

Exhibit F – The Regulatory Regime Governing ICE Futures Canada, Inc. in its Home Country or Countries

With respect to each relevant regulatory regime or authority governing ICE Futures Canada, attach, as Exhibit F, the following (including, where appropriate, an indication as to whether the applicable regulatory regime is dependent on the home country's classification of the product being traded on ICE Futures Canada, Inc. as a future, option, swap, or otherwise, and a description of any difference between the applicable regulatory regime for each product classification type):

ICE Futures Canada's primary regulator is The Manitoba Securities Commission ("MSC"), the statutory regulatory authority in the province of Manitoba. In addition to the MSC, ICE Futures Canada has reporting obligations to the Ontario Securities Commission ("OSC"), the Autorité des marchés financiers in Quebec ("AMF"), the Alberta Securities Commission ("ASC"), the U.S. Commodity Futures Trading Commission ("CFTC") and FINMA, the statutory regulatory authority in Switzerland. All products traded on ICE Futures Canada are agricultural futures and options on futures contracts, and are classified as such in all jurisdictions.

- (1) A description of the regulatory regime/authority's structure, resources, staff, and scope of authority; the regulatory regime/authority's authorizing statutes, including the source of its authority to supervise ICE Futures Canada; the rules and policy statements issued by the regulator with respect to the authorization and continuing oversight of markets, electronic trading systems, and clearing organizations; and the financial protections afforded customer funds.**

Introduction

In Canada, the oversight of securities and derivatives industries is a provincially enumerated power under the constitution, with legislation and oversight a provincial jurisdiction. On December 12, 2011, the Supreme Court of Canada issued a decision on a Reference question pertaining to the constitutionality of a proposed federal *Securities Act*.¹ The SCC determined that the *Securities Act*, as presently drafted, is not valid under the general branch of the federal power to regulate trade and commerce under s. 91(2) of the *Constitution Act, 1867*. Accordingly, in Canada the current regime of regulation of the securities and derivatives industries by provincial securities commissions will continue.

The securities commissions of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and Quebec have entered into a Memorandum of Understanding ("MOU") dated September 1, 2009 pertaining to the oversight of Canadian exchanges and automated trading systems. This MOU, Attachment F(1), provides that The Manitoba Securities Commission ("MSC") will be the primary regulator for ICE Futures Canada.² Notwithstanding the MOU, the AMF, and the OSC have

¹ The decision of the SCC in the matter can be found at <http://www.canlii.org/en/ca/scc/doc/2011/2011scc66/2011scc66.html>

² With respect to its oversight of ICE Futures Canada and ICE Clear Canada, the MSC notes in its 2011 Annual Report that: *The Commission oversees the operations of the exchange to ensure its business is being conducted in a manner that meets or exceeds international standards. The oversight program of the Commission includes ongoing review of the operations of the exchange and its clearinghouse, review of rules and policies of the exchange and clearinghouse and the review and monitoring of products offered by the exchange.* (pages 20-21)

each taken the position that ICE Futures Canada is required to file exemptive relief applications and, once such relief is granted, file copies of all information that is sent to the MSC to these regulatory authorities. The ASC has taken the position that ICE Futures Canada is required to apply for recognition as an exchange located outside of Alberta. ICE Futures Canada acquired this recognition on May 30, 2013.

The MSC is mandated by legislation to regulate and oversee ICE Futures Canada and ICE Clear Canada. That legislation is *The Commodity Futures Act* C.C.S.M. c. C152 ("CFA"). There are two regulations, Regulation 180/99 and Regulation 179/99, and Rule 1(CF) that have been promulgated under the provisions of the CFA. The MSC itself does not enact legislation. It does, however, have rule making power, which is similar in force to regulation. The rule making power is confined to certain specific areas, which are set out in Regulation 180/99. One rule has been enacted, Rule 1(CF). Copies of the CFA, and the regulations and rules are Attachments A-5(1) through A-5(4) to Exhibit A-5.

The MSC is comprised of two parts; a) the Commission which is made up of seven order-in-council appointees, including a full time Chairman, a part-time Vice-Chairman and a further five, part time members, and b) 37 full-time, permanent staff, including lawyers, chartered accountants, investigators and support staff.

The staff of the MSC are organized into the following seven operational sections:

1. Investigations

There are four staff in this section including the Manager of Investigation, two investigators and one administrative support staff. The investigation section receives inquiries and complaints, conducts investigations and assists legal staff in the preparation of matters for hearings. The members of the investigation section report to the Director of Legal, Enforcement and Registrations.

2. Legal

The legal section is comprised of the Deputy Director-Legal, two legal counsel and one administrative support staff. The legal section provides legal advice to the Commission members and all other functional sections of the Commission, takes part in policy development and the creation of educational materials, presents applications to Commission meetings and prepares and argues enforcement cases at Commission hearings and in court. The members of the legal section report to the Director of Legal, Enforcement and Registrations.

3. Registration

The registration section is made up of the Deputy Director- Registrations and four full-time registration clerks. This section is responsible for the registration of firms and individuals operating in the investment markets in Manitoba. The members of the registration section report to the Director of Legal, Enforcement and Registrations.

4. Compliance

The Compliance section is made up of the Senior Compliance officer, Compliance Auditor and one administrative support staff. The Compliance section supports the registration function by conducting compliance audits of the industry. The Compliance section is also responsible for Self Regulating Organization ("SRO") oversight. These staff members, who are both

professional Accountants, also assist in the investigation and legal functions of the Commission by analyzing financial and trading information arising from investigations or from claims made by investors for compensation for financial loss. These staff members report to the Director of Legal and Enforcement and Registrations.

5. Corporate Finance and Continuous Disclosure

There are five staff members in this section being senior analyst, analyst, administrative assistant, corporate finance clerk and continuous disclosure clerk. The analysts are professional accountants. This section reviews and monitors offering documents and applications, as well as continuous disclosure filings of reporting issuers. It also takes part in policy development and makes presentations at Commission meetings. Staff members report to the Director of Corporate Finance and Chief Administrative Officer, who is also a professional accountant.

6. Finance and Administration

There are five staff members assigned to this section including the controller (a professional Accountant), an accounting clerk, a web developer/analyst, a receptionist and an administrative clerk. This section, in consultation with management, prepares the Commission's budgets and financial reports and develops and implements office and personnel policies for both the securities and real estate divisions. Staff members report to the Director of Corporate Finance and Chief Administrative Officer.

7. Education and Communications

The Manager, Education and Communications and one administrative support staff are assigned to this section. The Manager, Education and Communications, who has a Bachelor of Education and a Certificate in Management, is responsible for the development and implementation of educational programs and internal and external communications for the general public, industry and staff.

The Commodity Futures Act ("CFA")

The CFA was proclaimed by the provincial government of Manitoba and effective as law on February 1, 2000. The CFA provides for a comprehensive regime for the registration and ongoing oversight of all entities that conduct derivatives business in Manitoba. The CFA provides the MSC with broad power of investigation under Part 2. Derivative exchanges, derivative clearinghouses, self-regulatory organizations, and all dealers and advisors (both companies and individuals) are required to be registered (Parts 3 and 4). Any extra-provincial exchanges are dealt with under Part 5. Any new contracts listed by commodity futures exchanges must be approved under Part 6 of the CFA. There are broad, general trading principles set out in Part 7 of the CFA.

The MSC performs three distinct but interconnected functions under the CFA:

Administrative - It administers the CFA, including the registration and on-going oversight of all commodity futures exchanges, clearinghouses, SROs, dealers, and advisers. In addition, it has rule making authority, which permits it to enact rules which have the legislative authority of regulations.

Investigative - It has broad investigative and enforcement powers under the CFA. These

include the power to issue investigation orders (under which the named investigators have the power to compel the attendance of individuals, whether registered or not, to attend and testify to any question under oath) to freeze bank accounts, to issue liens against real property, and to seize documentation.

Quasi-Judicial - The MSC acts as a quasi-judicial body with respect to:

- (a) hearing appeals from decisions made by a registered exchange, clearinghouse or SRO;
- (b) considering whether it is in the public interest to cancel or suspend the registration of a person or company;
- (c) considering whether it is in the public interest that a commodity futures exchange, clearinghouse and/or SRO be recognized;
- (d) sitting as the tribunal with respect to hearings brought before it for certain violations of the CFA. In this instance the Commission sits as a tribunal subject to the rules of administrative law in Canada. Appeals from such hearings are to the Manitoba Court of Appeal (on leave).

Registration

The cornerstone of the CFA is registration: every participant in the marketplace including exchanges, clearinghouses and individuals and companies that deal with the public must apply to the MSC and seek registration status. The CFA specifies the criteria to be met for registration to be granted.

Section 15 of the CFA reads:

Requirement to register as exchange

[15\(1\)](#) No person or company shall carry on business as a commodity futures exchange in Manitoba unless it is registered as a commodity futures exchange under this Part.

Registration

[15\(2\)](#) Upon application by or on behalf of a person or company wishing to carry on business in Manitoba as a commodity futures exchange, the commission shall grant registration to the person or company where it is satisfied that to do so would not be prejudicial to the public interest, taking into account whether

- (a) the clearing arrangements and the financial condition of the exchange, its clearing house and members provide reasonable assurance that all obligations arising out of contracts entered into on the exchange will be met;
- (b) the internal regulations of the exchange that govern its members and members of its clearing house are in the public interest and are actively enforced;
- (c) floor trading practices are fair and effectively supervised;
- (d) adequate measures are taken to prevent manipulation and excessive speculation;
- (e) adequate provision is made to record and publish details of trading, including volume and open interest; and
- (f) the exchange is in compliance with this Act, the regulations and the rules and is able to continue to be in compliance.

In addition to being registered as an exchange under Section 15 of the CFA, ICE Futures Canada has been recognized as an SRO by the MSC. On an ongoing basis this SRO status requires ICE Futures Canada to have processes and procedures in place that ensure that its Participants meet the Rules of ICE Futures Canada and also adhere to all requirements of the CFA.

Section 14 of the CFA reads:

Recognition of self-regulatory organization

[14\(1\)](#) The commission may recognize in writing an organization, whether incorporated or unincorporated, representing registrants as a self-regulatory organization if the commission considers that it is in the public interest to do so and that the organization is in compliance with this Act, the regulations and the rules and is able to continue to be in compliance.

On May 31, 2002 the MSC issued Order No.3767 under sections 14(1) and 15(1) of the CFA, recognizing the Exchange as an SRO and registering the Exchange as a commodity futures exchange. This order has been updated and amended twice subsequently; on June 11, 2002 by Order No. 3784 and on June 16, 2008 by Order No. 5718. Copies of these Orders are provided as Attachments A-5(12), A-5 (11) and A-5 (8), respectively, to Exhibit A-5.

ICE Futures Canada remains under the regulatory jurisdiction and oversight of the MSC, as outlined in Sections 18 and 19 of the CFA, which read:

Conflict with commodities law

[18](#) No internal regulation of a self-regulatory organization, a registered commodity futures exchange or a recognized clearing house shall conflict with this Act, the regulations or the rules, but any of them may impose additional requirements within its jurisdiction.

Suspension or cancellation of registration or recognition

[19\(1\)](#) If the commission, after giving a self-regulatory organization, a commodity futures exchange or a recognized clearing house an opportunity to be heard, considers it in the public interest to do so, it may reprimand the organization, exchange or clearing house or suspend, cancel, restrict or impose terms and conditions upon its registration, recognition or designation under this Part.

Rule and Policy Amendments

ICE Futures Canada is required to submit all Rule and policy amendments to the MSC for receipt of non-disapproval prior to implementing such amendments. Section 17 of the CFA reads:

Requirement to file documents

[17\(1\)](#) Every registered commodity futures exchange and every recognized clearing house shall file with the commission a copy of every constating document, general agreement or other document governing its members, internal regulation and every amendment to them, without delay and in any event not later than five days after the day on which the document or amendment is approved by the board of directors of the exchange and, where membership approval is required, before approval by its membership.

Commission may review filed document

[17\(2\)](#) The commission may review a document filed under subsection (1) and, if it considers it in the public interest to do so, make a decision respecting the document, including suspending its operation or requiring an amendment to it.

Additional powers

[17\(3\)](#) The commission may review the operation of a commodity futures exchange or its clearing house and, if it considers it in the public interest to do so, make an order

- (a) respecting the manner in which the exchange or clearing house carries on business;
- (b) in the case of an exchange,
 - (i) respecting trading on or through the facilities of the exchange, including the setting of levels of margin, daily price limits, daily trading limits and position limits, or
 - (ii) requiring the liquidation of or suspension of trading in a contract or any other action the commission considers necessary or advisable to maintain or restore orderly trading in a contract; and

(c) in the case of a clearing house, requiring it to liquidate a contract, suspend its operations or take any action the commission considers necessary or advisable to maintain or restore orderly trading in a contract.

Notwithstanding the provisions of Section 17, which permits the Exchange to enact all Rule amendments and provide notice to the Commission within 5 days, staff of the MSC requested early in its regulatory oversight of the Exchange, that whenever possible, pre-approval for Rule amendments should be obtained. Accordingly, the process that has been in place since 2001, and that is generally followed, is that the Exchange, after each Board or Special Regulatory Committee (“SRC”) meeting, sends a detailed letter to the MSC requests for non-disapproval of Rule amendments and other matters and submits background for items of interest for information purposes.

Staff of the MSC reviews all correspondence relating to Rule amendments and then submits matters to the Commission at its regularly scheduled weekly meetings. Staff of the MSC will then follow up with an email to the Exchange, which advises of the non-disapproval, or, if it has not been granted, seeks further information.

Depending on the situation, the Exchange may provide a notice to participants that a certain Rule amendment has been sent to the MSC for non-disapproval. This is usually done in a situation where the proposed Rule change affects the contract specifications or trading parameters, and in such cases it is necessary to ensure that the information is broadly distributed as soon as possible.

We note that in a few cases Rule amendments have been required to be implemented on an immediate basis and in such case the Exchange contacts MSC by phone or e-mail, outlining the need to implement the Rule amendment without first obtaining non-disapproval.

Financial Reporting

ICE Futures Canada and ICE Clear Canada provide regular financial reporting to the MSC, which includes monthly unaudited financial statements and the annual audited financial statements³.

New Contract Review

New contracts cannot be listed for trading until the Exchange meets the regulatory requirements set out in Part 6 of the CFA which include an application and receipt of written approval from the director of the MSC. Section 38(1) of the CFA reads:

Approval of form of contract by director

[38\(1\)](#) Upon application by or on behalf of a commodity futures exchange and the filing of a copy of all the terms and conditions of a form of contract that the exchange proposes for trading in Manitoba, the director shall approve the form of contract if he or she is satisfied that the form is not prejudicial to the public interest, taking into account whether

- (a) more than occasional use is to be made or can reasonably be expected to be made of the contract for hedge trades;

³ These financial statements are also provided to the AMF, the ASC, the OSC and FINMA.

- (b) with respect to a commodity futures contract, each term or condition conforms to normal commercial practices of the trade in the commodity or the exchange has a reasonable justification for any non-conformance;
- (c) with respect to a commodity futures contract, satisfactory levels of margin, daily price limits, daily trading limits and position limits are imposed by the commodity futures exchange;
- (d) with respect to a commodity futures option, the form of the commodity futures contract that is the subject of the option has been accepted under this section; and
- (e) with respect to a commodity futures option, performance on exercise of the option is reasonably assured by by-laws, rules, regulations, procedures and policies that are actively enforced.

Prior to submitting a new contract approval application to the MSC, ICE Futures Canada conducts a substantial market review to confirm that there will be a market for the product. This includes a consultation process with all stakeholders that may have an interest in the contract including end-users, grain companies, grain brokers, FCMs, academics, speculators, and Exchange staff. Critical to the introduction of a new contract is that the Exchange ensure the ongoing integrity of the cash market data underlying the contract at issue. Extensive consultation with industry participants, academics, trade groups, lobbying entities, consultants and others is instrumental in the development of a new contract. ICE Futures Canada reviews and adheres to the principles of contract design for physically settled commodity contracts as articulated in the “Principles for the Regulation and Supervision of Commodity Organization of Securities Commissions”, published September 2011, as they pertain to contract design⁴. This information is required background information for an application for a new contract review by the MSC.

Compliance-related reporting to the Manitoba Securities Commission by ICE Futures Canada

As set out in MSC Order No. 5718, the MSC imposes numerous reporting obligations on ICE Futures Canada and on the Special Regulatory Committee, including advising of disciplinary actions taken against any ICE Futures Canada participants, investigations of business transacted on the ICE Platform, and trade surveillance and market surveillance matters. The MSC has access to all trade information, compliance data, and other operational information as it relates to the Exchange’s operations. The MSC can and has requested the Exchange to conduct additional operational and market reviews as it deems necessary, particularly in areas concerning the enforcement of Rules, preventing market manipulation and customer and market abuses, and ensuring the recording and safe storage of trade information. The MSC has access to all records maintained by ICE Futures Canada.

On an annual basis the SRC is required to provide a comprehensive report to the MSC on all matters of regulatory importance pursuant to the requirement of Section 21 to Appendix A to Order No. 5718. The SRC also provides the MSC with an annual financial report specific to the operations of the Regulatory Division. Copies of the last Annual Report for the period ending dated June 25, 2014 and the last financial report (dated April 17, 2014) are included as Attachments F(2) and F(3) respectively.

⁴ Chapter 3.

Rules and Policy Statements - National Instruments

Although the MSC does not have legislative powers, it is able to make and enforce rules. In the past several years, the securities commissions across Canada have worked as a group, known as the Canadian Securities Administrators,

The website⁵ of the CSA states:

“The 10 provinces and 3 territories in Canada are responsible for securities regulations. Securities regulators from each province and territory have teamed up to form the Canadian Securities Administrators, or CSA for short. The CSA is primarily responsible for developing a harmonized approach to securities regulation across the country.

The CSA brings provincial and territorial securities regulators together to share ideas and work at designing policies and regulations that are consistent across the country and ensure the smooth operation of Canada's securities industry. By collaborating on rules, regulations and other programs, the CSA helps avoid duplication of work and streamlines the regulatory process for companies seeking to raise investment capital and others working in the investment industry”.

The rules and policies that the CSA collaborate on are referred to as “National Instruments”. National Instruments are applicable and binding on all registrants and cover such matters as the authorization and continuing oversight of markets, electronic trading systems, and clearing organizations, marketplace operations, trading rules (for equity markets), use of client brokerage commissions, the National Registration database, Ongoing registration requirements for Dealers, Underwriting conflicts (for equity markets) Registrants acting as Corporate Directors, Acceptable Accounting Principles and Auditing Standards, Insider Reporting exemptions, Corporate Governance requirements, and similar.

National Instruments are essentially rules, and have the same legal applicability as Regulations. Over the past several years, the provincial securities commissions in Canada have been working on harmonizing their rules and procedures.

An example is proposed National Instrument 24-102 Clearing Agency Requirements. (NI 24-102)⁶ Approximately a year ago, several provincial securities commissions issued rules which incorporated the requirements of the IOSCO Principles for Financial Market Infrastructures (PFMI). The rules issued, were referred to as “Model Provincial Rules” and there were numerous comments that clearing rules needed to meet global requirements and a similar set of rules across all Canadian regulatory authorities were warranted. The Model Provincial Rules were pulled back and NI 24-102 was issued. National Instruments are rules that all regulators agree to, although they must be promulgated under the provincial legislation.

National Instruments are complimentary to the provincial legislation - such as the CFA - but do not form part of the legislation. In terms of applicability, National Instruments will apply to

⁵ www.securities-administrators.ca

⁶ Link to the NI for the Ontario Securities Commission is here: http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20141127_24-102_proposed-clearing-agency.htm and there are similar postings on other provincial securities commissions websites.

whatever the subject matter is, which has included exchanges, clearing agencies, trade reporting repositories, broker-dealers, equity exchanges and similar.

Attachment F(4) is a list of the National Instruments that the MSC has approved.

Financial Protections afforded customer funds

As noted in Exhibit B, the MSC has officially delegated customer fund protection to the Investment Industry Regulatory Organization of Canada ("IIROC"). Pursuant to the Recognition order the MSC has issued to IIROC, IIROC is responsible for regulating dealers, establishing, administering and monitoring Financial and Operations Compliance rules, policies and regulations, and providing notice to the MSC of any violations of IIROC rules or securities/derivatives legislation.

The FinOp department of IIROC reviews and analyzes its members' financial filings to ensure ongoing financial compliance.

The CFA provides for certain protections to customers relative to customer funds, although more detailed and specific rules are provided for by IIROC.

The CFA Section 46(1) provides for the segregation, and accounting for money, securities, property, as follows:

Segregation, accounting for money, securities, property

[46\(1\)](#) A registered dealer

- (a) shall segregate, in accordance with any regulations or rules made for the purpose of this section, all money, securities, property and proceeds of loans received or advanced by a registered dealer to margin, guarantee or secure the trades or contracts of customers and all funds accruing to customers, for the benefit of the customers for whom they are held;
- (b) shall separately account for the money, securities, property, proceeds and funds so received, advanced or accrued; and
- (c) shall not knowingly commingle any money, securities, property, proceeds or funds referred to in clause (a) with the dealer's own money, securities, property and funds.

Registered dealer not to use funds

[46\(4\)](#) No registered dealer shall knowingly use money, securities, property, proceeds or funds received from, advanced or accrued to or held for a customer to margin, guarantee or secure trades or contracts or to secure or extend the credit of a customer other than the customer for whom the money, securities, property, proceeds or funds are held.

Registered dealer may advance funds

[46\(5\)](#) Despite subsection (1), a registered dealer may have a residual financial interest in a customer's account and may from time to time advance from the dealer's own funds sufficient funds to prevent a customer's account from becoming undermargined, and where a dealer has such an interest or so advanced funds, the dealer may draw on the account or any other account of the customer with the dealer to the dealer's own order to the extent of the dealer's residual financial interest or the amount of the funds advanced.

The failure to adhere to the requirements of the CFA can result in a fine of \$1,000,000.00 or a term of imprisonment of 2 years, or both on each charge (per Section 60(1)).

(2) A description of and, where applicable, copies of the laws, rules, regulations and policies applicable to:

(i) The authorization, licensure or registration of ICE Futures Canada, Inc.

See Attachment A-5(8) to Exhibit A-5 for MSC Order. No. 5718 and, Attachments A-5(11) and A-5 (12) to Exhibit A-5 for MSC Order Nos. 3784 and 3767.

(ii) The regulatory regime/authority's program for the ongoing supervision and oversight of ICE Futures Canada, Inc. and the enforcement of its trading rules.

The MSC is responsible for, and conducts, oversight review of ICE Futures Canada. These are conducted by senior compliance and auditing staff of the MSC and are designed to ensure that ICE Futures Canada is meeting the requirements of the CFA and MSC Order 5718.

The process that these reviews have followed are for Staff of the MSC to request documentation be provided in advance of an on-site visit. The documentation reviewed will include all updated Policy and procedure documentation, staff job descriptions, trading and surveillance materials, contracts, application/agreements between the exchange and its participants, and similar prior to an on-site visit.

There will be an on-site visit which may last between 10 to 14 days, at which time Staff of the MSC will review selected aspects of the operations of ICE Futures Canada, including meetings and questioning of staff, "job-shadowing" certain staff members for a half-day, sitting in on internal meetings, and reviewing the office systems. Once the on-site visit is concluded, additional materials are requested. There may be a brief exit interview conducted. Ultimately, Staff of the MSC will produce a written report with their findings and recommendations. The recommendations will outline the positions of Staff of the MSC as to whether action is required on a low, medium or high basis. Staff review the report and provide it in its entirety to both the Board and to the SRC.

Any suggestions for amendments noted are addressed and a written report is completed for submission to Staff of the MSC. [REDACTED]

(iii) The financial resource requirements applicable to the authorization, licensure or registration of ICE Futures Canada, Inc. and the continued operations thereof.

The MSC does not set minimum financial resource requirements for ICE Futures Canada. Appendix "A" to Order No. 5718 sets out, under Financial Viability, that the Exchange is required to "...maintain sufficient financial resources for the proper performance of its functions", and that there shall be regular financial reporting made to the MSC, including quarterly financial statements and annual audited statements.

Since the month ending May 2009 the Exchange has been providing the MSC with its

monthly financial statements and annual audited statements.

Attached as Attachment F(5) are the monthly financial statements for ICE Futures Canada for the period ending February 2015.

The fiscal year end of ICE Futures Canada is December 31. The audited financial statements for the year ending December 31, 2014 were approved by the Board on March 20, 2015 and distributed to the shareholders and the regulators.⁷ The annual audited financial statements for ICE Futures Canada for the year ending December 31, 2014 are attached as Attachment F(6).

(iv) The extent to which the IOSCO Principles are used or applied by the regulatory regime/authority in its supervision and oversight of ICE Futures Canada, Inc. or are incorporated into its rules and regulations and the extent to which the regulatory regime/authority reviews the applicable trading systems for compliance therewith.

Although the IOSCO Principles are not incorporated into the rules and regulations to the CFA, staff at the MSC consider them to be an important reference point. Its oversight reviews of the Exchange and the Clearinghouse look to the IOSCO Principles for guidance and direction. In addition, as set out in Supplement S-1, the MSC issued Order No. 6878 which mandates ICE Clear Canada to adhere strictly to the IOSCO PFMI.

In particular, the MSC notes that its approval of the ICE Platform, the trading system that the Exchange transitioned to in December 2007, was significantly based on the fact that the CFTC had approved of the ICE Platform by completing an analysis of the IOSCO Principles.

(v) The extent to which the regulatory regime/authority reviews and/or approves the trading rules of ICE Futures Canada, Inc. prior to their implementation.

ICE Futures Canada is required to submit all Rule and policy amendments to the MSC for receipt of non-disapproval prior to implementing such amendments. Section 17 of the CFA reads:

Requirement to file documents

[17\(1\)](#) Every registered commodity futures exchange and every recognized clearing house shall file with the commission a copy of every constituting document, general agreement or other document governing its members, internal regulation and every amendment to them, without delay and in any event not later than five days after the day on which the document or amendment is approved by the board of directors of the exchange and, where membership approval is required, before approval by its membership.

Commission may review filed document

[17\(2\)](#) The commission may review a document filed under subsection (1) and, if it considers it in the public interest to do so, make a decision respecting the document, including suspending its operation or requiring an amendment to it.

⁷ Section 152(2) of *The Corporations Act R.S.M 1987, c. C225* reads; "A corporation shall not issue, publish or circulate copies of the financial statements referred to in subsection 149 (1) unless the financial statements are (a) approved and signed in accordance with subsection (1); and (b) accompanied by the report of the auditor of the corporation, if any."

Additional powers

[17\(3\)](#) The commission may review the operation of a commodity futures exchange or its clearing house and, if it considers it in the public interest to do so, make an order

- (a) respecting the manner in which the exchange or clearing house carries on business;
- (b) in the case of an exchange,
 - (i) respecting trading on or through the facilities of the exchange, including the setting of levels of margin, daily price limits, daily trading limits and position limits, or
 - (ii) requiring the liquidation of or suspension of trading in a contract or any other action the commission considers necessary or advisable to maintain or restore orderly trading in a contract; and
- (c) in the case of a clearing house, requiring it to liquidate a contract, suspend its operations or take any action the commission considers necessary or advisable to maintain or restore orderly trading in a contract.

Notwithstanding the provisions of Section 17, which permits the Exchange to enact all Rule amendments and provide notice to the Commission within 5 days, staff of the MSC requested early in its regulatory oversight of the Exchange, that whenever possible, pre-approval for Rule amendments should be obtained. Accordingly, the process that has been in place since 2001, and that is generally followed, is that the Exchange, after each Board or SRC meeting, sends a detailed letter to the MSC requests for non-disapproval of Rule amendments and other matters and submits background for items of interest for information purposes.

Staff of the MSC reviews all correspondence relating to Rule amendments and then submits matters to the Commission at its regularly scheduled weekly meetings. Staff of the MSC will then follow up with an email to the Exchange, which advises of the non-disapproval, or, if it has not been granted, seeks further information.

Depending on the situation, the Exchange may provide a notice to participants that a certain Rule amendment has been sent to the MSC for non-disapproval. This is usually done in a situation where the proposed Rule change affects the contract specifications or trading parameters, and in such cases it is necessary to ensure that the information is broadly distributed as soon as possible.

We note that in a few cases Rule amendments have been required to be implemented on an immediate basis and in such case the Exchange contacts MSC by phone or e-mail, outlining the need to implement the Rule amendment without first obtaining non-disapproval.

(vi) The extent to which the regulatory regime/authority reviews and/or approves futures, option or swap contracts prior to their being listed for trading.

New contracts cannot be listed for trading until the Exchange meets the regulatory requirements set out in Part 6 of the CFA which include an application and receipt of written approval from the director of the MSC. Section 38(1) of the CFA reads:

Approval of form of contract by director

[38\(1\)](#) Upon application by or on behalf of a commodity futures exchange and the filing of a copy of all the terms and conditions of a form of contract that the exchange proposes for trading in Manitoba, the director shall approve the form of contract if he or she is satisfied that the form is not prejudicial to the public interest, taking into account whether

- (a) more than occasional use is to be made or can reasonably be expected to be made of the contract for hedge trades;

- (b) with respect to a commodity futures contract, each term or condition conforms to normal commercial practices of the trade in the commodity or the exchange has a reasonable justification for any non-conformance;
- (c) with respect to a commodity futures contract, satisfactory levels of margin, daily price limits, daily trading limits and position limits are imposed by the commodity futures exchange;
- (d) with respect to a commodity futures option, the form of the commodity futures contract that is the subject of the option has been accepted under this section; and
- (e) with respect to a commodity futures option, performance on exercise of the option is reasonably assured by by-laws, rules, regulations, procedures and policies that are actively enforced.

Prior to submitting a new contract approval application to the MSC, ICE Futures Canada conducts a substantial market review to confirm that there will be a market for the product. This includes a consultation process with all stakeholders that may have an interest in the contract including end-users, grain companies, grain brokers, Futures Commission Merchants (“FCMs”), academics, speculators, and Exchange staff. Critical to the introduction of a new contract is that the Exchange ensure the ongoing integrity of the cash market data underlying the contract at issue. Extensive consultation with industry participants, academics, trade groups, lobbying entities, consultants and others is instrumental in the development of a new contract. ICE Futures Canada reviews and adheres to the principles of contract design for physically settled commodity contracts as articulated in the “Principles for the Regulation and Supervision of Commodity Organization of Securities Commissions”, published September 2011, as they pertain to contract design⁸. This information is required background information for an application for a new contract review by the MSC.

(vii) The regulatory regime/authority's approach to the detection and deterrence of abusive trading practices, market manipulation, and other unfair trading practices or disruptions of the market.

The MSC does not review and analyze trade data. That is a function that it has delegated to ICE Futures Canada. The MSC does, however, review the market and will request information where there appears to be anomalies or unusual market activity. An example of this oversight occurred in the canola market in the course of two days within one week. The MSC requested detailed market data and reviewed the Exchange’s analysis.

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

- (i) Recordkeeping requirements.**
- (ii) The protection of customer funds.**
- (iii) Procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors, and to contain systemic risk.**

With respect to (i) and (ii) please see Exhibit B.

⁸ Chapter 3.

As set out in Exhibit B to this application, the only category of Participant that is permitted to act as a market intermediary is an FCM.

The default or failure of an FCM would not lead to systemic risk at ICE Futures Canada. All financial responsibilities are borne by Clearing Participants.

In terms of sales and customer compliance as between FCMs and their clients, ICE Futures Canada looks to the statutory regulatory authorities for FCMs. It is a requirement of Rule 4E.01 that all FCMs maintain registration with the statutory regulatory authority(ies) in the jurisdictions they operate in, as well as any SROs required by those statutory regulatory authorities.

The failure to maintain registration status as required by Rule 4E.01 would result in the entity's suspension and termination from Participant status with ICE Futures Canada.

Insolvency/Bankruptcy

Any Participant that becomes insolvent or is adjudged to be bankrupt is, and without any further action on the part of ICE Futures Canada, deemed to be in default and automatically suspended (Rule 4D.09 d.).

Any FCM in Canada that becomes insolvent or is adjudged to be in bankruptcy is automatically suspended from registration status with statutory regulatory authorities in Canada and with IIROC. The insurance provisions provided to customers of FCMs under the Canadian Investor Protection Fund would be available to covered accounts.

Failures Other Than Insolvency/Bankruptcy

FCM Participants can also default by not complying with the Rules of the Exchange. In such situations, the Exchange has compliance Rules and procedures to compel the Participant to meet the requirements. In situations where there is a failure to meet Rule requirements other than Rule 4 requirements, disciplinary action would result.

(4) A description of the regulatory regime/authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory regime/authority uses those powers to inspect, investigate, and enforce rules applicable to ICE Futures Canada, Inc.

One of the three significant functions that the MSC has under its legislative mandate is enforcement and investigation. The CFA provides the MSC with broad investigative and enforcement powers. These include the power to issue investigation orders (under which the named investigators have the power to compel the attendance of individuals, whether registered or not, to attend and testify to any question under oath) to freeze bank accounts, to issue liens against real property, and to seize documentation.

The enforcement powers of the MSC under the provisions of the CFA are broad and very sweeping. The MSC's mandate under the CFA is to administer and enforce the CFA and all Manitoba Securities Commission Participants are specifically required in the CFA to “.. *perform*

the duties that are vested in or imposed upon the commission by this Act or the regulations, and that are assigned to him or her by the commission.” (s.2(3)).

The specific provisions of the CFA and the powers it grants to the MSC are as follows:

- Section 6 The MSC is able to appoint persons (staff or otherwise) by order, to investigate any matter that it considers necessary or advisable for either (a) the due administration of Manitoba commodity futures law or the regulation of the commodity futures markets in Manitoba; and/or (b) the due administration of the commodity futures laws or the regulation of the commodity futures markets in another jurisdiction.
- Section 6(3) The scope of the investigation powers of the MSC is broad and wide-reaching. The relevant section reads:

Scope of Investigation

6(3) A person appointed to make an investigation under this section may investigate and inquire into,

- (a) the affairs of the person or company in respect of which the investigation is being made, including any trades, communications, negotiations, transactions, investigations, loans, borrowings or payments to, by, on behalf of, or in relation to or connected with the person or company and any property, assets, or things, owned, acquired or alienated in whole or in part by the person or company or by any other person or company acting on behalf of or as agent for the person or company; and
 - (b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person or company, and any relationship that may at any time exist or have existed between the person or company and any other person or company by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.
- The MSC has the right to examine documents or things, whether they are in the possession or control of the person or company in respect of which the investigation is ordered or of any other person or company (Section 6(4)).
 - The MSC can appoint anyone to do an examination of the financial affairs of a market participant (Section 7(1)).
 - Anyone appointed by the MSC to conduct an investigation, including a financial investigation, has the power to *compel* anyone to attend before him and answer any questions put to that person under oath (Section 8(1)). This is a similar power as that provided to the Court of Queen’s Bench for the trial of civil actions. If anyone refuses to attend, or refuses to answer questions put to him or her, they are subject to be committed to jail for contempt. In Canada, the power to compel testimony under oath is considered an extraordinary power to be granted to an administrative body.
 - A person doing an investigation can enter onto the business premises of any person or company named in an investigation order, during business hours, and inspect any documents or things that are used in the business that relate to the matters specified in the order, excepting only those files and documents maintained by a lawyer in respect of his or her client’s affairs (Section 8(3)).

- Persons named in investigation orders can apply to the Court of Queen's Bench for a search warrant, without notice to the other parties and are able to search and seize, provided all materials seized by delivered to the judge making the order. In doing this search the person(s) named in the investigation order can use as much force as is reasonable necessary for the purpose. (Sections 8(4) and 8 (6)).
- The MSC has the power to direct any person or company (whether registered under the CFA or not) to retain any funds, securities or property and to hold then under the MSC in writing revokes the direction or consents to release a particular fund, security or property from the direction (Section 12 (1)).
- In granting orders recognizing and registering commodity futures exchanges and clearing houses, the MSC is entitled to place any orders or directions it sees fit on the entities.
- Any person or company that is substantially affected by a decision, direction or order made under an internal regulation of a commodity futures exchange or a clearing house, has the right to apply to the MSC for a hearing to review the matter. (Section 21).
- Section 22(1) sets out that every commodity futures exchange and clearing house is required to keep books and records on every part of its operations and shall deliver them to the MSC, in a form acceptable to the MSC, at any time when requested by the MSC.
- The MSC requires all registrants to provide notice of changes in address, branches, managers, salespersons and so forth, thereby ensuring an up to date listing of all criteria necessary to investigate matters (Section 32(1) to 32(5)).
- As noted earlier, the MSC must approve all contracts and amendments to contracts traded on a commodity futures exchange (Section 38(1) to (4)).
- There are a number of trading rules in the CFA that the MSC has the mandate to monitor and review. These are set out in Part 7 of the CFA, commencing at Section 40. They include matters of trading, prohibited representations, restrictions on advertising, margin requirements, written confirmations to clients and customers and segregation requirements.

In terms of proceeding forward to disciplinary action and/or sanction, the MSC has two avenues to use in sanctioning market participants (whether registered or not). Firstly the MSC can authorize that a matter proceed to an administrative hearing, which is an internal hearing held before the seven-person Commission panel. Secondly, the MSC can authorize that charges be laid and a trial be held in provincial judges court. In either event the course of an appeal is to the Court of Queen's Bench and then the Court of Appeal. Depending on whether an administrative hearing or a provincial judges court trial is held, the sanctions available are different. The sanctions are set out in the CFA.

- Section 12(1) permits the commission to direct any person or company having on deposit or under its control or for safekeeping any funds, securities or property of any person or company to retain those funds, securities or property and to hold them until the commission

in writing revokes the direction or consents to release a particular, fund, security or property from the direction.

- Section 12(5) states that the MSC can file against land and request registration of the certificate in the land titles office and that certificate has the same effect as a certificate of pending litigation in respect of the land.
- The MSC can apply to the Court of Queen's Bench for the appointment of a receiver, receiver and manager, trustee or liquidator in respect of all or any part of the property of a person or company (Section 13(1)).
- The MSC has the power to suspend or condition or cancel the registration of a commodity futures exchange, a recognized clearing house (Section 19(1) or any company or individual registered (Section 26).
- After a hearing, the commission can reprimand a registrant, or suspend, cancel, restrict or impose terms and conditions upon the registrant (Section 27).
- If the MSC is concerned that the time required to have a hearing could prejudice the public, it can reprimand, suspend, cancel, restrict or impose terms and conditions upon a registrant without giving the registrant advance notice, provided that a hearing be held within 15 days (Section 27(2)).
- The MSC may, where it appears to it that a person or company (including an exchange, clearinghouse, or officer or employee) has failed to comply with a provision of or a decision made under the CFA, the regulations or the rules, despite any penalty previously imposed in respect of the non-compliance and in addition to any other rights the MSC may have, apply to the Court of Queen's Bench for an order (a) directing the person or company to comply with the CFA, regulations or rules or decision or restraining the person or company from failing to comply with it and (b) directing the directors and officers of the person or company to cause the person or company to comply with the CFA, regulations, rules or decision (Section 62).

If the MSC determines to proceed to a trial at Provincial Judges court for an infraction of the provisions of the CFA, it proceeds as a criminal trial. Provincial Judges court is a court of the provincial government of Manitoba and operates to enforce both provincial laws (such as the CFA) as well as certain federal laws (such as the *Criminal Code (Canada)*). Unlike administrative hearings before the Commission, judges of the Provincial Judges court have the jurisdiction to order imprisonment. The sanctions available, upon a finding of guilt, include those listed in the CFA at Sections 60(1), 60(4), and 60(5).

Offence and penalty

60(1) A person or company that

- (a) makes a statement in material, evidence or information that is submitted or given under this Act, the regulations or the rules to the commission, its representative, the director or a person appointed to make an investigation or audit under this Act and that, at the time and in the circumstances under which it is made, is a misrepresentation;
- (b) makes a statement in an application, release, report, return, financial statement, or other document that is required to be filed or furnished under this Act, the regulations or the rules and that, at the time and in the circumstances in which it is made, is a misrepresentation;

- (c) otherwise contravenes this Act, a regulation, or a rule specified in a regulation made under clause 70(s); or
- (d) fails to comply with a direction, decision, ruling, order or other requirement made under this Act or the regulations;

is guilty of an offence and is liable on summary conviction to

- (i) in the case of a company, a fine of not more than \$1,000,000.; or
- (ii) in the case of an individual, a fine of not more than \$1,000,000. or imprisonment for a term of not more than two years, or both.

The above sanctions are per offense, (Section 60(6)) and therefore the total sanction levied may be much larger in certain circumstances.

Apart from any other fines levied, a person or company that has contravened sections 58 or 59 of the CFA (Prohibition against front running and Prohibition on trading in material non-public order information) and has made a profit, the amount of which can be determined, by reason of the contravention is liable to a fine that is not less than the amount of the profit and not more than the greater of (a) \$1,000,000.00 and (b) three times the amount of the profit. (Section 60(5)) This section reads:

Amount of fine where profit made

[60\(5\)](#) Despite the fine referred to in subsection (1), a person or company that has contravened section 58 or 59 and made a profit, the amount of which can be determined, by reason of the contravention is liable under that subsection to a fine that is not less than the amount of the profit and not more than the greater of

- (a) \$1,000,000.; and
- (b) three times the amount of the profit.

(5) For both the foreign board of trade and the clearing organization (unless addressed in Supplement S-1), a report confirming that the foreign board of trade and clearing organization are in regulatory good standing, which report should be prepared subsequent to consulting with the regulatory regime/authority governing the activities of the foreign board of trade and any associated clearing organization. The report should include:

- (i) Confirmation of regulatory status (including proper authorization, licensure and registration) of the foreign board of trade and clearing organization.**
- (ii) Any recent oversight reports generated by the regulatory regime/authority that are, in the judgment of the regulatory regime/authority, relevant to the foreign board of trade's status as a registered foreign board of trade.**
- (iii) Disclosure of any significant regulatory concerns, inquiries or investigations by the regulatory regime/authority, including any concerns, inquiries or investigations with regard to the foreign board of trade's arrangements to monitor trading by members or other participants located in the United States or the adequacy of the risk management controls of the trading or of the clearing system.**
- (iv) A description of any investigations (formal or informal) or disciplinary actions initiated by the regulatory regime/authority or any other self-regulatory, regulatory or governmental entity against the foreign board of trade, the clearing organization or any of their respective senior officers during the past year.**

A written representation from the MSC that ICE Futures Canada is in good regulatory standing has been provided directly to the CFTC by the MSC by email dated February 4, 2015. In addition, it is noted that such a written representation has been provided by the MSC to the

CFTC on an annual basis for the past several years, in fulfillment of the terms of the no action letter.

A written representation from the MSC that ICE Clear Canada is in good regulatory standing has been provided directly to the CFTC by the MSC by email dated February 10, 2015.

(6) For both the foreign board of trade and the clearing organization (unless addressed in Supplement S-1), a confirmation that the regulatory regime/authority governing the activities of the foreign board of trade and the clearing organization agree to cooperate with a Commission staff visit subsequent to submission of the application on an “as needed basis,” the objectives of which will be to, among other things, familiarize Commission staff with supervisory staff of the regulatory regime/authority; discuss the laws, rules and regulations that formed the basis of the application and any changes thereto; discuss the cooperation and coordination between authorities, including, without limitation, information sharing arrangements; and discuss issues of concern as they may develop from time to time (for example, linked contracts or unusual trading that may be of concern to Commission surveillance staff).

On October 21, 2014 the CFTC and the MSC signed a Counterpart to the Memorandum of Understanding signed on March 25, 2014, regarding cooperation and the exchange of information in the supervision and oversight of regulated entities that operate on a cross-border basis in the United States and in certain Canadian Provinces.

ICE Futures Canada hereby confirms that it will cooperate fully with a Commission staff visit subsequent to the submission of this application on an “as needed basis”.