

ALBERTA SECURITIES COMMISSION

**RECOGNITION ORDER
FOREIGN DERIVATIVES EXCHANGE**

Citation: Re CBOE Futures Exchange, LLC, 2015 ABASC 876

Date: 20150921

CBOE Futures Exchange, LLC

Background

1. CBOE Futures Exchange, LLC (the **Applicant**) has applied to the Alberta Securities Commission (the **Commission**) pursuant to section 62 of the *Securities Act* (Alberta) (the **Act**) for recognition as an exchange; pursuant to section 15.1(1) of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) for exemption from NI 21-101; and pursuant to section 10(1) of National Instrument 23-103 *Electronic Trading* (**NI 23-103**) for exemption from Part 4 of NI 23-103.

Interpretation

2. Terms defined in the Act or in National Instrument 14-101 *Definitions* have the same meaning in this order unless otherwise defined herein.

Representations

3. The Applicant represents as follows:
 - (a) The Applicant is a for-profit limited liability company organized under the laws of Delaware and is a wholly-owned subsidiary of CBOE Holdings, Inc., a public company organized as a corporation under the laws of Delaware and listed for trading on the NASDAQ Global Select Market.
 - (b) The Applicant offers futures contracts in respect of financial and equity indices, and may in the future from time to time also offer other futures contracts and related futures contract options (collectively, **Derivatives Contracts**), transactions which are executed by or through participants of the Applicant on the electronic trading platform (the **Exchange Platform**) owned, operated, leased, licensed or otherwise made available by the Applicant in accordance with rules promulgated by the Applicant.
 - (c) The Applicant is a designated contract market (a **DCM**) within the meaning of that term under the United States (**US**) *Commodity Exchange Act* (the **US Act**), is subject to regulatory supervision by the Commodity Futures Trading Commission (**CFTC**), a US federal regulatory agency, and is in good standing as a DCM. The US Act obligates the Applicant to give the CFTC access to all records maintained in connection with the conduct of its business as a DCM unless prohibited by law or such records are subject to solicitor-client privilege. The Applicant, in the ordinary course of its business, cooperates with other regulatory authorities,

including making arrangements for information sharing. The CFTC reviews, assesses and enforces the Applicant's adherence to the US Act and the CFTC's core principles for DCMs relating to, among other things, financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection. CFTC supervision of the Applicant addresses similar public interest concerns in respect of the execution and clearing of Derivatives Contracts to those of interest to the Commission in the exercise of its jurisdiction under the Act.

- (d) The Applicant has designated The Options Clearing Corporation (the **Clearing Agency**) as the sole clearing agency for the Applicant for all Derivatives Contracts. Chicago Board Options Exchange, Incorporated, an affiliate of the Applicant, is one of five participant securities exchanges which together own the Clearing Agency, each in equal shares. The Clearing Agency operates as a not-for-profit utility.
- (e) The Clearing Agency clears, settles and guarantees to its members the performance of all transactions in the Derivatives Contracts executed on the Exchange Platform. The Clearing Agency is a derivatives clearing organization registered under the US Act (a **DCO**) and subject to regulatory supervision by the CFTC, with which, to the best of the Applicant's information and belief, it is in good standing as a DCO. The Clearing Agency is also registered with the US Securities and Exchange Commission (the **SEC**) as a registered clearing agency. The Clearing Agency is also one of eight entities in the US presently designated as a systemically important financial market utility (**SIFMU**) due to its importance to the US financial system. SIFMU status subjects an entity to enhanced regulatory oversight by the CFTC, the SEC and certain other US regulatory bodies.
- (f) All Derivatives Contracts are cleared through clearing members of the Applicant (**Clearing Members**) each of which, to qualify as such, must be a member of the Clearing Agency and meet Clearing Agency requirements including: (i) standards related to operational capability, experience and competence of personnel, and financial condition, including a minimum initial net capital of US\$2.5 million; (ii) minimum margin deposits when there are open short positions; and (iii) contributions of funds to the guarantee fund maintained by the Clearing Agency (the **Clearing Agency Guarantee Fund**). The Clearing Agency Guarantee Fund will be available to ensure the clearing of Derivatives Contracts in the event that a Clearing Member is unable to satisfy its obligations to the Clearing Agency. The Clearing Agency is interposed as a central counterparty for all transactions in Derivatives Contracts and acts as counterparty and guarantor to each transaction executed on the Exchange Platform. Market participants that wish to clear Derivatives Contracts through the Clearing Agency must maintain an appropriate account relationship with a Clearing Member. The Clearing Member clears the transactions and posts margin directly with the Clearing Agency and serves as the customers' agent and guarantor in respect of cleared Derivatives Contracts. Clearing Members require market participants to

deposit a specified amount of assets as initial and maintenance margin as security for performance of their obligations.

- (g) As part of its regulatory oversight over DCOs, including the Clearing Agency, the CFTC conducts, among other things, ongoing assessments of DCOs' and Clearing Members' regulations, procedures and practices to confirm that they satisfy the applicable requirements under the US Act.
- (h) The Clearing Agency requires Clearing Members either to register under the US Act as futures commission merchants (**FCMs**) and, as such, be members of the US National Futures Association (the **NFA**) or to register with the SEC under the *Securities and Exchange Act* of 1934 as broker/dealers. The Clearing Members' designated self-regulatory organization or designated examining authority enforces CFTC-approved financial and reporting requirements for intermediaries imposed on CFTC registrants and NFA members, including minimum capital, financial and other reporting requirements and similar SEC requirements, respectively.
- (i) The CFTC engages in ongoing regulatory supervision and oversight of the Applicant and the Clearing Agency, and the Clearing Members, intermediaries and other participants of the Applicant and the Clearing Agency, with respect to, among other things, market integrity, customer protection, clearing and settlement and the enforcement by the Applicant and the Clearing Agency of their respective rules.
- (j) The CFTC requires that an intermediary, who acts on behalf of another person in connection with futures and options on futures trading, register with the CFTC.
- (k) The CFTC has implemented and enforces procedures that empower it to: (i) prosecute violations of the US Act; (ii) provide protections to parties accused of such violations according to fair and clear standards; and (iii) impose sanctions for such violations.
- (l) The Applicant and, to the best of the Applicant's information and belief, the Clearing Agency have implemented and enforce procedures that empower them to: (i) prosecute violations of their respective rules; (ii) provide protections to parties accused of such violations according to fair and clear standards; and (iii) impose sanctions for such violations.
- (m) As part of its regulatory oversight of the Applicant, the CFTC, among other things, reviews, assesses and enforces the Applicant's ongoing compliance with the registration requirements under rules of the CFTC relating to financial resources, fitness and propriety of its members, systems and controls, maintenance of an orderly market, investor protection, rule-making and other matters including the Applicant's rules, procedures and practices.
- (n) The Applicant provides to Clearing Members and to certain other market participants (the **Participants**) direct access to the Exchange Platform, whereby a

Participant has an explicit grant of authority from the Applicant to enter trades directly into the Exchange Platform (**Direct Access**). In order to obtain Direct Access, a Participant must be a **Trading Privilege Holder** of the Applicant, which status requires among other things that the Participant complies with all applicable laws pertaining to its use of the Exchange Platform.

- (o) The Applicant maintains adequate rules to govern conflicts of interest and maintains and enforces rules which prohibit the disclosure of material non-public information obtained as a result of a Clearing Member's or Participant's performance of duties as a director or member of a significant committee of the Applicant.
- (p) Each Clearing Member will be a Trading Privilege Holder, and subject as such to the Applicant's rules and its disciplinary authority.
- (q) A Trading Privilege Holder that is not a Clearing Member must, before entering into a Derivatives Contract transaction, obtain either (i) prior authorization from a Clearing Member who will guarantee and assume financial responsibility for that transaction, and the Applicant's approval of such guarantee, or (ii) the Applicant's approval of an alternative arrangement.
- (r) The Applicant is subject to a US Act requirement to list only Derivatives Contracts that are not readily susceptible to manipulation.
- (s) The Clearing Agency is subject to requirements imposed by the CFTC and the SEC that are aligned with the *Principles for Financial Market Infrastructures* issued jointly by the Committee on Payment and Settlement Systems, renamed the Committee on Payments and Market Infrastructures (**CPMI**), and the Technical Committee of the International Organization of Securities Commissions (**IOSCO**), as the same may be amended, or any successor standards, principles and guidance for financial market infrastructures adopted jointly by CPMI and the IOSCO Technical Committee. To the best of the Applicant's information and belief, the Clearing Agency complies with all such legal requirements.
- (t) The Applicant and, to the best of the Applicant's information and belief, the Clearing Agency have:
 - (i) implemented and enforce rules and procedures to ensure compliance with their respective undertakings herein and in the 30 October 2012 Ontario Securities Commission (**OSC**) order exempting the Clearing Agency from the requirement to be recognized as a clearing agency under the *Securities Act* (Ontario) (the **Ontario OCC Order**);
 - (ii) the capacity to detect, investigate, and sanction persons who violate their respective rules; and
 - (iii) sufficient compliance staff and resources, including by delegation or

outsourcing to third parties, to fulfil their respective regulatory responsibilities, including appropriate trade practice surveillance, real-time market monitoring, market surveillance, financial surveillance, protection of customer funds, enforcement of clearing and settlement provisions and other compliance and regulatory responsibilities.

- (u) The Applicant has:
 - (i) implemented and enforces rules concerning: access to the Exchange Platform and the means by which the connection thereto is accomplished; prohibited trading practices; and market manipulation, attempted manipulation, price distortion and other disruptions of the market;
 - (ii) implemented and enforces rules and procedures that ensure a competitive, open and efficient market and mechanism for executing transactions on the Exchange Platform; and
 - (iii) the capacity to deter and detect market manipulation, attempted manipulation, price distortion and other disruptions of the market.
- (v) The Applicant and, to the best of the Applicant's information and belief, the Clearing Agency are authorized by rule or by contract to obtain from Clearing Members and Participants any information and cooperation necessary to conduct investigations, to effectively enforce their respective rules, and to ensure compliance with the undertakings herein.
- (w) The Applicant's transaction data system captures and retains sufficient order and trade-related data to allow its compliance staff to detect trading and market abuses and to reconstruct all transactions in Derivatives Contracts within a reasonable period of time.
- (x) The Exchange Platform:
 - (i) complies with IOSCO's *Principles for the Oversight of Screen-Based Trading Systems for Derivative Products*, as the same may be amended, or any successor thereto (the **IOSCO Screen-Based Trading Principles**);
 - (ii) employs a trade-matching algorithm that matches trades fairly and in a timely manner;
 - (iii) maintains a transaction data system that captures all relevant order and trade-related data, including changes to orders, and transaction data is securely maintained and available for an adequate time;
 - (iv) has demonstrated reliability;
 - (v) employs systems designed to ensure that access to the Exchange Platform

is secure and protected;

- (vi) backs up trade data to prevent loss of data; and
 - (vii) possesses adequate provisions for emergency operations and disaster recovery.
- (y) The Applicant reports to the public, directly or indirectly through an information vendor, data (including price and volume) relating to each transaction in Derivatives Contracts, as soon as technologically practicable after execution of the transaction.
- (z) The CFTC is signatory to IOSCO's *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information*, the Futures Industry Association's *Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations* which endorses the *International Information Sharing Memorandum of Understanding and Agreement* entered into on 15 March 1996 by certain futures exchanges and clearing organizations (the **Information-Sharing MOU**), and the *Memorandum of Understanding Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Covered Entities* to which the Commission and certain other Canadian regulatory authorities are also signatories.
- (aa) Clearing Members and Participants are fit and proper and satisfy financial and other standards set by the Applicant and, to the best of the Applicant's information and belief, those of the Clearing Agency.
- (bb) The CFTC has the power to share information directly with the Commission, upon request, including information necessary for the Commission to evaluate and assess the accuracy of, and compliance with, the representations and undertakings herein.
- (cc) The CFTC has the power to intervene in the market.
- (dd) The Applicant has executed the Information-Sharing MOU.
- (ee) The Applicant proposes to offer Direct Access to certain Participants resident in Alberta (**Alberta Participants**) that apply to and are approved by the Applicant as Trading Privilege Holders of the Applicant, and who agree to comply with the rules of the Applicant. Only Participants of the Applicant will have Direct Access in Alberta.
- (ff) the clearing-agency registration requirement of the Act does not currently apply to the Clearing Agency; and
- (gg) to the best of the Applicant's information and belief, the Clearing Agency is in compliance with the terms and conditions of the Ontario OCC Order and in good

standing with the OSC.

Undertakings

4. The Applicant undertakes:

- (a) to ensure that its representations herein continue to be accurate;
- (b) to satisfy its undertakings herein;
- (c) to maintain its status as a DCM in good standing in all material respects with the CFTC;
- (d) to not provide, and to take reasonable steps to prevent third parties from providing, Direct Access to persons other than Clearing Members and Participants;
- (e) to require each Alberta Participant that is granted Direct Access and is not registered with the Commission as a dealer to:
 - (i) file with the Applicant a written representation, executed by a person with the authority to bind the Alberta Participant, stating that as long as the Alberta Participant is granted Direct Access, the Alberta Participant agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to this order;
 - (ii) file with the Applicant a valid and binding appointment of an agent for service of process in Alberta pursuant to which the agent is authorized to accept delivery and service of communications issued by or on behalf of the Commission; and
 - (iii) maintain with the Applicant a written undertaking, executed by persons with the authority to bind the Alberta Participant, that the Alberta Participant will provide promptly to the Commission such information as the Commission may request, and access to all premises in or from which the Participant operates;
- (f) to preserve and to provide promptly and directly to the Commission all information requested by Commission staff;
- (g) to employ reasonable procedures for monitoring and enforcing compliance with the undertakings herein;
- (h) to cooperate with the Commission with respect to arrangements established to address cross-market oversight issues, including surveillance, emergency actions and the monitoring of trading;
- (i) to file with the Commission, within 30 days after the end of each calendar quarter, and at any time promptly upon the request of a Commission

representative, a statement setting out:

- (i) total volumes of Derivatives Contracts traded in the quarter through the Exchange Platform worldwide, and the portion thereof traded through Direct Access in Alberta; and
 - (ii) the names and principal addresses of all Clearing Members and Participants that have Direct Access to the Exchange Platform in Alberta and their trading volumes computed by separating buy-sides and sell-sides for each contract available to be traded through the Exchange Platform.
- (j) to promptly notify the Commission in writing of:
- (i) any significant change in the information provided by the Applicant to the Commission in support of its application for recognition, or to any representation herein;
 - (ii) any significant change in the Applicant's rules or US laws relevant to the Derivatives Contracts;
 - (iii) any matter that, in the reasonable judgement of the Applicant, may have a material adverse effect on the financial or operational viability of the Applicant or (to the best of the Applicant's information and belief) the Clearing Agency, or of the Exchange Platform, including, but not limited to, any significant system failure or interruption;
 - (iv) any significant changes to US laws and regulatory processes relevant to the Applicant's status or conduct as a DCM;
 - (v) any monetary default, insolvency or bankruptcy of any Participant that, in the reasonable judgement of the Applicant, may have an adverse effect on the financial or operational viability of the Applicant or the Exchange Platform;
 - (vi) any breach of an undertaking herein;
 - (vii) a description of any disciplinary action by the Applicant against a Clearing Member or Participant involving alleged market manipulation, fraud, deceit or conversion, and of any sanction by the Applicant of a Clearing Member or Participant, where the allegation or the sanctioned conduct relates to a Derivatives Contract made available through Direct Access; and
 - (viii) a description of any disciplinary action against the Applicant or a director or senior officer of the Applicant;

- (k) to file with the Commission, within 30 days after the end of each calendar year:
- (i) contact information for an employee at the CFTC who can confirm that the Applicant remains in good standing as a DCM and the Clearing Agency remains in good standing as a DCO;
 - (ii) a certificate, executed by a senior officer of the Applicant, that the representations herein remain accurate except to the extent of any change previously disclosed to the Commission hereunder;
 - (iii) a certificate, executed by a senior officer of the Applicant, that except as previously reported to the Commission hereunder, there has been no significant change to US laws and regulatory processes relevant to the Applicant's status or conduct as a DCM;
 - (iv) a certificate executed by a senior officer of the Applicant, that US laws, systems and compliance mechanisms continue to require the Applicant to maintain fair and orderly markets; prohibit fraud, abuse and market manipulation; and provide that such requirements are subject to regulatory oversight;
 - (v) a certificate executed by a senior officer of the Applicant, that CFTC listing standards continue to require that the Derivatives Contracts not be readily susceptible to manipulation;
 - (vi) a certificate executed by a senior officer of the Applicant, that the Applicant continues to be subject to oversight by the CFTC with respect to transactions effected through the Exchange Platform;
 - (vii) a certificate executed by a senior officer of the Applicant, that the Clearing Agency continues to be subject to comprehensive supervision, regulation and oversight by the CFTC;
 - (viii) a certificate executed by a senior officer of the Applicant that affiliates of Clearing Members and Participants continue to be required to comply with appropriate registration requirements and conditions and the rules of the Applicant, and that the Clearing Members or Participants to which they are affiliated are responsible to the Applicant for ensuring their affiliates' compliance; and
 - (ix) the terms and conditions of all Derivatives Contracts that differ substantively from Derivatives Contracts previously offered by the Applicant through Direct Access;
- (l) to file with the Commission a copy of each certification of the Applicant's rules

or rule amendments, within 15 days of the end of the calendar quarter in which the Applicant files such certification with the CFTC; and

- (m) all material filed with the Commission hereunder shall, if required to be executed, be signed by a senior officer of the Applicant who has the authority to bind the Applicant and shall be based on such officer's personal knowledge.

Submission to Jurisdiction and Agent for Service

- 5. The Applicant submits to the non-exclusive jurisdiction of the courts and administrative tribunals of Alberta in a proceeding arising out of, related to, or concerning, or in any other manner connected with, the activities of the Applicant in Alberta.
- 6. The Applicant has filed with the Commission a valid and binding appointment of an agent for service in Alberta 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 Applicant's activities in Alberta.

Decision

- 7. Based on the representations and undertakings herein, the Commission, being satisfied that it would not be prejudicial to the public interest to do so:
 - (a) under section 62 of the Act, recognizes the Applicant as an exchange;
 - (b) under section 15.1(1) of NI 21-101, exempts the Applicant from NI 21-101; and
 - (c) under section 10(1) of NI 23-103, exempts the Applicant from Part 4 of NI 23-103

for so long as the Applicant satisfies its undertakings herein and the Clearing Agency remains in good standing as a DCO with the CFTC.

For the Commission:

"original signed by"

Tom Cotter
Vice-Chair

"original signed by"

Stephen Murison
Vice-Chair