

FORM FBOT—EXHIBIT B

Request:

Attach the following, separately labeling each description:

(1) A description of the categories of membership and participation in the foreign board of trade and the access and trading privileges provided by the foreign board of trade. The description should include any restrictions applicable to members and other participants to which the foreign board of trade intends to grant direct access to its trading system.

(2) A description of all requirements for each category of membership and participation on the trading system and the manner in which members and other participants are required to demonstrate their compliance with these requirements. The description should include, but not be limited to, the following:

(i) Professional Qualification. A description of the specific professional requirements, qualifications, and/or competencies required of members or other participants and/or their staff and a description of the process by which the foreign board of trade confirms compliance with such requirements.

(ii) Authorization, Licensure and Registration. A description of any regulatory and self-regulatory authorization, licensure or registration requirements that the foreign board of trade imposes upon, or enforces against, its members and other participants including, but not limited to any authorization, licensure or registration requirements imposed by the regulatory regime/authority in the home country jurisdiction(s) of the foreign board of trade. Please also include a description of the process by which the foreign board of trade confirms compliance with such requirements.

(iii) Financial Integrity. A description of the following:

(A) The financial resource requirements, standards, guides or thresholds required of members and other participants.

(B) The manner in which the foreign board of trade evaluates the financial resources/holdings of its members or participants.

(C) The process by which applicants demonstrate compliance with financial requirements for membership or participation including, as applicable:

(i) Working capital and collateral requirements, and

(ii) Risk management mechanisms for members allowing customers to place orders.

(iv) Fit and Proper Standards. A description of how the foreign board of trade ensures that potential members/other participants meet fit and proper standards.

Response:

Participant Categories and Access

1. Categories of Membership--Market Participants

NGX is a non-intermediated trading facility and all Participants self-clear. NGX Participants are termed “Contracting Parties” in the NGX Contracting Party’s Agreement (“CPA”) which is both the participant agreement and the rules of the exchange and clearing house. The CPA is included as Attachment A-3a.

There is only one category of NGX Participant. All Participants have the right to trade on NGX and to clear their transactions through the NGX DCO. There are no restrictions on access in respect of U.S. Participants with direct access to the NGX market.

Nor is there any distinction between those with trading access and those with clearing rights. All Participants are required to self-clear and are not permitted to clear on behalf of other Participants. Thus, there is only one type of access to NGX, which includes both trading access and clearing rights.

2. Authorized Representatives and Requirements for Participants

A Participant may designate particular persons as “Authorized Representatives.”¹ Such persons are authorized by the Participant to enter information into the NGX Trading or Clearing Systems on the Participant’s behalf.² The Participant must file with NGX an “access notice” notifying NGX of the access rights provided by the Participant to an Authorized Representative.³

NGX is a non-intermediated market. Participants’ trading access and other rights and obligations, including their obligations to NGX and to their counterparties, are governed by the NGX CPA. NGX requires all Participants to enter into the CPA. The CPA requires all Participants to demonstrate compliance by making legal representations that they fulfill the requirements of the CPA.⁴ For example, Participants must represent that they enter into all transactions as principal and not as agent for any other party.⁵ Under Article 3.2(c) of the CPA, all contracts are entered into on a principle to principle basis, without any third-party standing in between the Contracting Parties. The Participant accepts responsibility for all contract rights and obligations for all transactions on NGX

¹ Attachment A-3a, CPA Article 3.2(c).

² This includes submitting transaction-related information to NGX DCO in respect of transactions not executed on the NGX Trading System. Pursuant to CPA Article 3.2(c), a (Clearing) Participant may also authorize a broker (“Off-Exchange Broker Representative”) in the over-the-counter (“OTC”) market to submit certain trades to NGX DCO for clearing. Off-Exchange Broker Representatives do not have access to the NGX Trading System or ICE Trading Platform.

³ *Id.*

⁴ *Id.* at Article 2.

⁵ *Id.* at Article 2.6(e).

The CPA requires Participants to meet certain initial admission requirements for the purpose of demonstrating their status and sophistication in the energy markets.⁶ NGX limits access to high-net worth entities. Natural persons may not be Participants. From its inception, NGX has limited access by U.S. entities to those entities that meet the definition of “Eligible Swap Participant” under former Part 35 of the Commission’s rules,⁷ “Eligible Contract Participant” and “Eligible Commercial Entity” under section 1a of the CEA. Thus, all Participants must be a validly organized corporation, partnership organization, trust or other business entity or have a majority of its voting shares owned directly or indirectly by one or more such entities with a net worth exceeding \$5 million or total tangible assets exceeding \$25 million as shown on its latest balance sheet or equivalent documentation.⁸ If a Participant satisfies the financial requirement through a parent company, the parent entity of the Participant is required to satisfy NGX-set requirements.⁹

Participants must represent that each transaction is entered into in conjunction with a line of its business (including financial intermediation services) or the financing of a line of its business.¹⁰

Prior to becoming a new Participant that can enter into transactions or clear through NGX, a prospective Participant must:

1. Meet the Minimum Qualification Requirement as evidenced by an entity’s latest financial statements or equivalent documentation;
2. Complete the NGX market participant Application Form;
3. Receive formal approval from the NGX Membership Committee;
4. Review and execute the NGX CPA;
5. Review and execute the ICE Participant Agreement;
6. Complete the NGX Contracting Party Administration Form; and
7. Arrange to provide collateral pursuant to the terms and conditions of Schedule C (“Risk Management Policy”) of the CPA.

ICE¹¹ will issue a trading ID to an Applicant once it receives confirmation from NGX that the Applicant has accomplished steps 1 through 5. Prior to receiving permissions to trade cleared contracts, the Applicant must accomplish steps 6 and 7.

⁶ Participants entering into physically-settled contracts that are traded on NGX (NGX forward contracts are not within the scope of the application) must also have access to capacity on the relevant commodity transportation system, thus ensuring their ability to make or take delivery as required under NGX forward contracts.

⁷ 17 CFR 35.1. NGX will amend the CPA to eliminate reference to Eligible Swap Participants in light of the elimination of that category under revised Part 35 of the Commission’s rules. See “Agricultural Swaps, 76 *Fed. Reg.* 49291 (August 6, 2011).

⁸ Attachment A-3a, CPA Article 2.3.

⁹ *Id.* at Schedule C-3, ¶ 5(b).

¹⁰ *Id.* at Article 2.6(b).

¹¹ See note 15, *infra*.

Based on current indications of demand, NGX plans to continue the current requirements for access. However, NGX stands ready to amend these access requirements in the future, including permitting futures commission merchants to become Participants for agency trading, in response to demand from market participants. As required under Commission Rule 48.8(b)(1)(ii)(A), NGX will notify the Commission if it amends the CPA in this manner.

3. Authorization, Licensure or Registration Requirements

Under the CPA, Participants must represent to NGX that the applicant has all regulatory and business licenses necessary to enter into and clear transactions on NGX.¹² Applicants seeking to become Participants must submit appropriate documentation demonstrating that they are duly authorized to enter into transactions on NGX.¹³

Additionally, as mentioned elsewhere in this Application, NGX and ICE have entered into a services agreement¹⁴ under which Participants directly access the NGX market through their ICE application programming interface. In the first instance, entities must satisfy NGX's access requirements and become a Participant. Such Participants must additionally satisfy ICE's participant requirements and must have valid access rights to, and remain in good standing with respect to its right to participate on, the ICE trading platform. Under the ICE Services Agreement, NGX is responsible for obligating its Participants to be accepted as a trader on the ICE Platform.¹⁵

4. Financial Integrity

A Participant must meet the minimum financial requirement of having a net worth exceeding \$5 million or total tangible assets exceeding \$25 million. As discussed above, if a Participant relies upon a parent to fulfill the minimum financial requirement, the parent entity must satisfy NGX-set requirements. To determine if Participants meet these minimum requirements, audited or unaudited financial statements, as per the CPA, are provided when a counterparty joins NGX and each year thereafter. The CPA also provides NGX with the right to request financials or other information to supplement the 5/25 checks. Typically, 5/25 checks are completed by July 31st of each year. The Participant represents and warrants in its CPA that it meets the minimum financial standard.

In addition to meeting the minimum financial qualification, NGX will determine a Margin Limit for each participant.¹⁶ If the Participant approaches, equals or exceeds the margin limit, NGX may call for additional collateral to be deposited, or may suspend the Participant's trading rights, or close-out and liquidate the Participant's outstanding contracts.¹⁷ NGX also has the authority to set Open Position Limits for Participants.¹⁸ If a Participant exceeds its Open

¹² *Id.* at Article 2.

¹³ *Id.*

¹⁴ The ICE Services Agreement is appended at Attachment A-3b..

¹⁵ Attachment A-3b, ICE Services Agreement, Exhibit E, Schedule 5, ¶ 2.

¹⁶ Attachment A-3a, CPA, Schedule C, ¶ 3(a).

¹⁷ *Id.* at ¶¶ 7(b)-(d).

¹⁸ *Id.* at Article 3.6.

Position Limit, NGX may cancel the Participant's pending orders upon 24 hours notice to the Participant (where notice is reasonably practicable in the circumstances).¹⁹

Each Participant must also represent to NGX that the Credit Support Provider, which is a party other than the Participant, providing collateral for the obligations of the Participant, has the requisite power, authority and capacity to execute and deliver, and fulfill the obligations under the credit support documents.²⁰ If an applicant is accepted as a Contracting Party by NGX, the Exchange will confirm to the Contracting Party that it and, if applicable, its Credit Support Provider, has satisfied the Minimum Qualification Requirement and any other fitness or financial requirements for becoming an NGX Participant.²¹

Finally, pursuant to its Risk Management Policy, NGX may impose additional conditions on applicants.²²

5. Fit and Proper

In order to become a Participant, an applicant must file an application with NGX and represent that it is in compliance with the applicable minimum requirements. As discussed above, the minimum eligibility requirements include the requirement that Participants qualify as being Eligible Swap Participants, Eligible Contract Participants and Eligible Commercial Entities with respect to each transaction, and that they have in effect all regulatory approvals required in their home jurisdictions. The Applicant's qualification are reviewed by NGX staff and staff conducts a due diligence review to ensure compliance with the eligibility requirements.

Under the CPA, each Participant is deemed to reaffirm that it meets the initial admission requirements each time it clears a transaction on NGX. As discussed above, a Contracting Party will be activated on the NGX Trading System and NGX Clearing System only after its application has been accepted and all pre-requisite requirements, including requirements specific to that entity as needed, have been satisfied under the CPA and once NGX has received collateral which will be used to establish a Margin Limit for that Contracting Party. NGX currently conducts a rolling annual review of all Participants to ensure ongoing compliance with the eligibility requirements.

¹⁹ *Id.*

²⁰ *Id.* at Article 2.2.

²¹ *Id.* at Schedule C-3, ¶ 5(c).

²² The Risk Management Policy is included in the CPA, as Schedule C.