedures should be clearly and specify timely actions to contain losses and liquidity pressures and should ensure ICE Endex to continue meeting its obligations (See Annex F-6).
70. Both the Exchange and ICE Clear have formulated default rules.
71. The Exchange may suspend a Member upon receiving a copy of a default notice, as provided for in clause I-10 of the Rules (which can be found in Annex A-6(1)). A Member has not access to the ICE Endex Platform or services while suspended. The Exchange will immediately cease to process and submit any transaction data to the Clearing House in such case.
72. The default rules of ICE Clear Europe are attached at Annex H-1(1). Under these rules ICE Clear Europe has a range of options. Contracts between the defaulting member and ICE Clear Europe (as counterparty to the contract) may be allowed to settle or transferred to another clearing member or the positions will be closed out.
- (4) A description of the regulatory regime/authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, and enforce rules applicable to the foreign board of trade.**
73. The AFM has several investigative powers, like the authority to demand information, the authority to demand to inspect business information and documents and the authority to enter any place with the exception of a dwelling. Any person is obliged to give the supervisor all such assistance as he may reasonably demand in the exercise of his investigative powers.
74. If a violation is discovered, the AFM may use one of the enforcement tools available under the DFSA, like issuing an instruction order, the appointment of one or more persons as custodian with regard to all or certain bodies or representatives of a financial enterprise, imposing an order for incremental penalty payments or imposing an administrative fine. In principle, the maximum fine for an individual violation is EUR 4,000,000. However, if at the time of the violation, a period of five years has not yet lapsed since the imposition of a fine for an identical violation, the fine for the second violation can be doubled. This means that the maximum fine may amount to EUR

## ICE ENDEX DERIVATIVES

8,000,000 in case of a repeated violation. In addition, the law provides that, if the benefits obtained as a result of the violation exceed EUR 2,000,000, the fine may also be determined on the basis of twice the benefits which were realized by the breach. In that case, the fine could be higher than EUR 8,000,000.

75. Acting in contravention of Sections 5:26(1) (license requirement), 5:30/5:32 (Exchange rules and procedures and financial resources) and 5:32d(1) (obtaining a qualified holding in the Exchange) DFSA may also constitute an economic offence under the Economic Offences Act (*Wet op de economische delicten*, "EOA"). The sanctions in the EOA differ depending on whether the offence was committed intentionally or not. These sanctions include imprisonment up to a maximum of two years and penalties up to a maximum of EUR 780,000.
- (5) For both the foreign board of trade and the clearing organization (unless addressed in Supplement S-1), a report confirming that the foreign board of trade and clearing organization are in regulatory good standing, which report should be prepared subsequent to consulting with the regulatory regime/authority governing the activities of the foreign board of trade and any associated clearing organization. The report should include:**
- (i) Confirmation of regulatory status (including proper authorization, licensure and registration) of the foreign board of trade and clearing organization.**
  - (ii) Any recent oversight reports generated by the regulatory regime/authority that are, in the judgment of the regulatory regime/authority, relevant to the foreign board of trade's status as a registered foreign board of trade.**
  - (iii) Disclosure of any significant regulatory concerns, inquiries or investigations by the regulatory regime/authority, including any concerns, inquiries or investigations with regard to the foreign board of trade's arrangements to monitor trading by members or other participants located in the United States or the adequacy of the risk management controls of the trading or of the clearing system.**
  - (iv) A description of any investigations (formal or informal) or disciplinary actions initiated by the regulatory regime/authority or any other self-regulatory, regulatory or governmental entity against the foreign board of trade, the clearing organization or any of their respective senior officers during the past year.**
76. A letter confirming that the Exchange is in regulatory good standing is attached as Annex A-7(1). It is understood that as ICE Clear Europe is CFTC supervised DCO there is no need to submit a good stand report for it.
- (6) For both the foreign board of trade and the clearing organization (unless addressed in Supplement S-1), a confirmation that the regulatory regime/authority governing the activities of the foreign board of trade and the clearing organization agree to cooperate with a Commission staff visit subsequent to submission of the application on an "as needed basis," the objectives of which will be to, among other things, familiarize Commission staff with supervisory staff of the regulatory regime/authority; discuss the laws, rules and regulations that formed the basis of the application and any changes thereto; discuss the cooperation and coordination between the authorities, including, without limitation, information sharing arrangements; and discuss issues of concern as they may develop from time to time (for example, linked contracts or unusual trading that may be of concern to Commission surveillance staff).**

## ICE ENDEX DERIVATIVES

77. The confirmation that the AFM is willing to cooperate with a Commission staff visit subsequent to submission of the application on an “as need basis”, is attached as Annex F-11