

ALBERTA SECURITIES COMMISSION

RECOGNITION ORDER: DERIVATIVES EXCHANGE

Citation: Re ICE NGX Canada Inc., 2018 ABASC 183

Date: 20181206

ICE NGX Canada Inc.

Background

1. The Alberta Securities Commission (the **Commission**) recognized ICE NGX Canada Inc. (**ICE NGX**) (previously, Natural Gas Exchange Inc. (**NGX**)) as an exchange under section 62 of the *Securities Act* (Alberta), R.S.A. 2000, c S-4 (the **Act**) by a Commission order cited as *Re Natural Gas Exchange Inc.*, 2017 ABASC 52, effective March 31, 2017 (the **2017 Exchange Order**).
2. At the time of the 2017 Exchange Order, NGX was a wholly owned subsidiary of TMX Group Limited (**TMX**).
3. On December 14, 2017, TMX completed a transaction with Intercontinental Exchange, Inc. (**ICE**) pursuant to which NGX became an indirectly held wholly owned subsidiary of ICE (the **Transaction**).
4. The 2017 Exchange Order contains provisions which establish policies and procedures for the management of conflicts of interest arising from confidential information relating to NGX being obtained by an individual who is a partner, director, officer or employee of a shareholder of TMX through that individual's involvement in the management or oversight of NGX's operations or regulatory functions (the **TMX Conflicts Provisions**). As a result of the Transaction, the TMX Conflicts Provisions are no longer necessary.
5. On April 16, 2018 NGX changed its corporate name to ICE NGX Canada Inc. (the **Name Change**).
6. ICE NGX has requested that the 2017 Exchange Order be revoked under section 214(1) of the Act and replaced with a recognition order of the Commission under section 62 of the Act that reflects the closing of the Transaction and the Name Change and incorporates substantially the same terms as the 2017 Exchange Order, excluding the TMX Conflicts Provisions.
7. ICE NGX has applied to the Commission under:
 - (a) section 144(1) of the Act for an exemption from the registration requirement in section 75(1) of the Act for exchange participants (**Contracting Parties**) that enter into a standard-form participation agreement (**Contracting Party's Agreement**) with ICE NGX (the **Registration Relief**);
 - (b) section 15.1(1) of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) for an exemption from the requirements of NI 21-101;

- (c) section 213 of the Act for an exemption from the requirement in section 62 of the Act to be recognized as an exchange in relation to the trading of ICE NGX products identified as "Forwards" (**Forwards**) in the Contracting Party's Agreement (the **Forward Exemption**); and
- (d) section 221(5) of the Act for the holding in confidence of documentation that: (i) is not made public by ICE NGX; and (ii) contains sensitive and confidential material about ICE NGX's business operations, information about its participants, information about its private contractual relationships with various entities, or other similar information (collectively, **Confidential Material**), and which has been or may be provided to the Commission in connection with: (i) an application by ICE NGX to be recognized as an exchange; (ii) any associated applications for recognition or exemptive relief; or (iii) any ongoing filings that may be required in connection with any recognition or exemption orders granted to ICE NGX by the Commission.

Interpretation

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

Representations

- 9. ICE NGX represents as follows:
 - (a) ICE NGX is an indirectly held, wholly owned subsidiary of ICE, incorporated under the laws of Canada and based in Calgary, Alberta;
 - (b) ICE NGX makes natural gas, electricity, crude oil and related commodity contracts identified in the Contracting Party's Agreement as "Futures" and "Options" (**Contracts**) and Forwards available for trading on an electronic platform owned, operated, leased, licensed or otherwise made available by ICE NGX (the **Exchange Trading Platform**);
 - (c) Contracting Parties use the Exchange Trading Platform as principals;
 - (d) trades in Contracts are executed solely by Contracting Parties that have entered into a Contracting Party's Agreement with ICE NGX which sets out the rules applicable to the Exchange Trading Platform (the **Rules**) and establishes a minimum qualification requirement for an entity to become a Contracting Party (the **Minimum Qualification Requirement**);
 - (e) all transactions in Contracts that ICE NGX makes available for trading are executed on the Exchange Trading Platform during hours prescribed by ICE NGX for such trading; and
 - (f) disclosure to the public of Confidential Material provided to the Commission could damage ICE NGX's business interests by exposing sensitive business information and financial information, and such disclosure could expose information about its Contracting Parties that ICE NGX has contractually agreed to keep confidential.

Undertakings

10. ICE NGX undertakes:

- (a) not to enter into any contract, agreement or arrangement that may limit its ability to comply with Alberta securities laws;
- (b) to operate the Exchange Trading Platform in accordance with the operating requirements set out in Appendix A to this order (the **Operating Requirements**);
- (c) to report to the Commission in accordance with the reporting requirements set out in Appendix B to this order (the **Reporting Requirements**);
- (d) to employ reasonable procedures for monitoring and enforcing compliance with these undertakings (the **Undertakings**), the Operating Requirements and the Reporting Requirements;
- (e) to take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets;
- (f) to establish, maintain and enforce Rules, policies and other similar instruments (collectively, the **ICE NGX Requirements**) that are designed to: (i) govern the terms and conditions of the Contracts, the operation of the Exchange Trading Platform, access to the Exchange Trading Platform and the conduct of Contracting Parties; (ii) ensure compliance with securities legislation; (iii) prevent fraudulent and manipulative acts and other abuses on the Exchange Trading Platform; (iv) promote just and equitable principles of trade; (v) foster cooperation and coordination with persons or entities engaged in regulating, clearing, settling and processing information relating to trading on the Exchange Trading Platform; and (vi) provide appropriate sanctions for violations of the ICE NGX Requirements;
- (g) to investigate any possible violation of the ICE NGX Requirements promptly upon request from the Commission;
- (h) to provide accurate and complete information in any communication with the Commission and any information required to be transmitted or made available to Contracting Parties or the public;
- (i) to notify the Commission immediately upon ICE NGX becoming aware that any of the representations in this order are no longer true and accurate or that it has become unable to fulfil any of the Undertakings; and
- (j) to comply with any request from the Commission relating to the oversight of ICE NGX as an exchange.

Decision

11. Based on the above representations and Undertakings, the Commission, being satisfied that it would not be prejudicial to the public interest to do so:

- (a) under:
 - (i) section 62 of the Act, continues to recognize ICE NGX as an exchange;
 - (ii) section 144(1) of the Act, grants the Registration Relief; and
 - (iii) section 15.1(1) of NI 21-101, exempts ICE NGX from the requirements of NI 21-101;

provided that, and for so long as, ICE NGX continues to fulfil the Undertakings;

- (b) under section 213 of the Act, grants the Forward Exemption provided that ICE NGX maintains for a period of seven years, and provides to the Commission upon request, records of trades by Contracting Parties in Forwards; and
 - (c) under section 214(1) of the Act, revokes the 2017 Exchange Order.
12. The Commission, being satisfied that it would not be prejudicial to the public interest to do so, under section 221(5) of the Act, orders that all Confidential Material provided to the Commission will be held in confidence by the Commission until otherwise ordered, until such Confidential Material becomes publicly available by sources other than the Commission, or until the Commission is required by law to disclose such Confidential Material.
13. This order takes effect on December 6, 2018.

For the Commission:

“original signed by”

Tom Cotter
Vice-Chair

“original signed by”

Kari Horn
Vice-Chair

APPENDIX A

Operating Requirements

This Appendix forms a part of, and adopts terms defined in, the order governing ICE NGX's recognition as a derivatives exchange (the **Order**).

Access

1. ICE NGX Requirements concerning access to the Exchange Trading Platform must not unreasonably prohibit, condition or limit access by an entity to the Exchange Trading Platform or permit unreasonable discrimination among Contracting Parties.
2. ICE NGX must provide access to the Exchange Trading Platform only to entities authorized by ICE NGX pursuant to a Contracting Party's Agreement and must take reasonable steps to prevent third parties, including Contracting Parties, from providing unauthorized access.
3. ICE NGX must take reasonable steps to ensure that each officer and director, or other individual performing a similar function or occupying a similar position, of each entity applying to become a Contracting Party, is a fit and proper person for that role. When conducting this assessment, ICE NGX must consider whether the past conduct of such individual affords reasonable grounds for the belief that the individual will perform his or her duties with integrity.
4. If ICE NGX makes a decision denying or suspending access of a Contracting Party or an applicant to be a Contracting Party to the Exchange Trading Platform, ICE NGX must ensure that the party has been given an opportunity to be heard and the party is able to appeal the decision or otherwise have it reviewed.
5. ICE NGX must not impose any restriction on competition among Contracting Parties that is not reasonably necessary or appropriate.

Fees

6. ICE NGX's process for setting fees must be fair and appropriate and its fee model must be readily accessible to Contracting Parties and applicants for Contracting Party status.

Financial integrity of transactions

7. ICE NGX must take steps to ensure the financial integrity of transactions, including:
 - (a) requiring transactions in Contracts executed on the Exchange Trading Platform to be cleared through a clearing agency recognized in Alberta; and
 - (b) confirming, on a periodic basis and as otherwise required by the Commission, that each Contracting Party continues to be able to meet the Minimum Qualification Requirement.

Trade monitoring and market integrity

8. ICE NGX must have an effective program for real time monitoring of trading activity on the Exchange Trading Platform to identify market or system anomalies, as well as an effective program of market surveillance to identify, investigate and, where appropriate, sanction, as soon as practicable: (i) disorderly trading; and (ii) fraudulent or manipulative conduct and market abuses.
9. ICE NGX must ensure that Contracts traded on the Exchange Trading Platform are not readily susceptible to manipulation.
10. ICE NGX must establish risk-control mechanisms including powers to: address trading errors and system malfunctions (including the power to cancel trades); impose trading halts or suspensions in market conditions prescribed by ICE NGX; and apply position-management mechanisms.
11. ICE NGX must ensure that trade cancellations, excluding trade cancellations made in relation to block transactions or "exchange for related positions" transactions, are visible on the Exchange Trading Platform to Contracting Parties.

Recordkeeping

12. ICE NGX must maintain for a period of seven years, in a form and manner acceptable to the Commission, and make available to the Commission upon request, records of all activities relating to ICE NGX carrying on business as an exchange. Without limiting the foregoing, ICE NGX must keep records of:
 - (a) each decision to grant, deny or limit access to the Exchange Trading Platform, and the reasons therefor;
 - (b) any other decision made by ICE NGX that significantly affects a Contracting Party, or an applicant for Contracting Party status, and reasons therefor; and
 - (c) all trading activities on the Exchange Trading Platform.
13. The records required under section 12(c) of this Appendix (the **Audit Trail**) must be sufficient to facilitate the accurate reconstruction of all transactions in Contracts on the Exchange Trading Platform within a reasonable time and must consist of:
 - (a) an unalterable, sequentially identified original source document for each order and each modification or cancellation of an order or trade containing: the terms of each order and each modification or cancellation of an order or trade; a Contracting Party account identifier; and the time and date of order entry and modification or cancellation of an order or trade; and
 - (b) an electronic transaction history database, with electronic surveillance and analysis capability, that includes: a history of all orders and trades and modifications and cancellations of orders and trades; all data entered into the order entry or matching

system for the transaction to match and clear; identification of each account to which Contracts are allocated; and timing and sequencing data.

14. The ICE NGX Requirements must establish the terms upon which Contracting Parties are required to keep records of their trading activities on the Exchange Trading Platform, including records of their activities in any underlying commodity and related derivatives markets that are related to their trading on ICE NGX.

Post trade reporting

15. ICE NGX must report to the public directly, or indirectly through an information vendor, daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded Contracts by the close of the business day following the day to which the information pertains.

Conflicts of interest

16. ICE NGX must establish a process for identifying and managing conflicts of interest.

Enquiries and investigations

17. The ICE NGX Requirements must provide that ICE NGX may make enquiries or conduct investigations relating to the activities of Contracting Parties to ensure compliance with, or enforcement of, the ICE NGX Requirements and, in relation to such an enquiry or investigation, the ICE NGX Requirements must give ICE NGX access to a Contracting Party's records of trading activity upon reasonable notice to the Contracting Party.

Governance

18. ICE NGX's governance arrangements must be designed to ensure effective oversight of the Exchange Trading Platform.
19. ICE NGX must take reasonable steps to ensure that each officer and director of ICE NGX is a fit and proper person for that role. When conducting this assessment, ICE NGX must consider whether the past conduct of such director or officer affords reasonable grounds for the belief that the director or officer will perform his or her duties with integrity.

System safeguards

20. ICE NGX must maintain a program of risk analysis and oversight designed to identify and manage sources of operational risk (an **Enterprise Risk Management Program**) through the development of appropriate controls and procedures and the development of systems that are reliable, secure and adequately scalable.
21. ICE NGX must have business continuity and disaster recovery plans designed to ensure that ICE NGX can resume trading on the Exchange Trading Platform after trading is disrupted. Under normal commercial circumstances, ICE NGX should ensure capability to resume trading on the next business day following a disruption.

22. ICE NGX must conduct regular testing and review of its automated systems and business continuity and disaster recovery capabilities and retain records of such tests and reviews for a period of seven years.
23. Where necessary, and to the extent practicable, ICE NGX will coordinate and test its business continuity and disaster recovery capabilities with those of its essential service providers and Contracting Parties upon whom ICE NGX depends to provide liquidity.

Resources and outsourcing

24. ICE NGX must have access to sufficient financial, operational, managerial and regulatory compliance and oversight resources to fulfil its functions and regulatory responsibilities.
25. ICE NGX must ensure that any arrangements for outsourcing of services will not impair ICE NGX's ability to satisfy its obligations under the Order.

APPENDIX B

Reporting Requirements

This Appendix forms a part of, and adopts terms defined in, the order governing ICE NGX's recognition as a derivatives exchange (the **Order**).

Event reporting

1. ICE NGX will notify the Commission as soon as reasonably practicable, and in any event not later than 10 business days prior to:
 - (a) any significant change to ICE NGX's constating documents or bylaws;
 - (b) any significant change to the Minimum Qualification Requirement;
 - (c) entering into an agreement to outsource key Exchange Trading Platform functions;
 - (d) any significant change in the design or operation of the Exchange Trading Platform;
 - (e) any change of the identity of the entity or entities by which ICE NGX is directly or indirectly controlled as that term is defined in section 1.2(2) of National Instrument 24-102 *Clearing Agency Requirements* (**NI 24-102**);
 - (f) any change of direct ownership of ICE NGX;
 - (g) any significant change to automated systems that may affect the reliability, security or adequate scalability of such systems;
 - (h) any significant change to ICE NGX's Enterprise Risk Management Program;
 - (i) engaging in a new type of business activity or ceasing to engage in a business activity in which ICE NGX is engaged; and
 - (j) any significant change to the fees charged by ICE NGX, including the addition of new significant fees.
2. Prior to implementing a change contemplated in paragraph 1(a) or (j) of this Appendix, ICE NGX will file with the Commission, concurrently with the notification required under such subparagraph, a certification by ICE NGX that the change does not conflict with the terms of the Order.
3. ICE NGX will not implement a change contemplated in paragraph 1(b) of this Appendix without the Commission's prior written approval.

4. ICE NGX will promptly notify the Commission upon ICE NGX becoming aware of:
 - (a) any electronic trading halts or systems malfunctions that occur for 15 minutes or more;
 - (b) cyber security incidents or targeted threats that jeopardize automated system operation, reliability, security or capacity;
 - (c) any event triggering the activation of ICE NGX's business continuity plan;
 - (d) any change to ICE NGX's board membership or senior management team or any significant change to ICE NGX's corporate governance or corporate structure unless a notification of the change has been made under paragraph 1(a), (e) or (f) of this Appendix;
 - (e) any order, sanction or other directive imposed on ICE NGX by a regulatory or government body;
 - (f) any investigation of ICE NGX by a regulatory or government body;
 - (g) any criminal or quasi-criminal charge brought against ICE NGX, any of its subsidiaries, or any of the officers or directors of NGX or its subsidiaries;
 - (h) any civil suit brought against ICE NGX, any of its subsidiaries, or any of the officers or directors of ICE NGX or its subsidiaries, that is reasonably expected to have a significant impact on ICE NGX's business; and
 - (i) any significant change to an agreement between ICE NGX and any exchange platform service provider.

The ICE NGX Requirements and Contracts

5. Not later than 10 business days prior to implementing a significant change to the ICE NGX Requirements, ICE NGX will file with the Commission a certification by ICE NGX that the change will not conflict with the terms of the Order.
6. ICE NGX will publish all changes to the Rules on the date of implementation of the changes.
7. Not later than one business day prior to listing a new or amended Contract for trading on the Exchange Trading Platform, ICE NGX will file with the Commission a certification by ICE NGX that the new or amended Contract will not conflict with the terms of the Order.
8. ICE NGX will publish details of the new or amended Contract on the date of listing of the Contract.

Quarterly reporting

9. Within 45 days after the end of each interim period, ICE NGX will provide to the Commission:
- (a) a list of additions to, or deletions from, ICE NGX's list of Contracting Parties from the time of the previous quarterly report; and
 - (b) interim financial statements in the form required for clearing agencies under NI 24-102.

Annual reporting

10. Within 90 days after the end of each financial year, ICE NGX will provide to the Commission:
- (a) annual audited financial statements in the form required for clearing agencies under NI 24-102; and
 - (b) a report on the activities of ICE NGX during the financial year, which shall include a summary of:
 - (i) ICE NGX's business activity;
 - (ii) new Contracts introduced;
 - (iii) testing undertaken to ensure the adequacy of system safeguards; and
 - (iv) staffing changes at ICE NGX.