



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5,
AS AMENDED ("OSA")**

AND

**IN THE MATTER OF
ICE CLEAR CANADA, INC.
AND ICE FUTURES CANADA, INC.**

**ORDER
(Section 147 of the OSA)**

WHEREAS ICE Clear Canada, Inc. ("ICE Clear Canada") and ICE Futures Canada, Inc. (ICE Futures Canada) have filed an application dated November 25, 2010 (the "Application") with the Ontario Securities Commission (the "Commission" or "OSC") requesting an order pursuant to section 147 of The Securities Act (Ontario) (the "OSA") exempting ICE Clear Canada from the requirement to be recognized by the OSC as a clearing agency pursuant to subsection 21.2(0.1) of the OSA;

AND WHEREAS ICE Futures Canada and ICE Clear Canada have represented to the Commission that:

1. ICE Clear Canada is a share capital corporation incorporated under the provisions of *The Corporations Act* (Manitoba) and situate in Winnipeg, Manitoba. It has been the designated clearinghouse of ICE Futures Canada, Inc. since it was incorporated in 1998 and operated under the name WCE Clearing Corporation up to January 1, 2008.
2. ICE Clear Canada is a wholly owned subsidiary of ICE Futures Canada which is Canada's only agricultural derivatives exchange and which has been in continual operation since 1887.
3. ICE Futures Canada is a private corporation and is an indirect and wholly-owned subsidiary of IntercontinentalExchange, Inc. ("ICE"), a public company governed by the laws of the State of Delaware and listed on the New York Stock Exchange.
4. ICE Futures Canada facilitates trading in futures contracts and options on futures contracts in canola and western barley (collectively, the "ICE Futures Canada Contracts"), on an electronic trading platform (the "ICE Platform"), which is owned and operated by ICE.
5. ICE Clear Canada is a recognized clearinghouse under section 16(1) of *The Commodity Futures Act* (Manitoba) (the CFA Manitoba) pursuant to Order No. 5719 of the Manitoba Securities Commission ("MSC"). Order No. 5719 (the "MSC Recognition Order") is set out in Schedule "C". All ICE Futures Canada Contracts are cleared and settled by ICE Clear Canada. ICE Clear Canada acts as the counterparty and financial guarantor to each ICE Futures Canada Contract that is cleared.
6. The MSC is ICE Clear Canada's primary regulator. As part of its regulatory oversight of ICE Clear Canada, the MSC reviews, assesses and enforces the on-going compliance by ICE Clear Canada with the requirements set out in the MSC Recognition Order including financial resources, the financial and operational requirements for Clearing Participants, systems and controls, rule-making, and ICE Clear Canada's practices and procedures.
7. ICE Clear Canada is required to provide to the MSC, on request, access to all records and to cooperate with other regulatory authorities, including making arrangements for information-sharing.

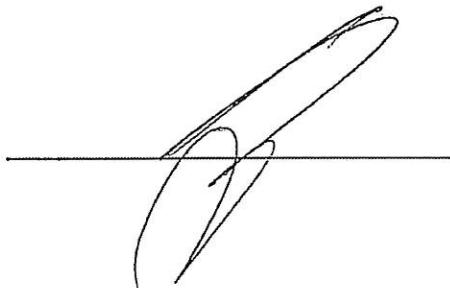
8. ICE Clear Canada maintains rigorous clearing participant criteria that all applicants must satisfy before their applications are accepted, including fitness criteria, review of corporate constating documentation, financial standards, operational standards, appropriate registration qualifications with applicable statutory regulatory authorities, and ICE Clear Canada applies a due diligence process to ensure that all applicants meet the required criteria. Applicants can register with ICE Clear Canada in one of two categories: Futures Commission Merchant or General (collectively, "Clearing Participants").
9. ICE Clear Canada utilizes multi-layered processes to minimize systemic risk, which processes include operational and financial criteria for all Clearing Participants, margining and financial protections, the maintenance of a clearing/guarantee fund, sound information systems, comprehensive internal controls, ongoing monitoring of Clearing Participants, and appropriate oversight by the Board of Directors.
10. ICE Clear Canada permits Ontario residents who meet the criteria set out in its Rules to become registered as Clearing Participants, and as a result, is considered by the Commission to be "carrying on business as a clearing agency" in Ontario. ICE Clear Canada cannot carry on business in Ontario as a clearing agency unless it is recognized by the OSC as a clearing agency under subsection 21.2(0.1) of the OSA or exempted from such recognition under s. 147.
11. Based on the facts and representations set out in the Application, ICE Clear Canada satisfies the criteria set out in Schedule "A" to this order.

AND WHEREAS based on the Application and the representations of ICE Futures Canada and ICE Clear Canada have made to the Commission, the Commission has determined that ICE Clear Canada satisfies the criteria set out in Schedule "A" and that the granting of exemption from recognition as a clearing agency would not be prejudicial to the public interest;

AND IT IS HEREBY ORDERED by the Commission that pursuant to section 147 of the OSA, ICE Clear Canada is exempt from recognition as a clearing agency under subsection 21.2(0.1) of the OSA.

PROVIDED THAT ICE Futures Canada and ICE Clear Canada comply with the terms and conditions attached hereto as Schedule "B".

DATED at Toronto this 1st day of February, effective March 1, 2011.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom, positioned above a horizontal line.A handwritten signature in black ink, appearing to read "E.P. Kern", positioned above a horizontal line.

SCHEDULE "A"

Criteria for Exemption from Recognition by the OSC as a clearing agency pursuant to section 21.2(0.1) of the OSA

PART 1 Governance

- 1.1 The governance structure and governance arrangements of the clearing agency ensures:
- (a) effective oversight of the clearing agency;
 - (b) the clearing agency's activities are in keeping with its public interest mandate;
 - (c) fair, meaningful and diverse representation on the governing body (board) and any committees of the board, including a reasonable proportion of independent directors;
 - (d) a proper balance among the interests of the owners and the different entities seeking access (Clearing Participants) to the clearing, settlement and depository services and facilities of the clearing agency;
 - (e) the clearing agency has policies and procedures to appropriately manage conflicts of interest;
 - (f) each director or officer of the clearing agency, and each person or company that own or controls, direct or indirectly, more than 10 percent of the clearing agency is a fit and proper person, and
 - (g) there are appropriate qualification, limitation of liability and indemnity provisions for directors and officers of the clearing agency

PART 2 Fees

- 2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.
- 2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 3 Access

- 3.1 The clearing agency has appropriate written standards for access to its services.
- 3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. The clearing agency keeps records of
- (a) each grant of access including, for each participant, the reasons for granting such access, and
 - (b) each denial or limitation of access, including the reasons for denying or limited access to an applicant.

PART 4 Rules and Rulemaking

- 4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and
- (a) are not inconsistent with securities/derivatives legislation,
 - (b) do not permit unreasonable discrimination among participants, and
 - (c) do not impose any burden on competition that is not necessary or appropriate.

- 4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.
- 4.3 The clearing agency monitors participant activities to ensure compliance with the Rules.
- 4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

PART 5 Due Process

- 5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:
 - (a) an applicant or a participant is given an opportunity to be heard or make representations; and
 - (b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or review of, its decisions.

PART 6 Risk Management

- 6.1 The clearing agency's settlement services are designed to minimize systemic risk.
- 6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place
- 6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:
 - 1. Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.
 - 2. The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.
 - 3. Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.
 - 4. Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.
 - 5. Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.
 - 6. If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlement.
- 6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

PART 7 Systems and Technology

- 7.1 For its settlement services systems, the clearing agency:
 - (a) develops and maintains,

- (i) reasonable business continuity and disaster recovery plans,
 - (ii) an adequate system of internal control,
 - (iii) Adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and systems software support.
- (b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,
- (i) makes reasonable current and futures capacity estimates,
 - (ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner, and
 - (iii) tests its business continuity and disaster recovery plans; and
- (c) promptly notifies the regulator of any material systems failures.
- 7.2 The clearing agency ensures a qualified party will conduct an independent systems review and prepare a report regarding its compliance with section 7.1(a).

PART 8 Financial Viability and Reporting

- 8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

PART 9 Operational Reliability

- 9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

PART 10 Protection of Assets

- 10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

PART 11 Outsourcing

- 11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

PART 12 Information Sharing and Regulatory Cooperation

- 12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE "B"

Terms and Conditions

REGULATION OF ICE Clear Canada, Inc.

1. ICE Clear Canada will maintain its recognition as a clearinghouse with the MSC and will continue to be subject to the regulatory oversight of the MSC as described in the MSC Recognition Order, as amended and restated on June 16, 2008, and attached to this order as Schedule "C".
2. ICE Clear Canada will continue to comply with its ongoing requirements as set out in the MSC Recognition Order.
3. ICE Clear Canada will continue to meet the Criteria for Exemption from Recognition as a Clearing Agency as set out in Schedule "A".

GOVERNANCE

4. ICE Futures Canada and ICE Clear Canada will promote a corporate governance structure that minimizes the potential for any conflict of interest between ICE Futures Canada and ICE Clear Canada that could adversely effect the clearance and settlement of trades in contracts or the effectiveness of ICE Clear Canada's risk management policies, controls, and standards.

SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE

5. For greater certainty, ICE Clear Canada submits to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of ICE Clear Canada in Ontario.
6. For greater certainty, ICE Clear Canada will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of ICE Clear Canada in Ontario.

FILING REQUIREMENTS

MSC Filings

7. ICE Clear Canada will provide staff of the Commission, concurrently, the following information that it is required to provide to or file with the MSC:
 - (a) the annual audited financial statements of ICE Futures Canada and the annual financial statements of ICE Clear Canada which may be unaudited;
 - (b) the institution of any legal proceeding against it;
 - (c) the presentation of a petition for winding up, the appointment of a receiver or the making of any voluntary arrangement with creditors; and
 - (d) changes and proposed changes to its bylaws, rules, operations manual, participant agreements and other similar instruments or documents of ICE Clear Canada which contain any contractual terms setting out the respective rights and obligations between ICE Clear Canada and Clearing Participants or among Clearing Participants.

Prompt Notice

8. ICE Clear Canada will promptly notify staff of the Commission of any of the following:

- (a) any material change to its business or operations or the information as provided in the Application;
- (b) any material problems with the clearance and settlement of transactions in contracts cleared by ICE Clear Canada, including any failure by a Clearing Participant of ICE Clear Canada to promptly fulfill its settlement obligations, that could materially affect the operations or financial situation of ICE Clear Canada;
- (c) a default of a Clearing Participant which results in the liquidation of the Clearing Fund (as defined in the ICE Clear Canada Rules) in whole or in part;
- (d) any change or proposed change to the MSC Recognition Order;
- (e) any change to the regulatory oversight by the MSC.

Quarterly Reporting

9. ICE Clear Canada will maintain the following updated information and submit such information to the Commission on at least a quarterly basis, and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario resident Clearing Participants;
 - (b) a list of all Ontario resident Clearing Participants against whom disciplinary action has been taken in the last quarter by ICE Clear Canada or the MSC with respect to activities on ICE Clear Canada;
 - (c) a list of all investigations by ICE Clear Canada relating to Ontario resident Clearing Participants; and
 - (d) a list of all Ontario applicants who have been denied Clearing Participant status in ICE Clear Canada.

INFORMATION SHARING

10. ICE Clear Canada and ICE Futures Canada will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws governing the sharing of information and the protection of personal information.

ADDITIONAL REQUIREMENT

11. ICE Futures Canada shall take such actions as are within its ability to assist ICE Clear Canada in meeting the terms and conditions of this order.

SCHEDULE "C"

MANITOBA SECURITIES COMMISSION

THE COMMODITY FUTURES ACT)	Order No. 5719
)	
Subsection 16(1))	June 16, 2008

ICE CLEAR CANADA, INC. AND ICE FUTURES CANADA, INC.

WHEREAS:

- (A) ICE Futures Canada, Inc. and ICE Clear Canada, Inc. (ICE Clear Canada) through predecessor corporations WCE Holdings Inc. and WCE Clearing Corporation applied to The Manitoba Securities Commission (the "Commission") pursuant to Subsection 16 (1) of *The Commodity Futures Act*, S.M. 1996, c. 73 C:152 (as amended) (the "Act") for an order that WCE Clearing Corporation ("WCECC") be designated as a recognized clearing house pursuant to Subsection 16(1) of the Act and that order was granted on May 31, 2002 by Order No. 3766 which order was amended and replaced on December 21, 2006 by Order No. 5265;

- (B) It was represented to the Commission by WCECC in the applications that were filed with respect to Orders No. 3766 and 5265 that:
 - 1. WCECC was incorporated as a Manitoba corporation in May 1998 and has operated as a clearing house continuously since that time;
 - 2. WCECC was a share capital corporation wholly owned by Holdings;
 - 3. WCECC was designated as the clearing house for Winnipeg Commodity Exchange Inc. pursuant to the rules of Winnipeg Commodity Exchange Inc. ;
 - 4. WCECC met world recognized standards for clearing houses in terms of its written rules, policies and procedures, the setting and maintaining of standards of financial requirements for all Clearing Participants.

- (C) On August 27, 2007 all of the shares of WCE Holdings Inc. were acquired by 5509794 Manitoba Inc.;

- (D) The ultimate parent company of 5509794 Manitoba Inc. is IntercontinentalExchange, Inc. a corporation subsisting under the laws of the state of Delaware, whose common stock is listed on the New York Stock Exchange and are widely held;

- (E) WCECC was part of a corporate reorganization and re-branding whereby WCECC became a wholly owned subsidiary of ICE Futures Canada, Inc., and WCECC was renamed 'ICE Clear Canada, Inc., and the reorganization and renaming relative to ICE Clear Canada, Inc., was completed on January 2, 2008.

- (F) The Commission is of the opinion that it is in the public interest to grant the order requested.

IT IS ORDERED:

- 1. **THAT**, subject to the terms and conditions set out in Appendix "A" to this order, ICE Clear Canada be designated as a recognized clearing house pursuant to Subsection 16(1) of the Act.

- 2. **THAT**, effective January 2, 2008, this Order replaces Commission Order No. 5265 dated December 21, 2006.

BY ORDER OF THE COMMISSION

"original signed by"

Appendix “A” to Order Number 5719 effective the 2nd day of January 2008.

Terms and Conditions

Notice of Share Ownership

1. In the event that ICE Clear Canada intends to amend its Articles of Incorporation, the Commission will be given notice prior to any amendment being approved by the shareholder(s).
2. ICE Clear Canada shall provide the Commission with a minimum of 21 days notice respecting the acquisition of voting shares of ICE Clear Canada by any entity other than ICE Futures Canada.

Corporate Governance

3. The governance structure of ICE Clear Canada shall provide for:
 - a. fair and meaningful representation on its governing body, in the context of the nature and structure of ICE Clear Canada;
 - b. appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of ICE Clear Canada generally.
4. ICE Clear Canada shall maintain conflict of interest rules and/or policies for the Board, all committees and ICE Clear Canada staff. Such rules and/or policies shall extend to anyone in a position to affect the outcome of a decision and shall provide for all such persons to be required to declare their interests and to foresee the possibility that a person may withdraw from a matter.

Regulation

5. The Board of Directors of the ICE Clear Canada shall be responsible, for all matters relating to surveillance matters and ensuring compliance by the Clearing Participants with the provisions of the Rules.
6. ICE Clear Canada shall advise the Commission in writing of the names and background of each person appointed to the Board of Directors.
7. ICE Clear Canada shall promptly provide a written report to the Commission detailing any misconduct or fraud on the part of a Clearing Participant, or such other circumstances that may result in material loss or damage to ICE Clear Canada or its operations, including all situations where the solvency of a Clearing Participant is at risk.

Systems

8. For each of its systems that support the operations of ICE Clear Canada, ICE Clear Canada shall, or in the case where such systems are owed by third parties, ICE Clear Canada shall ensure that those third parties shall:
 - (a) Make reasonable current and future capacity estimates;
 - (b) Conduct necessary stress tests of critical systems on a reasonably frequent basis to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
 - (c) Develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;

- (d) Review the vulnerability of those systems and computer operations to internal and external threats including physical hazards and natural disasters;
- (e) Establish reasonable contingency and business continuity plans; and
- (f) Notify the Commission, in writing, of any material systems failures or changes that impact clearing operations.

Purpose of Rules

- 9. ICE Clear Canada shall, subject to the terms and conditions of this Order and the jurisdiction and oversight of the Commission in accordance with the laws of the Province of Manitoba, establish such rules, regulations, policies, procedures, practices or other similar instruments as are necessary or appropriate to govern and regulate all aspects of its business and internal affairs and shall in so doing specifically govern and regulate so as to:
 - a. seek to ensure compliance with the Act; and
 - b. seek compliance with the terms and conditions of this order as well as any regulations, rules, policies or orders issued by the Commissions.

Due Process

- 10. ICE Clear Canada shall ensure that its rules shall ensure that the requirements of ICE Clear Canada relating to its facilities, the imposition of limitations on conditions of access, and denial of access are fair and reasonable.

Information Sharing

- 11. ICE Clear Canada and ICE Futures Canada shall cooperate by the sharing of necessary and reasonably relevant information, with the Canadian Investor Protection Fund and other Canadian exchanges, recognized self-regulatory organizations and regulatory authorities responsible for the supervision of clearing activities, subject to the applicable laws concerning the sharing of information and the protection of personal information.

Additional Requirements

- 12. ICE Clear Canada shall notify the Commission prior to providing any regulatory duties or regulatory operations to other exchanges, self-regulatory organization, or other persons.
- 13. ICE Futures Canada shall obtain prior written approval from the Commission before subcontracting a portion of its regulatory duties or regulatory functions to other self-regulatory organizations.
- 14. ICE Clear Canada shall provide the Commission and its staff with such information as it may, from time to time, request.

ICE Futures Canada to facilitate ICE Clear Canada in its compliance requirements

- 15. ICE Futures Canada shall not take any action that has the effect, either directly or indirectly, of interfering with the ability of ICE Clear Canada to comply with the terms and conditions of this order or with any other requirement applying to a recognized clearing house under the Act.

ALL OF WHICH ARE INCORPORATED AS TERMS AND CONDITIONS OF THE ORDER ISSUED BY THE COMMISSION