

ALBERTA SECURITIES COMMISSION

**RECOGNITION ORDER
DERIVATIVES EXCHANGE**

Citation: ICE Futures Canada, Inc., Re, 2013 ABASC 238

Date: 20130530

ICE Futures Canada, Inc.

Background

1. ICE Futures Canada, Inc. (the **Applicant**) has applied to the Alberta Securities Commission (the **Commission**) pursuant to section 62 of the *Securities Act* (Alberta) (the **Act**) for recognition as an exchange; pursuant to section 213 of the Act for relief from section 106(b) of the Act, pursuant to section 15.1(1) of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) for relief from NI 21-101, and pursuant to section 10(1) of National Instrument 23-103 *Electronic Trading* (**NI 23-103**) for relief from Part 4 of NI 23-103.

2. Under a Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems among the Commission, Autorité des marchés financiers, British Columbia Securities Commission, Manitoba Securities Commission (the **MSC**), Ontario Securities Commission and Financial and Consumer Affairs Authority, the MSC has been designated as the lead regulator for the Applicant.

Interpretation

3. Terms defined in the Act or National Instrument 14-101 *Definitions* have the same meaning in this order unless otherwise defined herein.

Representations

4. The Applicant represents as follows:

- (a) The Applicant is a share capital corporation incorporated under *The Corporations Act* (Manitoba) and is an indirect and wholly-owned subsidiary of Intercontinental Exchange, Inc., a public company organized under the laws of Delaware and listed for trading on the New York Stock Exchange.
- (b) The Applicant offers a variety of commodity derivatives contracts, including futures contracts and options on futures contracts in canola, milling wheat, durum wheat and barley (collectively, **Derivatives Contracts**), transactions in which are executed by or through clearing participants (**Clearing Participants**) or other participants of the Applicant (each ultimately cleared by a Clearing Participant) on the electronic trading platform (the **Exchange Platform**) owned, operated, leased,

licensed or otherwise made available by the Applicant in accordance with rules promulgated by the Applicant.

- (c) The Applicant is recognized as a self-regulatory organization (**SRO**) by the MSC under section 14(1) of *The Commodity Futures Act (Manitoba)* (the **Manitoba Act**), registered as a commodity futures exchange (**CFE**) under section 15(1) of the Manitoba Act, and is in good standing with the MSC as both an SRO and CFE. The Manitoba Act obligates the Applicant to provide the MSC with access to all records and to cooperate with other applicable regulatory authorities, subject to applicable law concerning the sharing of information and the protection of personal information. The Applicant, in the ordinary course of business, cooperates with other regulatory authorities, including making arrangements for information sharing. The MSC reviews, assesses and enforces the Applicant's adherence to the Manitoba Act relating to, among other things, financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection. MSC supervision of the Applicant addresses similar public interest concerns in respect of the execution and clearing of Derivatives Contracts to those of interest to the Commission in the exercise of its jurisdiction under the Act.
- (d) The Applicant has designated ICE Clear Canada, Inc. (the **Clearing Agency**), a wholly-owned subsidiary of the Applicant, as the clearing agency for the Applicant. The Clearing Agency clears, settles and guarantees to Clearing Participants the performance of all transactions in Derivatives Contracts executed on the Exchange Platform. The Clearing Agency is designated as a recognized clearing house under section 16(1) of the Manitoba Act and subject to regulatory supervision by the MSC, with which it is in good standing.
- (e) All Derivatives Contracts are submitted by Clearing Participants for clearing through the Clearing Agency. Each Clearing Participant, in order to qualify as such: (i) satisfies minimum financial requirements in accordance with the Manitoba Act or the rules of the Applicant and the Clearing Agency; and (ii) maintains funds on deposit in a guarantee fund maintained by the Clearing Agency (the **Guarantee Fund**) in accordance with the rules of the Clearing Agency. The Guarantee Fund will be available to ensure the clearing of Derivatives Contracts in the event that a Clearing Participant is unable to satisfy its obligations to the Clearing Agency. The Clearing Agency is interposed as a central counterparty for all transactions in Derivatives Contracts and acts as counterparty and guarantor to each transaction executed on the Exchange Platform. Market participants that are not Clearing Participants and that wish to clear Derivatives Contracts through the Clearing Agency maintain an appropriate account relationship with a Clearing Participant registered under the Manitoba Act as a dealer in the "futures commission merchant"

registration category. The Clearing Participant clears the transactions and posts margin directly with the Clearing Agency, and serves as the customers' agent and guarantor in respect of cleared Derivatives Contracts. Clearing Participants require market participants to deposit a specified amount of assets as initial and maintenance margin as security for performance of their obligations.

- (f) As part of its regulatory oversight of the Clearing Agency, the MSC conducts ongoing assessments of the rules, procedures and practices of the Clearing Agency to confirm that they satisfy the requirements under the Manitoba Act.
- (g) Clearing Participants who engage in soliciting or accepting orders for or on behalf of another person for the purchase or sale of Derivatives Contracts on the Exchange Platform must be "dealer members", as defined under the rules of the Investment Industry Regulatory Organization of Canada and registered as dealers under the Manitoba Act.
- (h) The MSC engages in ongoing regulatory supervision and oversight of the Applicant and the Clearing Agency, and the Clearing Participants, intermediaries and other participants of the Applicant and the Clearing Agency with respect to, among other things, market integrity, customer protection, clearing and settlement and the enforcement by the Applicant and the Clearing Agency of their respective rules.
- (i) The MSC has implemented and enforces procedures that empower it to:
 - (i) prosecute violations of the Manitoba Act;
 - (ii) provide protections to parties accused of such violations according to fair and clear standards;
 - and (iii) impose sanctions for such violations.
- (j) The Applicant and the Clearing Agency have implemented and enforce procedures that empower them to:
 - (i) prosecute violations of their respective rules;
 - (ii) provide protections to parties accused of such violations according to fair and clear standards;
 - and (iii) impose sanctions for such violations.
- (k) As part of its regulatory oversight of the Applicant, the MSC reviews, assesses and enforces the Applicant's ongoing compliance with the requirements of the Applicant's recognition by the MSC, including rules of the MSC relating to financial resources, fitness and propriety of the Applicant's participants, systems and controls, maintenance of an orderly market, investor protection, rule-making and the Applicant's rules, procedures and practices.
- (l) The Applicant provides to Clearing Participants and to certain other market participants (**Direct Access Participants**) direct access to the

Exchange Platform, whereby a Direct Access Participant may transmit orders and enter trades directly into the Exchange Platform without intermediation by a Clearing Participant (**Direct Access**). In order to obtain Direct Access, a Direct Access Participant must enter into a direct access trading participant agreement (a **DATP Agreement**) with the Applicant which, among other things, requires the Direct Access Participant to comply with all applicable laws pertaining to the Direct Access Participant's use of the Exchange Platform.

- (m) The Applicant maintains adequate rules to govern conflicts of interest and maintains and enforces rules which prohibit the disclosure of material non-public information obtained as a result of a Clearing Participant's or Direct Access Participant's performance of duties as a director or member of a significant committee of the Applicant.
- (n) Derivatives Contracts made available for trading by Direct Access are cleared through the Clearing Agency.
- (o) The Applicant is subject to a Manitoba Act requirement to list only Derivatives Contracts that are not readily susceptible to manipulation.
- (p) The Clearing Agency complies with the *Recommendations for Central Counterparties* issued jointly by the Committee on Payment and Settlement Systems (**CPSS**) and the Technical Committee of the International Organization of Securities Commissions (**IOSCO**), as the same may be amended, or any successor standards, principles and guidance for central counterparties and financial market infrastructures adopted jointly by CPSS and the IOSCO Technical Committee (collectively, the **CPSS/IOSCO RCCPs**).
- (q) The Applicant and the Clearing Agency have:
 - (i) implemented and enforce rules and procedures to ensure compliance with the undertakings herein;
 - (ii) the capacity to detect, investigate, and sanction persons who violate their respective rules; and
 - (iii) sufficient compliance staff and resources, including by delegation or outsourcing to third parties, to fulfil their respective regulatory responsibilities, including appropriate trade practice surveillance, real time market monitoring, market surveillance, financial surveillance, protection of customer funds, enforcement of clearing and settlement provisions and other compliance and regulatory responsibilities.

- (r) The Applicant has:
 - (i) implemented and enforces rules concerning: access to the Exchange Platform and the means by which the connection thereto is accomplished; prohibited trading practices; and market manipulation, attempted manipulation, price distortion and other disruptions of the market;
 - (ii) implemented and enforces rules and procedures that ensure a competitive, open and efficient market and mechanism for executing transactions on the Exchange Platform; and
 - (iii) the capacity to deter and detect market manipulation, attempted manipulation, price distortion, and other disruptions of the market.
- (s) The Applicant and the Clearing Agency are authorized by rule or by contract to obtain from Clearing Participants and Direct Access Participants any information and cooperation necessary to conduct investigations, to effectively enforce their respective rules, and to ensure compliance with the undertakings herein.
- (t) The Applicant's transaction data system captures and retains sufficient order and trade-related data to allow its compliance staff to detect trading and market abuses and to reconstruct all transactions in Derivatives Contracts within a reasonable period of time.
- (u) The Exchange Platform:
 - (i) employs a trade-matching algorithm that matches trades fairly and in a timely manner;
 - (ii) maintains a transaction data system that captures all relevant order and trade-related data, including changes to orders, and transaction data is securely maintained and available for an adequate time period;
 - (iii) has demonstrated reliability;
 - (iv) employs systems designed to ensure that access to the Exchange Platform is secure and protected;
 - (v) backs up trade data to prevent loss of data; and
 - (vi) possesses adequate provisions for emergency operations and disaster recovery.

- (v) The Applicant reports to the public, directly or indirectly through an information vendor, data (including price and volume) relating to each transaction in Derivatives Contracts, as soon as technologically practicable after execution of the transaction.
- (w) Clearing Participants and Direct Access Participants are fit and proper and satisfy financial and other standards set by the Applicant and the Clearing Agency.
- (x) The MSC has the power to share information directly with the Commission, upon request, including information necessary for the Commission to evaluate and assess the accuracy of, and compliance with, the representations and undertakings herein.
- (y) The MSC has the power to intervene in the market.
- (z) The Applicant proposes to offer Direct Access to certain participants resident in Alberta (**Alberta Participants**) by entering into DATP Agreements. Only Direct Access Participants will have Direct Access in Alberta.

Undertakings

5. The Applicant undertakes:

- (a) to continue to observe the representations and to satisfy the undertakings herein;
- (b) to maintain its status as an SRO and CFE with the MSC, and to cause the Clearing Agency to maintain its status as a recognized clearing house, in good standing in all material respects with the MSC;
- (c) not to provide, and to take reasonable steps to prevent third parties from providing, Direct Access to persons other than Clearing Participants and Direct Access Participants;
- (d) to cause the Clearing Agency to continue to comply with the CPSS/IOSCO RCCPs;
- (e) to require each Alberta Participant that is granted Direct Access but which is not registered with the Commission as a dealer to:
 - (i) file with the Applicant a written representation, executed by a person with the authority to bind the Alberta Participant, stating that as long as the Alberta Participant is granted Direct Access, the Alberta Participant agrees and submits to the jurisdiction of the

Commission with respect to activities conducted pursuant to this order;

- (ii) file with the Applicant a valid and binding appointment of an agent for service of process in Alberta pursuant to which the agent is authorized to accept delivery and service of communications issued by or on behalf of the Commission; and
 - (iii) maintain with the Applicant a written undertaking, executed by persons with the authority to bind the Alberta Participant, that the Alberta Participant will provide promptly to the Commission such information as the Commission may request, and access to all premises in or from which the Alberta Participant operates;
- (f) to preserve and to provide promptly and directly to the Commission all information requested by Commission staff;
- (g) to employ reasonable procedures for monitoring and enforcing compliance with the undertakings herein;
- (h) to cooperate with the Commission with respect to arrangements established to address cross-market oversight issues, including surveillance, emergency actions and the monitoring of trading;
- (i) to file with the Commission within 30 days after the end of each calendar quarter, and at any time promptly upon the request of a Commission representative, a statement setting out:
- (i) total volumes of Derivatives Contracts traded in the quarter through the Exchange Platform worldwide, and the portion thereof traded through Direct Access in Alberta; and
 - (ii) the names and principal addresses of all Clearing Participants and Direct Access Participants that have Direct Access to the Exchange Platform in Alberta and their trading volumes computed by separating buy-sides and sell-sides for each contract available to be traded through the Exchange Platform;
- (j) to promptly notify the Commission in writing of:
- (i) any significant change in the information provided by the Applicant to the Commission in support of its application for recognition, or to any representation herein;
 - (ii) any significant change in the Applicant's or the Clearing Agency's rules, or Manitoba laws relevant to Derivatives Contracts;

- (iii) any matter that, in the reasonable judgement of the Applicant or the Clearing Agency, may have a material adverse effect on the financial or operational viability of the Applicant, the Exchange Platform or the Clearing Agency, including, but not limited to, any significant system failure or interruption;
 - (iv) any significant changes to Manitoba laws and regulatory processes relevant to the Applicant's status or conduct as an SRO or CFE, or the Clearing Agency's status as a recognized clearing house under the Manitoba Act;
 - (v) any monetary default, insolvency or bankruptcy of any Clearing Participant or Direct Access Participant that, in the reasonable judgement of the Applicant or the Clearing Agency, may have an adverse effect on the financial or operational viability of the Applicant, the Exchange Platform, or the Clearing Agency;
 - (vi) any breach of an undertaking herein;
 - (vii) a description of any disciplinary action by the Applicant or the Clearing Agency against a Clearing Participant or Direct Access Participant involving alleged market manipulation, fraud, deceit or conversion, and of any sanction by the Applicant or the Clearing Agency of a Clearing Participant or Direct Access Participant, where the allegation or the sanctioned conduct relates to a Derivatives Contract made available through Direct Access; and
 - (viii) a description of any disciplinary action against the Applicant, the Clearing Agency or a director or senior officer of either;
- (k) to file with the Commission, within 30 days after the end of each calendar year:
- (i) a certificate, executed by a senior officer of the Applicant, that:
 - A. the Applicant remains in good standing as an SRO and CFE and that the Clearing Agency remains in good standing as a recognized clearing house under the Manitoba Act;
 - B. the representations herein remain accurate except to the extent of any change previously disclosed to the Commission hereunder;
 - C. there has been no significant change to Manitoba laws and regulatory processes relevant to the Applicant's status or

conduct as an SRO or CFE or the Clearing Agency's status or conduct as a recognized clearing house except as previously reported to the Commission hereunder;

- D. Manitoba laws, systems and compliance mechanisms continue to require the Applicant to maintain fair and orderly markets; prohibit fraud, abuse and market manipulation; and provide that such requirements are subject to regulatory oversight;
 - E. MSC listing standards continue to require that the Derivatives Contracts not be readily susceptible to manipulation;
 - F. the Applicant continues to be subject to oversight by the MSC with respect to transactions effected through the Exchange Platform;
 - G. the Clearing Agency continues to be subject to comprehensive supervision, regulation and oversight by the MSC as described by the Applicant to the Commission in support of its application for recognition;
 - H. affiliates of Clearing Participants and Direct Access Participants continue to comply with appropriate registration requirements and conditions and the rules of the Applicant and the Clearing Agency, and that the Clearing Participants or Direct Access Participants with which they are affiliated are responsible to the Applicant for ensuring their affiliates' compliance; and
- (ii) the terms and conditions of all Derivatives Contracts that differ substantively from Derivatives Contracts previously offered by the Applicant through Direct Access;
- (l) to file with the Commission a copy of all material filed by the Applicant or the Clearing Agency, concurrently with such filing(s) with the MSC; and
 - (m) all material filed with the Commission hereunder shall, if required to be executed, be signed by a senior officer of the Applicant who has the authority to bind the Applicant and shall be based on such officer's personal knowledge.

Submission to Jurisdiction and Agent for Service

6. The Applicant submits to the non-exclusive jurisdiction of the courts and administrative tribunals of Alberta in a proceeding arising out of, related to or concerning, or in any other manner connected with, the activities of the Applicant in Alberta.

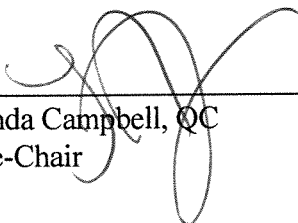
7. The Applicant will file with the Commission a valid and binding appointment of an agent for service in Alberta upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the Applicant's activities in Alberta.

Decision


8. Based on the representations and undertakings herein, the Commission, being satisfied that it would not be prejudicial to the public interest to do so:
 - (a) under section 62 of the Act, recognizes the Applicant as an exchange;
 - (b) under section 213 of the Act, exempts the Applicant, Clearing Participants and Direct Access Participants from section 106(b) of the Act, which prohibits trading in an exchange contract unless the form of the exchange contract has been accepted by the Commission;
 - (c) under section 15.1(1) of NI 21-101, exempts the Applicant from NI 21-101; and
 - (d) under section 10(1) of NI 23-103, exempts the Applicant from Part 4 of NI 23-103

for so long as the Applicant satisfies its undertakings herein.

For the Commission:



Glenda Campbell, QC
Vice-Chair



Stephen Murison
Vice-Chair