

ALBERTA SECURITIES COMMISSION

RECOGNITION ORDER: CLEARING AGENCY

Citation: Re ICE NGX Canada Inc., 2018 ABASC 182

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 a clearing agency under section 67 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 53, effective March 31, 2017 (the **2017 Clearing Order**).
2. At the time of the 2017 Clearing 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 Clearing 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 Clearing Order be revoked under section 214(1) of the Act and replaced with a recognition order of the Commission under section 67 of the Act that reflects the closing of the Transaction and Name Change and incorporates substantially the same terms as the 2017 Clearing Order, excluding the TMX Conflicts Provisions.
7. ICE NGX has applied to the Commission under 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 a clearing agency; (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 operates an electronic clearing system (the **Clearing System**) based in Calgary, Alberta, for clearing and settlement of natural gas, electricity, crude oil and related commodity contracts identified in ICE NGX's Contracting Party's Agreement (defined below) as "Futures" and "Options" (**Contracts**);
 - (c) access to the Clearing System is restricted to clearing participants (**Contracting Parties**) that enter into a standard-form participation agreement (**Contracting Party's Agreement**) with ICE NGX which sets out the rules applicable to ICE NGX's clearing services (the **Rules**) and establishes a minimum qualification requirement for Contracting Parties (the **Minimum Qualification Requirement**);
 - (d) Contracting Parties use the Clearing System as principals; and
 - (e) 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 comply with and report to the Commission, as applicable, in accordance with the requirements set out in the Appendix to this order (the **Appendix Requirements**);
 - (c) to employ reasonable procedures for monitoring and enforcing compliance with these undertakings (the **Undertakings**) and the Appendix Requirements;
 - (d) to establish, maintain and enforce Rules, policies and other similar instruments (collectively, the **ICE NGX Requirements**) governing ICE NGX's clearing services;

- (e) to investigate any possible violation of the ICE NGX Requirements promptly upon request from the Commission;
- (f) to establish, maintain and enforce policies and procedures for identifying and managing conflicts of interest;
- (g) 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;
- (h) to notify the Commission immediately upon ICE NGX becoming aware that any of its representations in this order are no longer true and accurate or that it has become unable to fulfil any of the Undertakings; and
- (i) to comply with any request from the Commission relating to its oversight of ICE NGX as a clearing agency.

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 section 67 of the Act, continues to recognize ICE NGX as a clearing agency provided that, and for so long as, ICE NGX continues to fulfil the Undertakings; and
 - (b) under section 214(1) of the Act, revokes the 2017 Clearing 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

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

Event reporting

1. The requirements in paragraphs 2, 6 and 7 of this Appendix govern the subject matter contained in section 2.2 of National Instrument 24-102 *Clearing Agency Requirements (NI 24-102)* as contemplated by section 1.5(4) of NI 24-102.
2. 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 Clearing System functions;
 - (d) any significant change in the design or operation of the Clearing System;
 - (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 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 program of risk analysis and oversight designed to identify and manage sources of operational risk;
 - (i) engaging in a new type of business activity or ceasing to engage in a business activity in which ICE NGX is engaged;
 - (j) any significant change to the fees charged by ICE NGX including the addition of new significant fees; and
 - (k) establishing or removing a link as defined in NI 24-102 or making significant change to an existing link.
3. Prior to implementing a change contemplated in paragraph 2(a), (j) or (k) above, 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.

4. ICE NGX will not implement a change contemplated in paragraph 2(b) of this Appendix without the Commission's prior written approval.
5. ICE NGX will notify the Commission not later than two business days after the date of occurrence of a default by a Contracting Party under its Contracting Party's Agreement that is not resolved within that time.
6. ICE NGX will promptly notify the Commission upon ICE NGX becoming aware of:
 - (a) cyber security incidents or targeted threats that jeopardize automated system operation, reliability, security or capacity;
 - (b) any event triggering the activation of ICE NGX's business continuity plan;
 - (c) 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 2(a), (e) or (f) of this Appendix;
 - (d) any order, sanction or other directive imposed on ICE NGX by a regulatory or government body;
 - (e) any investigation of ICE NGX by a regulatory or government body;
 - (f) any criminal or quasi-criminal charge brought against ICE NGX, any of its subsidiaries, or any of the officers or directors of ICE NGX or its subsidiaries;
 - (g) 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;
 - (h) any default by ICE NGX under a Contracting Party's Agreement that affects ICE NGX's financial resources or its ability to meet its obligations as a clearing agency, including the particulars of the default, the resolution proposed and details of the impact of the default on the adequacy of ICE NGX's financial resources; and
 - (i) any significant change to any agreement to which ICE NGX is a party, establishing or amending a credit facility or default insurance coverage.

The ICE NGX Requirements

7. 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.
8. ICE NGX will publish all changes to the Rules on the date of implementation of the changes.

Quarterly reporting

9. Within 45 days after the end of each interim period, or within such shorter period as the Executive Director may direct, ICE NGX will provide to the Commission, and concurrently publish, any amendments to ICE NGX's qualitative disclosure that forms part of the PFMI Disclosure Framework Document as defined in NI 24-102 that are made as a consequence of a change referenced under paragraph 2, 6 or 7 of this Appendix.
10. 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;
 - (b) a list of defaults by Contracting Parties under their Contracting Party's Agreements that occurred within the quarter and were not resolved within two business days of the date of default;
 - (c) a description of any significant margin requirement exceptions that occurred during the interim period;
 - (d) a summary of the results of any testing performed during the quarter on ICE NGX's model for the computation of participant margin; and
 - (e) evidence of compliance as of the last day of the interim period with "Key Consideration 2" of "PFMI Principle 15", as PFMI Principle is defined in NI 24-102, including:
 - (i) a statement of ICE NGX's anticipated operating costs calculated as of the last day of such interim period;
 - (ii) for each asset on which reliance is placed to comply with Key Consideration 2 of PFMI Principle 15, (A) a description of such asset, and (B) ICE NGX's assessment of the current market value of such asset calculated as of the last day of such interim period; and
 - (iii) an explanation of the calculations in clauses (i) and (ii), including any reductions in the assessment of market value to reflect market risk and credit risk.

Annual reporting

11. Within 90 days after the end of each financial year, ICE NGX will provide to the Commission an assessment of the accomplishments and the challenges faced by ICE NGX during that financial year, which will include a summary of:
 - (a) ICE NGX's business activity;

- (b) testing undertaken to ensure the adequacy of system safeguards; and
- (c) staffing changes at ICE NGX.

Board and advisory committees

12. The requirements in paragraphs 13 and 14 of this Appendix govern the subject matter contained in section 4.4(1) of NI 24-102.
13. The board of directors of ICE NGX will, at a minimum, establish and maintain a committee on risk management, the functions of which will, at a minimum, include the following:
 - (a) providing advice and recommendations to the board of directors to assist it in fulfilling its risk management responsibilities, including reviewing and assessing ICE NGX's risk management policies and procedures, the adequacy of the implementation of appropriate procedures to mitigate and manage such risks, and ICE NGX's participation standards and collateral requirements; and
 - (b) ensuring adequate processes and controls are in place over the models used to quantify, aggregate, and manage ICE NGX's risks.
14. If the board of directors of ICE NGX does not establish a separate committee on audit and finance, it will perform the functions of the audit and finance committee which will, at a minimum, include the following:
 - (a) reviewing and approving ICE NGX's audited financial statements, and overseeing ICE NGX's internal controls, internal audit, and external auditor;
 - (b) monitoring the financial performance of ICE NGX, and providing financial management oversight and direction to the business and affairs of ICE NGX; and
 - (c) regularly reviewing ICE NGX's senior management performance, and assessing the performance of each member of the board of directors of ICE NGX.
15. The board of directors of ICE NGX must be chaired by a sufficiently knowledgeable individual who is independent (as that term is defined in section 4.1 NI 24-102) of ICE NGX.