

FORM FBOT—EXHIBIT D-2

Request: Attach a description of the manner in which the foreign board of trade assures the following with respect to the trading system, separately labeling each description:

- (1) Algorithm. The trade matching algorithm matches trades fairly and timely.
- (2) IOSCO Principles. The trading system complies with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions (IOSCO Principles). Provide a copy of any independent certification received or self-certification performed and identify any system deficiencies with respect to the IOSCO Principles.
- (3) Audit Trail.
 - (i) The audit trail timely captures all relevant data, including changes to orders.
 - (ii) Audit trail data is securely maintained and available for an adequate time period.
- (4) Public Data. Adequate and appropriate trade data is available to users and the public.
- (5) Reliability. The trading system has demonstrated reliability.
- (6) Secure Access. Access to the trading system is secure and protected.
- (7) Emergency Provisions. There are adequate provisions for emergency operations and disaster recovery.
- (8) Data Loss Prevention. Trading data is backed up to prevent loss of data.
- (9) Contracts Available. Mechanisms are available to ensure that only those futures, option or swap contracts that have been identified to the Commission as part of the application or permitted to be made available for trading by direct access pursuant to the procedures set forth in § 48.10 are made available for trading by direct access.
- (10) Predominance of the Centralized Market. Mechanisms are available that ensure a competitive, open, and efficient market and mechanism for executing transactions.

Response:

(1) Algorithm.

The algorithm uses time/price priority logic. Time/price priority assures that trades are matched in a fair manner. Matches are made on a timely basis.

(2) IOSCO Principles.

ICE, in its Services Agreements, confirms that it adheres to “Good Industry Practice” in connection with its operation of the trading platform.¹ In this regard, in developing, deploying and operating the ICE trading platform, ICE has employed the expertise of industry specialists to ensure that the resulting system infrastructure follows best industry practice and quality standards. Its meeting of the IOSCO Principles is illustrated by the detailed description of its trading system.

(3) Audit Trail.

The NGX Trading System captures a complete audit trail of all orders entered into the trading system and all trades that are executed. In this regard, the following information is required to be included on orders submitted to the trading system: (1) commodity; (2) contract; (3) purchase or sale; (4) customer account; (5) volume; (6) limit price; and (7) strike prices, put or call (for options). The trading system automatically records the time of, and retains a record of, each entry into the system. Resting orders that have not resulted in an executed trade may be withdrawn. However, the entry and withdrawal of such orders is captured and a record thereof retained. Thus, the trading system captures and retains a complete and accurate audit trail of all activity on the trading system. All relevant data are retained for a period of not less than five years in an electronic storage medium, subject to appropriate security measures that meet generally accepted industry practices. Where applicable, such data is available to NGX from ICE on request.

(4) Public Data.

NGX has a complete database on clearinghouse and exchange activity. It uses such data to calculate customer invoices, assess and monitor Participant’s risk positions, monitor market activity, calculate volatility and margin requirements, conduct stress tests of its systems and analyze trading.

Real-time market data is available to Participants with respect to bids, offers, and transactions via reports that are available from NGX’s website and other channels. Entities that do not trade on NGX but that wish to access real-time and historical market data may become View-only Members. View-only memberships, which are available from ICE in respect of the NGX products traded on the ICE Platform, in essence, operate as would a subscription to a market data service, but enable the subscriber to see the same market trading activity as a Participant.

As discussed above, various market data are publicly available on NGX’s website, including, by contract, trading volume, settlement prices and open interest. In addition, information on yearly volume is available.

(5) Reliability.

The reliability of the NGX Trading System is grounded in the hardware, datacenter and network infra-structure as well as the robust nature of its software. The hardware specification

¹ See, e.g., Attachments A-3b and A-3c, ICE Services Agreements, Article 3.1(c).

for the Execution Platform includes a duplicate, backup datacenter capable of conducting all essential trading and clearing functions. All proprietary software and databases are duplicated in the backup system, with the backup being substantially a mirror image of the primary system.

The ICE Trading System has been designed to exacting specifications. Its software and components have been subject to rigorous acceptance testing procedures. It has been deployed for the NGX market since spring of 2007, and is operated to strict service levels. Under the service agreement, the Execution Platform must operate with a 99.6% availability during each month. There was one material availability issue during 2008, the first year of NGX's deployment of the ICE System, and there have been no material reliability or availability issues during 2009 and 2010.²

(6) Secure Access.

The trading system includes a security system that provides user authentication, confidentiality and information integrity. It ensures the integrity of the trading system by using features embedded in the API that cannot be accessed externally. The security system is responsible for: (i) maintaining the database of currently certified users; (ii) authenticating certified users as they log on; (iii) distributing session keys as part of the login process; and (iv) maintaining a list of currently logged-on authorized users.

Only authorized users are allowed to use the system. Access is granted based upon a review and verification of access request forms by the NGX Application Support team, the group within NGX responsible for technical support. Such forms must include an approved signature or some other agreed upon auditable mechanism. Once an account has been set up for a new Participant by market administration, Registered Users are added by the Participant.

NGX personnel direct ICE to create, amend and delete NGX Registered Users access rights to the ICE Platform. User authentication is through the use of username and passwords. Passwords are required to be changed periodically. Passwords are provided to Registered Users following a security check verifying the identity of the person to whom the password is delivered.

The security of the system also depends on the actions of system users. Each Participant is required by the CPA to implement suitable security measures to ensure that only those persons specifically authorized by the registered market participant have access to the user's passwords and security keys.

(7) Emergency Provisions.

NGX maintains and periodically tests a Business Continuity Plan (a "BCP") which is designed to ensure that trade execution³ and clearing services will not be significantly affected in the event of operational problems at the primary data site, inability to access the office space and/or significant staffing problems. These arrangements involve a combination of alternate

² Please see Exhibit D-1 with respect to a discussion of certain service interruptions during 2011.

³ As discussed in greater detail below, ICE as the operator of the trade execution platform has in place a BCP which would apply with respect to its operation of the NGX trade execution functions.

computer and office sites, the ability to operate systems remotely and extensive cross-training of employees.

NGX operates a parallel, duplicate network in a separate physical location that is updated on a real-time basis. As a result, in the event of a malfunction in one network, NGX can continue to operate its services with a minimum of interruption and loss of data. The system is designed so that in the event of a network failure, the system can be switched to an alternate network in a reasonable period of time.

The connection between the primary server and the duplicate network is achieved through a direct fiberlink. Each site has an independent internet connection, supplied by different providers. Either site can fully support the NGX clearing and trading system.

NGX has a “BCP Team” designed to handle all crucial business functions for the immediate period following a disaster. Employees have company laptops to use during disaster recovery scenarios, and an alternative work site has been set up to accommodate employees if NGX is not accessible. NGX employees can also access the network over one of two VPN connections; one located at the primary NGX site and the other located at the off-site data center.

NGX engages in regular testing and updating of its BCP. TMX Group provides independent oversight and currently conducts an annual internal audit of NGX’s BCP.

As noted above, operation of the trading platform with respect to natural gas, power and crude oil is outsourced to ICE, which has agreed to have in place both a Disaster Recovery Plan and a BCP in connection with its outsourcing agreement with NGX.⁴ Specifically, the ICE Services Agreements requires ICE to adhere to, maintain and test its BCP insofar as its operations are required to fulfill its outsourcing obligations to NGX. ICE is also required to provide NGX with a copy of its Disaster Recovery Plan and to assist NGX in the event a disaster has occurred. Under the ICE Services Agreements, both parties are required to cooperate in testing each other’s Disaster Recovery Plans.

The ICE Platform is reviewed annually by an independent auditor, following the standards of review set out in the Statement on Standards for Attestation Engagements No. 16, Reporting on Controls at a Service Organization, commonly known as SSAE No. 16. The SSAE No. 16 audit standards require testing of controls to provide reasonable assurance that system security and other stated control objectives are satisfied. The ICE Platform and software controls are the subject of examination, including ICE’s computer equipment, storage media, internal documentation, physical and environmental protection measures, and access to systems and data. The examination provides independent assurance of the operational controls and security representations made by ICE about the ICE Platform. ICE provides NGX with a current audit report in connection with its provision of the outsourced services.

To sum up, NGX has in place a business continuity plan which would enable the exchange with respect to trade execution and clearing to implement recovery procedures in the face of a disaster. This plan stresses the ability of the exchange to resume operations in the face of a disaster within a commercially acceptable time frame.

⁴ Attachments A-3b and A-3c, ICE Services Agreements, Articles 3.2 and 3.3.

(8) Data Loss Prevention.

Trading data is consistently backed up, as specified in the ICE Services Agreements. Data is preserved for not less than five years, or longer if required by law or regulation, and is readily accessible is needed.⁵

(9) Contracts Available.

The trading system is built to ensure that of those contracts subject to the Act only those that have been deemed available for trading by direct access pursuant to the procedures set forth in § 48.10 are made available for trading by direct access. The ICE platform provides NGX with the ability to configure Market Participants' accounts and limit Market Participants' ability to trade in, or in select, instruments.⁶

(10) Predominance of the Centralized Market.

The structure and operations of the trading system ensure a competitive, open, and efficient market and mechanism for executing transactions. NGX rules recognize two forms of off-market transaction; block transactions and Exchange of Futures for Related Products. Each is discussed below.

Block Trades

NGX has established under Article 3.2(f) a Block Transaction rule, referred to herein as a block "trade". The block trade rule contributes to the market being competitive, open and efficient. The block trade rule ensures that the price at which a Block Transaction can be executed is tied to the traded price of the market, assuring that block trades are competitively priced. Specifically, Article 3.2(f)(vi) requires that the price of a block trade not exceed by more than a stated percentage the day's overall high and low, or if the market did not trade, the same percentage of the previous day's range. The rule further provides, however, that if the market did not trade on that or the previous day, then the price may be as the parties agree. This is in recognition of the fact that if a market trades only episodically, the price may move more than the range provided. In this instance, where the market may not have trade in several days, the block price likely will establish the market price. By requiring the prices for block trades be within a specified range of the day's high and low, where the market is active, the block trade provision ensures that market participants do not use block trades to avoid competitively determined prices. Moreover, restricting the price at which block trades are executed to be within the range of traded prices discourages participants from attempting to use block trades as a means of avoiding a market-derived price in a liquid market. On the other hand, the rule recognizes that in very illiquid market, the only price available may be a block trade. Finally, the rule permits the Exchange in exceptional circumstances to permit a block trade outside of the stated range to stand. This would be for example, where the market does not trade on the day of the block and there has been an event which causes the market to be outside of the range of the prior day's range, such as a severe weather event occurring. In this instance, the block may

⁵ *Id.* at Article 3.1 and Exhibit B, ¶ 4.

⁶ *Id.* at 2.1(e).

legitimately be priced outside of the percentage amount of the range of the prior day's high and low.

The block trade rule assures that the market remains open and transparent by requiring that block trades be timely reported. The CPA requires that block trades be reported immediately upon execution and confirmed within 15 minutes. Block trades will then be reported by NGX as such, providing transparency to other market participants of the transaction.

Finally, the NGX block trade rule establishes minimum block sizes that are relatively large transactions for the underlying markets involved. In this way, block trades contribute to the efficiency of the market by providing a mechanism by which large trades are able to be executed without unduly affecting the market price. Without the block trade facility, these large sized contracts might tax the liquidity of the market at any particular time, thereby moving the market and impairing the market's ability to reflect a competitively-determined price. NGX's block trading provision therefore contributes to NGX being a competitive, open and efficient market.

Exchange of Futures for Related Products

In general

Exchange of Futures for Related Product ("EFRP") transactions are available on NGX in Canadian and U.S. natural gas and oil. The related products that may be exchanged for a futures contract under rule 3.2(e) of the CPA include forwards, options (and, in electricity, swaps).⁷ All EFRP transactions are cleared by NGX DCO as futures contracts. In general, most EFRPs will involve the submission of forward contracts to NGX for exchange for futures. The trade details of forward contracts that are entered into bilaterally off of any organized market may be submitted as EFRPs to NGX by the parties themselves or by an off-exchange broker representative. Submission of these off-market EFRP transactions to NGX is through an ICE web interface called "ICEBlock" or by providing verbal instructions to NGX personnel by telephone or other communication device.

Canadian natural gas and oil

Forward contracts in Canadian natural gas and in oil are traded on NGX,⁸ with access through the WebICE Trading Platform. Trading in forward contracts in Canadian natural gas and oil are not within the scope of the FBOT Application. Canadian natural gas and oil contracts are referred to as "NGX Forwards." NGX Forwards may be submitted as EFRPs through entrance of trade details via ICEBlock or by communicating with NGX personnel. The use of EFRPs with respect to either bilateral forward contracts or NGX Forwards is a small portion of the overall cleared market for Canadian natural gas or oil. That is, the overwhelming majority of the

⁷NGX under the CPA is able to accept any form of off-market transaction as an EFRP transaction. At this time, however, NGX expects that all EFRPs will be for forwards or options and that none of its Participants will submit swaps to NGX via its EFRP rule. Nevertheless, NGX does not prohibit the submission of swap transactions for EFP transactions. The characterization of the related product is by the market participants submitting the related transaction to NGX.

⁸ Forward contracts traded on NGX are contracts in which the parties intend to make or take delivery. They are not cleared, except pursuant to the EFRP provisions of Article 3.2.

cleared futures markets in Canadian natural gas and oil are transactions that initially were executed as foreign futures and options on NGX Trading System.

U.S. natural gas

Forward contracts in U.S. natural gas may be traded bilaterally and submitted via EFRP for clearing by NGX DCO as futures contracts. These contracts are submitted via ICEBlock or by communicating with NGX personnel.

In addition, forward contracts in U.S. natural gas products are traded on ICE on ICE's trading platform. These U.S. natural gas contracts are referred to as "ICE Forwards." In addition, NGX trades foreign futures and options on natural gas with U.S. Delivery Points. A counterparty trading an ICE Forward may enter an Order that recognizes that it may not be able to obtain best execution as a forward contract and permitting his order to match as an NGX future in order to be executed or obtain best execution. In essence, this form of order provides that the market participant is ready and able to enter into a forward contract and intends to deliver on the forward contract, except that the market participant agrees to execution as a futures contract if that is the means to obtain best execution. Only market participants that are qualified to enter into forward contracts and intend initially to deliver are able to enter this type of order.

NGX notes that this structure encourages the ability of market participants to execute their contracts in the most efficient market environment and encourages the use of clearing. Under the clearing enablement provision of the ICE central market, traders of forward contracts may indicate a willingness to be executed against orders to be submitted as cleared transactions. This increases the liquidity of contracts traded in the central market and encourages trading on the centralized market rather than off the centralized market and encourages clearing as well.