

Form 3-C2014 ICE Clear Canada, Inc. Application Package

**ICE Clear Canada, Inc.
Clearing Participant Application Instructions**

Enclosed is an Application/Agreement and related documents which must be completed by an entity seeking to be registered as a Clearing Participant of ICE Clear Canada, the designated clearinghouse for ICE Futures Canada. Please note that the By-Laws, Rules and Operations Manual of ICE Clear Canada are incorporated by reference in the application/agreement and you should ensure that you have a copy of the current documents prior to executing the application/agreement. They are available to be downloaded at:

<https://www.theice.com/clear-canada/regulation#rulebook>

In addition to the publicly disseminated materials, there are a number of policies that potential Clearing Participants should familiarize themselves with before submission of an application/agreement. Please contact the Corporate Secretary to obtain copies of these documents.

Note that all applicants for Clearing Participant status must be Canadian companies.

The following is a list of documents that must be furnished by applicants for Clearing Participant status. An original plus one copy of all documents and the completed application/agreement form should be sent to the attention of:

**Attn: Corporate Secretary
ICE Clear Canada, Inc.
850A Pembina Highway
Winnipeg, Manitoba
R3M 2M7
(204) 925-5009**

A. Forms to be Completed:

1. ICE Clear Canada, Inc. Application/Agreement Form 3-C2014 and all attached Schedules.
2. Certified Copy of a Resolution of the Board of Directors.

B. Documents to be Provided by Applicant:

1. A copy of all constating documents. Please include a copy of the Articles of Incorporation, any amendments, copy of last annual return of the Company, any operating agreements and updated By-laws.
2. The most recent audited financial statements and most recent three monthly financial statements certified by the Chief Financial Officer of the company.

General Information

1. In order to be registered as a Clearing Participant, a company must first be registered as a Direct Access Trading Participant with ICE Futures Canada, Inc.
2. Although all Clearing Participants must be Canadian entities, they can have all required back office operations conducted by affiliated or associated companies in the United States or the United Kingdom. The Canadian entity remains responsible for all work conducted by the third party affiliated or associated company. A copy of any applicable outsourcing agreements are to be provided.
3. The annual fees for registration as a Clearing Participant are: CAD \$5,000 per annum for a Clearing Participant registering in the category of Futures Commission Merchant and CAD \$2,500 per annum for a Clearing Participant registering in the category of General. These fees are payable annually, in advance. At the time of registration, the Clearing Participant will be billed the pro-rata amount owing to the end of the year.
4. Clearing Participants are required to provide deposits for both margin and Guaranty Fund purposes. Please refer to the Rules (Sections A-6 and A-7) and the Operations Manual (Sections 6 and 9) for complete details.
5. Each Clearing Participant initially deposits \$250,000 to the Guaranty Fund. Thereafter the contribution to the Guaranty Fund is based upon the Guaranty Fund calculation provided for in the Rules (Section 6).

Section A-602 Base Guaranty Fund

The Base Guaranty Fund shall be calculated by the Corporation, and shall be the greater of:

- a. the largest Uncovered Risk on any single Clearing Participant's total positions during the last Two Hundred and Sixty (260) Trading Days, adjusted for the largest position size during the last Sixty (60) Trading Days (taking into account increases or decreases in open interest); or
- b. the largest Uncovered Risk on any single Clearing Participant's total positions during the last Sixty (60) Trading Days; or

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- c. \$15,000,000.

Section A-603 Guaranty Fund Deposits Required by Clearing Participant

- a. Each Clearing Participant is liable to pay to the Corporation the Guaranty Fund amount allocated to it in compliance with these Rules and with the Guaranty Fund Policy.
- b. Each Clearing Participant is required to deposit acceptable collateral with the Corporation in an amount which is the greater of:
 - (i) \$250,000.00; or
 - (ii) the amount determined by multiplying that Clearing Participant's Risk Ratio by the Base Guaranty Fund;

Provided that, each Clearing Participant is required to deposit no less than 50% of their Guaranty Fund requirement in cash.

Section A-604 Base Guaranty Fund Calculation and Guaranty Fund Re-Allocation

- a. The Base Guaranty Fund shall be calculated by the Corporation;
 - (i) once per month, within the first Six (6) Trading Days of each month; and
 - (ii) more frequently than once per month, when markets are volatile or positions have increased, at the sole discretion of the Corporation.
- b. A Guaranty Fund Re-Allocation will be conducted following every Base Guaranty Fund Calculation if the Base Guaranty Fund Calculation evidences a deficiency between the current deposits to the Base Guaranty Fund and the Base Guaranty Fund Calculation, of Twenty Percent (20%) or more.
- c. Clearing Participants will be notified, in writing, by the Corporation, of every Guaranty Fund Re-allocation conducted and will be advised of their required deposit.
- d. The new deposit requirements applicable to each Clearing Participant will become effective at the close of business on the third Trading Day following receipt of notice from the Corporation of a Guaranty Fund Re-Allocation.
- e. If a Clearing Participant's Guaranty Fund deposits are insufficient to cover its deposit requirements at the close of business on any Trading Day, whether due to fluctuations in value of securities deposited, or due to new requirements coming into effect, or for any other reason, then the Clearing Participant will be notified of the deficiency (debit) amount, and the deficiency must be paid in cash according to the procedures specified in the Operations Manual, and prior to the deadline specified in the Operations Manual.
- f. In the event there are surplus deposits provided by a Clearing Participant for its Guaranty Fund obligations, such surplus may be withdrawn by submission to the Corporation between the hours specified by the Corporation, of a withdrawal request in the form prescribed by the Corporation. A Withdrawal will not be processed where Guaranty Fund deposits held by the Corporation would then be insufficient to cover current Guaranty Fund requirements or requirements for which a notice of Guaranty Fund Re-Allocation has been distributed and the requirements have not yet become effective.

6. Process – The Clearing Participant application/agreement and required attachments will be reviewed and the applicant will then be contacted to set up a meeting. Typically, ICE Clear Canada will speak to all members of senior management of the applicant and will conduct an on-site review prior to submitting the application/agreement to the Board for approval as required by Rule A-206.

- 7. Applicants are requested to contact staff directly with any questions or concerns:

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On the Rules and application process:

Linda Vincent

Corporate Secretary

(204) 925-5009

Linda.Vincent@theice.com

On matters pertaining to systems access, Margin Policy, Guaranty Fund Policy:

Wenzel Lieb

Manager, Clearing and Product Support

(204) 925-5017

Wenzel.Lieb@theice.com

**ICE CLEAR CANADA, INC.
APPLICATION / AGREEMENT FOR CLEARING PARTICIPANT STATUS**

To: ICE Clear Canada, Inc.
850A Pembina Highway
Winnipeg, Manitoba
R3M 2M7

The undersigned, (type full legal name & full mailing address)

(the "Clearing Participant")

applies for Clearing Participant Status with ICE Clear Canada, Inc. (the "Clearinghouse" or the "Corporation") and acknowledges that, upon acceptance by the Clearinghouse, this application/agreement shall constitute a binding agreement between the Clearinghouse and the Clearing Participant upon the terms and subject to the conditions set forth herein. This Agreement must have a completed Schedule "A" and Schedule "B", and a Corporate Resolution attached. Unless stated otherwise, this Agreement becomes effective at the Effective Time.

If the applicant is a Futures Commission Merchant, please set out all jurisdictions in which the applicant is registered with the statutory regulatory authority:

Agreement

1. **Definitions**

1.1 All capitalized terms used and not defined herein shall have the respective meanings ascribed thereto in the Rules of the Clearinghouse, as the Rules may from time to time be amended. In this application, the following terms will mean:

"Act" means *The Commodity Futures Act C.C.S.M. c. C152.*

By-Laws” shall mean the by-laws of ICE Clear Canada, Inc. as they may be amended from time to time.

“Clearing Participant Agreement” shall mean the agreement which results from the acceptance by the Clearinghouse of this application.

Clearinghouse, Clearing house, or Corporation – shall mean ICE Clear Canada, Inc.

“Clearing System” - includes all facilities and systems provided by the Clearinghouse to permit clearing, including, but not limited to, trade entry and matching systems, give up and average pricing systems, ICEBLOCK system, banking and settlement systems, the ice.com website, position maintenance systems and the ECS, PCTS, and ACT applications;

“Commission or MSC” means The Manitoba Securities Commission.

“Confidential Information” has the meaning given in Clause 22.

“Customer” means a customer of a Direct Access Trading Participant who is duly authorized by such Direct Access Trading Participant to conduct trades (via a Responsible Individual) or permissioned by a Direct Access Trading Participant to have view-only access.

“Direct Access Interface” means software that has been approved and conformed as required under a Direct Access Interface Agreement;

“Direct Access Trading Participant” shall have the meaning set out in the Exchange Rules.

“Exchange” shall mean ICE Futures Canada, Inc.

“Exchange Contracts” means the contracts listed by the Exchange on the Trading System.

“Exchange Rules” shall mean the Rules of the Exchange, as may be amended from time to time.

“ICE” means Intercontinental Exchange Holdings, Inc.

“Intellectual Property Rights” means ICE’s and/or the Exchange’s patents (including all renewals, extensions or divisions thereof), copyright, trademarks, know how, design rights, registered designs, domain names, database rights and confidential information including any and all similar rights in any jurisdictions.

“Market Data” means the real time market prices of the Exchange Contracts.

“Money” shall mean a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada or by a foreign government as part of its currency.

“Person” shall include an individual, a corporation, a partnership, a co-operative, a trust and an unincorporated organization or association.

“Purposes” means the trading of the Exchange Contract(s) supported by the Platform and the Platform Software.

“Regulatory Authority” means the Manitoba Securities Commission (MSC) or any successor or other body in the Province of Manitoba, Canada, or in the United States or overseas, which has authority to regulate the business, operation and trading activities of the Exchange, any participant of the Exchange (whether registered or not), any user of the Trading System, a Clearing Participant, Customer or Responsible Individual.

“Rules” or Clearinghouse Rules” shall mean the Rules and the Operations Manual of ICE Clear Canada, as may from time to time be amended, changed, supplemented or replaced in whole or in part.

“STA” – means *The Securities Transfer Act (Manitoba)* C.C.S.M. c. S60.

“Trading Participant” shall have the meaning set out in the Exchange Rules.

“Trading System” – includes all facilities and services provided by the exchange to permit trading, including, but not limited to, data, entry services, the ICE Platform, and all other computer-based trading systems and programs and price quotations and other market information services and applies to the provision, use performance, maintenance or malfunction of the ICE Platform.

“User Interface” means the software conformed as appropriate and used to connect to the API.

2. **Agreement of Clearing Participant to be Bound by the Clearinghouse Rules and the Exchange Rules**

- 2.1 The Applicant agrees that the Corporation’s By-laws, Rules and Operations Manual, and the Exchange Rules are hereby incorporated in this Agreement by reference, and shall form part of this Agreement as though they were reproduced herein in their entirety. These documents are also incorporated by reference in each contract or transaction that the Clearing Participant conducts and/or clears or is required to conduct and/or clear, pursuant to all Clearing Authorization and Guaranty forms it has executed or will execute, and pursuant to all Systems Managed Accounts it issues or will issue.
- 2.2 The Clearing Participant acknowledges receipt from the Clearinghouse of a copy of the Corporation’s By-laws, Rules and Operations Manual and the

Exchange Rules, as in effect at the time of submission to the Clearinghouse of this application, and agrees to be bound by the provisions thereof. The Clearinghouse agrees that it will provide the Clearing Participant from time to time, with notice of amendments, changes or supplements to the By-laws, Rules and Operations Manual, and the Exchange Rules, via the Exchange website, provided however, that the failure of the Clearinghouse to provide the Clearing Participant with notice of any such amendments, changes or supplements shall not relieve the Clearing Participant of its obligation to comply with the said Rules as so amended, changed or supplemented.

- 2.3 In providing its services, the Clearinghouse is subject to certain domestic and foreign laws, rules, regulations and treaties, and to agreements entered into, instruments and declarations made and acts done by the Clearinghouse. The Clearing Participant must comply therewith, as applicable, upon being informed by the Clearinghouse of the provisions thereof.

3. **Category of Registration**

As provided by the Clearinghouse rules, the Applicant applies to become a Clearing Participant in one of the following categories:

- Canadian Futures Commission Merchant
 General

4. **Clearing of Exchange Transactions Through the Facilities of the Clearinghouse**

- 4.1 All Ancillary Transactions (including EFSs, EFPs, EOOs, and Negotiated Option Strategy transactions) as set out in Exchange Rule 8C.01 are to be processed through the clearing facilities designated, or the ICE BLOCK facility, or such other facility as may be determined, from time to time. All exchange transactions are to be processed through the ICE Platform via an approved Direct Access Interface.

5. **Access to the Trading Platform, Clearing Authorization and Guaranty Forms and Issuing System Managed Accounts**

- 5.1 Access to the Trading System is authorized by, and obtained through, the Direct Access Trading Participant agreements with the Exchange. Every Clearing Participant must be a registered Direct Access Trading Participant with the Exchange in order to obtain and maintain Clearing Participant status. Failure to maintain Direct Access Trading Participant status with the Exchange will result in termination of this Agreement. For greater clarity, nothing in this Agreement permits access to the Trading System, or provides any right to interface with the Trading System for the Purposes.
- 5.2 Clearing Participants may only execute Clearing Authorization and Guaranty forms for entities registered as Direct Access Trading Participants with the Exchange.

- 5.3 Clearing Participants may issue System Managed Accounts to Direct Access Trading Participants or, if the Clearing Participant is registered in the category of Futures Commission Merchant, to a client.

6. **Counterpart Substitution**

- 6.1 Where the Clearinghouse Rules provide for counterpart substitution, then upon the Clearinghouse recording its acceptance of an Exchange Transaction, such transaction and the obligation and right between Clearing Participants or with the Clearinghouse arising thereunder, are replaced through novation by two new contracts whereby:

- (a) the Clearinghouse is substituted as, and assumes the position of, seller to the buyer and buyer to the seller in the relevant transaction on the long and short sides; and
- (b) upon this substitution, each Clearing Participant is deemed to have bought the contract from or sold the contract to the Clearinghouse, as the case may be, and the Clearinghouse and each Clearing Participant have all the rights and all the liabilities of their respective contract with respect to such transaction.

This substitution by novation is effective in law for all purposes.

- 6.2 These new contracts are subject to this Agreement and otherwise to the same terms as the original Exchange Transaction, Exercise Notice or Tender Notice replaced by them.
- 6.3 In any case of default of any Clearing Participant, the Corporation as a substituted counterpart does not have any obligation other than to make or receive any payment, credit or delivery to or from any Clearing Participant for any amount of funds, Series of Options, Series of Futures, Delivery Certificates or Underlying Interest. This obligation of the Corporation is strictly limited to those financial resources reasonably and immediately available to it pursuant to the Clearinghouse Rules. The Corporation is expressly discharged from any obligation beyond such resources; any net amount of funds or quantity of Series or Options, Series of Futures, Delivery Certificates, or Underlying Interest payable by or receivable from a Clearing Participant shall be charged back to any Clearing Participant.

7. **Clearinghouse Security Interests**

- 7.1 To guarantee the due payment and performance of all financial and other obligations under this Agreement, and the Rules and Operations Manual the Clearing Participant grants to the Corporation a security interest (the Corporation's Security Interest) in, and pledges, charges, and assigns to the Corporation, its Collateral, and all dividends, interests, amounts due on maturity, principal repayment and all other entitlements and proceeds arising with respect to the Collateral. The pledged Collateral may be held in a securities account in the name of the Corporation or an agent of the

Corporation. The granting of the Corporation's Security Interest secures the due payment of all amounts due, from time to time to the Corporation from the Clearing Participant, and the performance of all obligations of the Clearing Participant to the Corporation under this Agreement, and the Rules and Operations Manual.

- 7.2 The Clearing Participant represents and warrants to the Corporation that it has full authority and power to grant the Corporation Security Interest, including any exemption or authorization that may be required pursuant to any statute or regulation binding on it. The granting of the Corporation's Security Interest by the Clearing Participant shall survive the suspension, termination, or withdrawal of it from Clearing Participant status.
- 7.3 The Clearing Participant shall execute and deliver to the Corporation such financing statements and other documents as the Corporation may request for the purpose of confirming or perfecting this pledge, hypothecate and the Corporation's Security Interest.
- 7.4 The Clearing Participant will assure that the Collateral and such other assets that are furnished or deposited by it to or with the Corporation or through an Approved Depository, in pledge, hypothecate or as additional security interest:
- a. are the sole legal and beneficial property of the Clearing Participant. The Clearing Participant shall ensure that no party other than the Corporation or an authorized agent of the Corporation shall have control (as that term is defined in the STA) over the Collateral. The Clearing Participant agrees that it shall not furnish or deposit securities or other assets to or with the Corporation in pledge, hypothecate or as security interest otherwise than in conformity to this Agreement; and
 - b. are negotiable and meet the rules of good delivery, and the Clearing Participant shall indemnify and save harmless the Corporation against any claim, action, demand, loss or expense which may be made against or suffered or incurred by the Corporation in the event that any securities deposited by it are not negotiable and do not meet the rules of good delivery.
- 7.5 Upon the suspension, termination or withdrawal of a Clearing Participant, or upon the default of a Clearing Participant to make any payment or deposit of funds required, the Corporation may call in and realize the Corporation's Security Interest, for such price and upon such terms as the Corporation deems best, without notice or other prior indication to the Clearing Participant.

8. Payment of fees and other charges, books and records

- 8.1 The Clearing Participant, forthwith upon the acceptance by the Clearinghouse of this application, shall establish arrangements satisfactory to the Clearinghouse for the conduct of business with the Clearinghouse.

- 8.2 The Clearing Participant shall pay to the Clearinghouse the fees provided for in the Clearinghouse Rules for clearing, participant status, and other services rendered to the Clearing Participant and such fines as may be imposed in accordance with the Clearinghouse Rules.
- 8.3 Upon the acceptance by the Clearinghouse of this application, the Clearing Participant shall make such payments to or in respect of the Guaranty Fund as may be required from time to time pursuant to the Clearinghouse Rules (including any initial deposit required as a condition to the acceptance by the Clearinghouse of this application), and shall maintain any minimum capital requirements required to be maintained by the Clearing Participant pursuant to the Clearinghouse Rules.
- 8.4 The Clearing Participant's books and records specified in the Clearinghouse Rules shall at all times be open for the inspection by the duly authorized representatives of the Clearinghouse or its agents, and the Clearing Participant shall furnish on request all such information in its possession in respect of the Clearing Participant's business and transactions as the Clearinghouse may require. The right of the Clearinghouse to inspect such books and records of the Clearing Participant and to require information concerning the Clearing Participant's business shall continue for seven (7) years following the termination of the Clearing Participant's status as a Clearing Participant of the Clearinghouse but shall be limited to the books, records and business dealings of the Clearing Participant maintained or entered into while the Clearing Participant was a Clearing Participant of the Clearinghouse.
- 8.5 The Clearing Participant shall establish a separate bank account for each currency in which Exchange Transactions that it enters into are settled, prior to trading in that currency.
- 8.6 The Clearing Participant hereby authorizes the Clearinghouse to withdraw funds from a bank account to be established and designated by the Clearing Participant pursuant to the Clearinghouse Rules to satisfy settlement of premiums, margin, Guaranty Fund payments and clearing fees in accordance with the Clearinghouse Rules.

9. **Additional Representations and Warranties of the Clearing Participant**

The Clearing Participant represents and warrants to the Clearinghouse as follows, and acknowledges that the Clearinghouse is relying upon such representations and warranties and all other representations and warranties of the Clearing Participant contained herein in connection with this application:

- (a) the Clearing Participant has all necessary power and authority to enter into this Agreement, and neither the execution nor delivery of this Agreement, nor any act to be performed pursuant thereto by the Clearinghouse or by or on behalf of the Clearing Participant, will violate the Clearing Participant's constating documents or by-laws or any other agreements to which the

Clearing Participant is a party or by which the Clearing Participant's property is bound or any provision of law applicable to the Clearing Participant;

- (b) the Clearing Participant has operations department staff capable of meeting all the requirements of the Clearinghouse Rules, and the Exchange Rules, as applicable.

10. **Authorized Signatories – Clearing Stamps**

For the purposes of this Clearing Participant Agreement and the Clearinghouse Rules, the Clearinghouse shall be entitled to rely and act upon written instructions signed or purporting to be signed on behalf of the Clearing Participant by any one of its authorized signatories named on any list of authorized signatories furnished by the Clearing Participant to the Clearinghouse at any time or from time to time or stamped with a stamp in a form designated by the Clearing Participant as being an authorized form of stamp. The Clearinghouse shall be under no obligation to ensure the genuineness or validity of any signature purporting to be that of an authorized signatory of the Clearing Participant or any stamp purporting to be an authorized stamp, and the Clearinghouse shall have no responsibility in the event that any such signature or stamp is forged or unauthorized or in the event that the written instructions signed or purporting to be signed or stamped on behalf of the Clearing Participant are otherwise invalid or ineffective.

11. **Authorized Person and Contact Persons**

- (a) Each Clearing Participant must appoint one or more Responsible Representative(s) who have the authority to decide matters of policy and to bind the Clearing Participant with respect to all matters. These individuals must be available at all times and must provide full contact details.

NOTE: COMPLETE SCHEDULE "A";

- (b) Each Clearing Participant must appoint two or more operational contacts.

NOTE: COMPLETE SCHEDULE "B".

12. **Assignment**

12.1 The Applicant may not assign this Agreement without the prior written consent of the Exchange.

12.2 The Clearinghouse may assign or transfer its rights, obligations and duties under this Agreement, without prior notice and in its absolute discretion, to any entity:

- (a) controlling, controlled by, or under common control with the Clearinghouse; or
- (b) which succeeds to all or substantially all of the assets and business of the Clearinghouse.

The Clearinghouse may otherwise assign or transfer its rights, obligations and duties under this Agreement following no less than one (1) month prior written notice to the Applicant of its intention to do so.

13. **Liability**

13.1 The Clearinghouse does not provide any guarantees with respect to the Clearing System or the Trading System or any part thereof. Further, the Clearinghouse does not guarantee the sequence, timeliness, accuracy or completeness of any of the Exchange's Market Data or guarantee the accuracy, responsiveness or completeness of the Platform, the Platform Software or the Related Documentation.

13.2 THE APPLICANT ACKNOWLEDGES THAT THE CLEARING SYSTEM, THE PLATFORM, PLATFORM SOFTWARE, RELATED DOCUMENTATION, ACCESS TO ANY INTERFACE AND ANY OF THE CLEARING OR EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THEM, ARE PROVIDED "AS IS". EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, ICE CLEAR CANADA, INC., INTERCONTINENTAL EXCHANGE HOLDINGS, INC., AND THE RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, AND LICENSORS OF THE EXCHANGE AND INTERCONTINENTAL EXCHANGE (THE "**DISCLAIMING PARTIES**"), MAKE NO, AND HEREBY DISCLAIM ALL, WARRANTIES, CONDITIONS, UNDERTAKINGS, TERMS OR REPRESENTATIONS, EXPRESSED OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE, IN RELATION TO THE CLEARING SYSTEM, PLATFORM, PLATFORM SOFTWARE, RELATED DOCUMENTATION AND ACCESS TO ANY INTERFACE OR ANY PARTS OR PARTS OF THE SAME. THE DISCLAIMING PARTIES SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT (EXCEPT AS OTHERWISE PROVIDED HEREIN). THE DISCLAIMING PARTIES FURTHER DISCLAIM ALL WARRANTIES, IMPLIED OR OTHERWISE, RELATING TO ANY THIRD PARTY MATERIALS (EXCEPT AS OTHERWISE PROVIDED HEREIN). NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE EXCHANGE SHALL CREATE A WARRANTY AND THE USER MAY NOT RELY UPON SUCH INFORMATION OR ADVICE EXCEPT TO THE EXTENT SPECIFIED IN THIS AGREEMENT.

13.3 NONE OF THE DISCLAIMING PARTIES SHALL BE LIABLE IN ANY WAY TO THE APPLICANT OR TO ANY OTHER PERSON OR ENTITY FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES, LOSS OF PROFITS, GOODWILL, LOSS OF USE OR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF THEY WERE FORESEEN, FORESEEABLE, KNOWN OR OTHERWISE , INCLUDING, BUT NOT LIMITED TO :

(a) ANY FAULTS WITH THE CLEARING SYSTEMS OR THE TRADING SYSTEM, HOWEVER THOSE FAULTS MAY ARISE;

- (b) THE SUSPENSION, TERMINATION OR INABILITY TO ACCESS OR USE THE CLEARING SYSTEM OR THE TRADING SYSTEM OR ANY INACCURACIES OR OMISSIONS IN ANY INFORMATION PROVIDED, HOWEVER SUCH SUSPENSION, TERMINATION, INABILITY TO ACCESS, INACCURACY OR OMISSION MAY ARISE;
 - (c) ANY FAILURE OR DELAY SUFFERED BY THE APPLICANT OR AN EMPLOYEE AND/OR CUSTOMER OF AN APPLICANT RELATING TO ACCESS TO THE CLEARING SYSTEM OR THE TRADING SYSTEM;
 - (d) ANY OTHER CAUSE IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE OR USE OF OR INABILITY TO USE ALL OR ANY PART OF THE CLEARING SYSTEM OR THE TRADING SYSTEM; OR
 - (e) ANY INJURIOUS ACT, DEFAULT, OR OMISSION UNLESS SUCH ACT, DEFAULT OR OMISSION WAS THE RESULT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF THE DISCLAIMING PARTY OR PARTIES SOUGHT TO BE HELD LIABLE THEREFOR.
- 13.4 In no circumstances shall either the Clearinghouse or ICE, nor any of its or their officers, directors, employees, agents, or licensors be liable to the other party or any other person or entity for any indirect; incidental; consequential damages or punitive damages; or damages for loss of profits or goodwill, even if it has been advised of the possibility of these damages and even if the damages are due to the other party's error, omission or negligence.
- 13.5 Subject in all cases to the foregoing, the maximum aggregate liability of the Clearinghouse to the Applicant or its customers, on an aggregate basis, for any and all claims made in relation to this Agreement in any calendar year shall be ten thousand dollars (\$10,000), however that liability arises, including (without limitation) breach of contract, tort, misrepresentation or breach of statutory duty.
- 13.6 Each Party shall notify the other of any claim arising under or in connection with this Agreement within one (1) calendar month of the date on which it becomes aware of the specific act, fact, circumstance or event which gave rise to the claim. Neither party shall have any liability to the other for any such claim notified after such one (1) month period.

14. **The Applicant's Indemnification**

The Applicant agrees to indemnify, protect and hold harmless the Disclaiming Parties for any and all losses, damages, expenses and costs, including reasonable legal fees, arising from a claim, suit or other proceeding made or instituted by any person or entity arising from:

- (a) unauthorized access to, or use of the Clearing System or the Trading System; or
- (b) unauthorized access to or use of the Applicant's interfaces with the Clearing System and/or the Trading System, that causes damage to the Clearing System, the Trading System or any other participant.

15. **Waiver**

The failure of a party hereto to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

16. **Remedies Not Exclusive**

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy including without limitation any remedy or rights under the Exchange Rules or the Clearinghouse Rules, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.

17. **Survival**

Notwithstanding a suspension, termination, withdrawal, arbitration or other proceedings, the Clearing Participant remains bound by this Agreement as to all matters and Exchange Transactions occurring while a Clearing Participant and thereafter occurring with or through the Clearinghouse.

18. **Jurisdiction and Governing Laws**

- (a) With respect to any suit, action or proceeding relating to this Agreement, the Clearing Participant irrevocably:
 - (i) submits to the jurisdiction of the Court of Queen's Bench Manitoba, in the City of Winnipeg, Province of Manitoba;
 - (ii) waives any objection that it may have to the laying of venue of any suit, action or proceeding brought in any such Court, and any claim that such suit, action or proceeding has been brought in an inconvenient forum and further waive the right to object that such Court does not have any jurisdiction over such party;
 - (iii) waives with respect to itself and its revenues and assets, irrespective of their use or intended use, all immunity on the grounds of sovereignty or other similar grounds from suit, relief by way of injunction, order for specific performance or for recovery of property, attachment of its assets whether before or after judgment, and execution or enforcement of any judgment to which it or its revenues

or assets might otherwise be entitled in any suit, action or proceeding in the courts of any jurisdiction; and

- (iv) waives the right to claim any such immunity.
- (b) In consideration of the uniform application of all rights and obligations of the Clearinghouse and the Clearing Participant arising pursuant to this Agreement, and for the processing of all services by the Clearinghouse from a single location servicing a computer network, all such rights and obligations and this Agreement are governed and construed exclusively in accordance with the laws of the Province of Manitoba and of Canada applicable therein, as if all parties were residents of and the Clearing Agreement obligations were performed in Manitoba, without regard to applicable conflict of laws doctrine or provisions.

19. **Term and Termination**

- 19.1 This Agreement shall take effect when signed by both parties and shall be for a period of one (1) calendar year and shall be renewed automatically upon the expiry of that period and each calendar year thereafter unless terminated in accordance with this Agreement.
- 19.2 A party shall have the right to terminate this Agreement forthwith by giving written notice to the other party if the other party makes any arrangement or composition with its creditors or if a bankruptcy petition is presented or if a receiving order is made against it or if, being a company, an order is made or a resolution is passed for the winding-up of the other party or an order is made for the appointment of an administrator to manage the other party's affairs, business and property, or if a receiver is appointed in respect of any of the other party's assets or undertaking, or if circumstances arise which entitle the Court or a creditor to appoint an administrative receiver, receiver or manager or which entitle the Court to make a winding-up order, or if the other party takes or suffers any similar or analogous action in consequence of debt in any part of the world.
- 19.3 The Clearinghouse may terminate this Agreement at any time upon the occurrence of any of the events specified in subsections (i) through (v) of this clause 19.3. Such action shall in all events be without liability to the Clearinghouse as a consequence thereof. The Clearinghouse's right to take such action pursuant to subsections (i) and (ii) shall take effect ten (10) days from notice by the Exchange that the event listed in such subsection has occurred, unless the Applicant cures such breach within such notice period. The Clearinghouse's right to take such action pursuant to subsections (iii) through (v) shall be immediate and without prior notice by the Clearinghouse. Pursuant to this clause 19.3, the Clearinghouse may terminate this Agreement if:
 - (i) any fees or other amounts due to the Clearinghouse hereunder or otherwise pursuant to the Clearinghouse Rules are past due;
 - (ii) the Applicant breaches any material obligation of this Agreement;

- (iii) such termination is required by applicable law or regulation or Court order;
- (iv) such termination is provided by the Exchange Rules or the Clearinghouse Rules;
- (v) the Applicant's status as a Direct Access Trading Participant with the Exchange is terminated.

19.4 The Applicant may terminate this Agreement on giving thirty (30) days' written notice to the Clearinghouse.

20. **Consequences of Termination**

Any termination of this Agreement shall be without prejudice to the accrued rights of the parties as at the date of such termination, and to the continuation in force of all provisions of this Agreement expressed to survive such termination, including, but not limited to, Clauses 7, 8, 9, 13 and 14.

21. **Amendments**

21.1 The Clearinghouse may in its sole discretion amend any provision of this Agreement by notice to the Applicant, where failure to do so will or would be likely to give rise to a breach of the rules and regulations of an applicable Regulatory Authority by the Clearinghouse. The Applicant expressly acknowledges and agrees that this provision is a condition of the Agreement and is necessary to ensure that regulatory compliance is maintained by the Clearinghouse at all times.

21.2 The Clearinghouse may further amend the provisions of this Agreement by notice sent in accordance with this Agreement, to the listed recipient, who shall be referred to as the "Notice Recipient". The amendment to this Agreement contained within the notice sent to the Notice Recipient shall be effective one (1) month subsequent to receipt of the notice by the Notice Recipient ("the Amendment Effective Date"), unless the Notice Recipient raises a substantive objection to the amendment before the Amendment Effective Date. If a substantive objection is raised by the Notice Recipient prior to the Amendment Effective Date, then the Clearinghouse shall have the discretion to suspend the Applicant's clearing rights from the Amendment Effective Date until such time that the Applicant has confirmed its acceptance of the relevant amendment in writing to the Clearinghouse. In the event that the Applicant has not signified its acceptance of the amendment in writing to the Clearinghouse by the date two (2) months subsequent to the Amendment Effective Date, then the Clearinghouse reserves the right to terminate this Agreement on two (2) week's notice to the Applicant.

22. **Invalid Provision**

Any prohibited, unenforceable or invalid provision in this Agreement is ineffective and deemed severed from this Agreement without affecting the enforceability of the remaining provisions thereof.

23. **Interpretation**

In case of any inconsistency in this Agreement between its provisions and those of the Clearinghouse Rules, the Agreement prevails, and between the Clearinghouse Rules and the Operations Manual, the Rules prevail.

24. **Intercontinental Exchange as Agent of ICE Clear Canada**

The Clearing Participant acknowledges that the Clearinghouse and the Exchange have entered into an agreement whereby Intercontinental Exchange provides certain back office clearing and related services for the Clearinghouse. Any requests made of the Clearing Participant by ICE shall be dealt with and responded to by the Clearing Participant as if such request(s) had been made by the Clearinghouse.

25. **Notices**

All notices or communications to be delivered under or with respect to this Agreement shall be delivered to all parties as set out herein, and be in writing and either be:

- (a) hand delivered or forwarded by registered mail to the last known address of the Applicant; or
- (b) sent via electronic mail.

In the event of any notice being required to be sent to a party under the terms of this Agreement, then such notice shall be addressed as follows:

If to ICE Clear Canada, Inc.:

Name: The Legal Department, ICE Clear Canada, Inc.
 Address: 850A Pembina Highway, Winnipeg, Manitoba R3M 2M7
 Telephone: (204) 925-5000
 Fax No. (204) 925-5014
 E-mail: Compliance-Canada@theice.com

If to the Clearing Participant:

(NOTE: IF THIS IS NOT COMPLETED – SERVICE MAY BE AFFECTED ON ANY ONE OF THE RESPONSIBLE INDIVIDUALS APPOINTED).

Name: _____
 Address: _____
 Telephone: _____
 Fax No: _____
 E-mail: _____

Notices shall be deemed to have been served at 9 am in Winnipeg, Manitoba on the Business Day following the date of sending where the notice is sent by hand or electronic mail, or 9 am in Winnipeg, Manitoba on the third Business Day following the date of sending where the notice is sent by registered mail.

26. **Remedies Not Exclusive**

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy including without limitation any remedy or rights under the Clearinghouse Rules, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.

27. **Regulatory Requirements**

It shall not be the responsibility of the Clearinghouse to inform Applicants or their employees or Customers of regulatory requirements including without limitation, all regulatory, audit trail, record keeping and record retention requirements to which they may be subject (in any jurisdiction) and no such inference or interpretation shall be drawn from the terms and conditions of this Agreement. The Applicant shall assume all responsibility for keeping itself fully informed of all Clearinghouse Rules, requirements, policies and laws.

28. **Force Majeure**

Other than an obligation of payment under the terms of this Agreement and without prejudice to the Clearinghouse's rights under the terms of the Clearinghouse Rules, a party is not liable for any failure or delay in performing any obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, war, acts of terrorism, armed conflict, labor strikes or disputes, transportation unavailability, stoppages or slowdowns, provided that the affected party gives prompt notice to the other of the nature of the event and its estimated duration and resumes performance as soon as possible after the event.

29. **Further Assurance**

The parties shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

30. **Counterparts**

This Agreement may be executed in counterparts by the Parties, each of which when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument. A complete set of counterparts shall be lodged with each Party.

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31. The Clearing Participant acknowledges receipt of a copy of this Clearing Participant Application/Agreement.

Dated as of this _____ day of _____, 20 _____.

(Type full correct legal name of Clearing Participant)

Per _____
(Authorized Signatory)

(Print Name and Title of Authorized Signatory)

This application/agreement was accepted by the Board of Directors of ICE Clear Canada, Inc. pursuant to Rule A-206, at a board meeting held _____.

ICE CLEAR CANADA, INC.

Per: _____
Corporate Secretary

Schedule A to the
Application for Clearing Participant Status

**Designation of
Responsible Representatives and Signing Officers**

(To be updated by the Clearing Participant as required.)

Initial Filing Update Filing Date: _____

**To: ICE Clear Canada, Inc.
850A Pembina Highway
Winnipeg, Manitoba R3M 2M7
Attention: Carol Klopko fax # (204) 925-5014**

_____ (the "Clearing Participant" hereby designates each of the individuals named below as Responsible Representatives and Signing Officers authorized to act on behalf of the Clearing Participant for all purposes and certify that such individuals hold the office set opposite his or her name and that the specimen signature set opposite his or her name is his or her genuine signature. Each Responsible Representative has completed Schedule "A" and will keep the information on the schedule updated:

Responsible Representatives

- | | | | |
|----|--------|--------------------|--------------------|
| 1. | _____ | _____ | _____ |
| | Name | Title | Specimen Signature |
| | _____ | _____ | _____ |
| | Work # | Fax # | Cell # |
| | _____ | _____ | |
| | Email | Main Switchboard # | |
| 2. | _____ | _____ | _____ |
| | Name | Title | Specimen Signature |
| | _____ | _____ | _____ |
| | Work # | Fax # | Cell # |
| | _____ | _____ | |
| | Email | Main Switchboard # | |

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3. _____
Name Title Specimen Signature

Work # Fax # Cell #

Email Main Switchboard #

4. _____
Name Title Specimen Signature

Work # Fax # Cell #

Email Main Switchboard #

The Clearinghouse shall be entitled to rely upon this designation of Responsible Representatives and signing officers until any changes are notified to the Clearinghouse, in writing, in accordance with the Rules.

**Schedule B
Application for Clearing Participant Status**

Designation of Operational Contacts

(To be updated by the Clearing Participant as required.)

Initial Filing Update Filing Date: _____

**To: ICE Clear Canada, Inc.
850A Pembina Highway
Winnipeg, Manitoba R3M 2M7
Attention: Carol Klopko – fax # (204) 925-5014**

_____ (the "Clearing Participant" hereby designates each of the individuals named below as Operational Contacts authorized to act on behalf of the Clearing participant for all purposes relative to clearing and the operations of the Clearinghouse. Each Responsible Representative will keep the information on this schedule current and updated:

(A) Operational Contacts:

1.

Name	Title	Specimen Signature
Work #	Fax #	Cell #
Email	Main Switchboard #	

2.

Name	Title	Specimen Signature
Work #	Fax #	Cell #
Email	Main Switchboard #	

3.

Name	Title	Specimen Signature
Work #	Fax #	Cell #
Email	Main Switchboard #	

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4. _____
Name Title Specimen Signature

Work # Fax # Cell #

Email Main Switchboard #

The Clearinghouse shall be entitled to rely upon this designation of Operational Contacts until any changes are notified to the Clearinghouse, in writing, in accordance with the Rules.

**Certified Copy of a Resolution of the Clearing Participant's
Board of Directors**

Re: Clearing Participant status with ICE Clear Canada, Inc. (the Clearinghouse)

It has been resolved that;

The Corporation be and is hereby authorized to apply to become a Clearing Participant with the Clearinghouse and to complete the Application/Agreement and forms prescribed by the Clearinghouse;

Any one director or officer of the Corporation shall be and is hereby authorized to execute for, in the name of, and on behalf of the Corporation, the Application/Agreement required by the Clearinghouse and is authorized to execute such other agreements, documents or instruments as are necessary for the purposes of the Corporation becoming a Clearing Participant with the Clearinghouse;

Upon acceptance, execution and delivery of the Application/Agreement by the Clearinghouse, same will constitute a binding and enforceable agreement of the Corporation pursuant to its terms and conditions.

The undersigned, _____, being the _____ ("Title") of _____ (the "Corporation") hereby certifies that the foregoing is a true and correct copy of the resolution passed by the Board of Directors of the Corporation at a meeting duly called and held on _____, 20 _____ at which a quorum was present and acting throughout, and that such resolution remains in full force and effect, unchanged.

Dated the _____ day of _____, 20 _____ .

(Signature)

(Name – Please Print)

(Title)

OPINION OF COUNSEL
for
Clearing Participant Applicant if a Limited Liability Company

{To be furnished on law firm's letterhead}

Attention: Corporate Secretary
ICE Clear Canada, Inc.
850A Pembina Highway
Winnipeg, Manitoba
R3M 2M7

Sirs:

This opinion is addressed to you in connection with the request of _____ {name of firm} (the "Applicant") to become registered as a Clearing Participant of ICE Clear Canada, Inc. with respect to contracts that are cleared by ICE Clear Canada, Inc. For purposes of rendering this opinion to ICE Clear Canada, Inc. we have reviewed such laws and regulations and examined such documents and records that we have deemed necessary. Based upon, and subject to the foregoing, it is our opinion that:

- (1) The Applicant is a Limited Liability Company, duly organized and validly existing under the laws of the State/Province of:
- (2) The Application/Agreement for Clearing Participant Status ("the Agreement") has been duly authorized, executed and delivered by the Applicant.
- (3) The Agreement has been duly executed and delivered by the Applicant and constitutes a valid and binding agreement of the Applicant.

This opinion is rendered to ICE Clear Canada, Inc. solely for its benefit and may not be relied upon by any other person for any purpose without our prior written consent.

Yours truly,
