



March 30, 2016

Sent By E-mail

Ontario Securities Commission
20 Queen Street West, 19th Floor
Toronto, Ontario M5H 3S8

Attention: Secretary of the Ontario Securities Commission

Re: ICE Swap Trade, LLC – Application for Exemption from Recognition as an Exchange

Dear Sirs,

ICE Swap Trade, LLC (the “**Applicant**”) hereby submits this application with the Ontario Securities Commission (the “**Commission**”) pursuant to section 147 of the *Securities Act* (Ontario) (the “**Act**”), requesting a decision exempting the Applicant from the requirement to be recognized as an exchange under subsection 21.(1) of the Act (the “**Exchange Relief**”) in relation to the operation of a swap execution facility (“**SEF**”) in the province. The Applicant is currently permitted to operate its SEF under an interim exemption order dated October 1, 2013 (the “**Interim Order**”).

For convenience, this application is divided into the following Parts I to V, Part III of which describes how the Applicant satisfies Commission staff’s criteria for exemption of a foreign exchange trading OTC derivatives from recognition as an exchange.

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PART I INTRODUCTION

1. Description of the Applicant's Services

- 1.1 The Applicant operates a SEF that is regulated by the Commodity Futures Trading Commission (“**CFTC**”). The Applicant currently offers trading in credit default swaps (indices, sovereigns, options and tranches) and financially settled commodity swaps (including swaps for natural gas, electric power and oil). The Applicant’s SEF enables participants (each, a “**Participant**”) to engage in transactions through limit order book, block, and voice broker functionality, which are described in detail in Part II below. The Applicant provides flexible connectivity options, including access through a Direct API and independent software vendors (“**ISV**”).
- 1.2 Under the terms of the Interim Order, the Applicant offers direct access to trading on its SEF to Participants that are located in Ontario (“**Ontario Participants**”) and that satisfy criteria for an “eligible contract participant” (“**ECP**”) as defined in Section 1a(18) of the *U.S. Commodity Exchange Act* (the “**CEA**”) and as further described in Part III below. Ontario Participants may include Canadian financial institutions, registered dealers and advisers, government entities, pension funds and other well capitalized non-regulated entities.

- 1.3 The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described herein.

PART II BACKGROUND OF THE APPLICANT

1. Ownership of the Applicant

- 1.1 The Applicant is a limited liability company organized under the laws of the State of Delaware in the United States (“U.S.”) and is a wholly owned subsidiary of Intercontinental Exchange Holdings, Inc. (“ICE HoldCo”), which in turn is a wholly owned subsidiary of Intercontinental Exchange, Inc. (“ICE”), an NYSE listed company that trades under the symbol “ICE”.
- 1.2 ICE is a leading operator of regulated global markets and clearing houses, including futures exchanges, securities exchanges, over-the-counter, or OTC, markets, derivatives clearing houses and post-trade services. ICE operates these global marketplaces for trading and clearing in a broad array of energy, environmental and agricultural commodities, credit default swaps, or CDS, equity indices, currency contracts, equities and equity options. ICE offers electronic platforms for trading in these markets together with clearing services, post-trade processing and market data. Through its widely-distributed electronic markets, ICE brings together buyers and sellers of derivative and physical commodities and financial contracts by offering a range of services to support its Participants’ risk management and trading activities.

2. Products Traded on the Applicant’s SEF

- 2.1 The Applicant currently offers trading in credit default swaps (indices, sovereigns, options and tranches) and financially settled commodity swaps (including swaps for natural gas, electric power and oil). The Applicant expects to offer trading in single name corporate credit default swaps upon granting of registration (temporary or otherwise) from the United States Securities and Exchange Commission (“SEC”). A list of products traded on the SEF and a description of the contract terms is provided at Exhibit A.
- 2.2 The Applicant publishes on its website daily trading data, including, price and volume information, for each swap contract listed on the SEF and reports all transactions executed on the SEF to a CFTC registered swap data repository. The CFTC reviews, assesses and enforces a SEF’s adherence to CFTC regulations on an ongoing basis. The following daily reports are available on the Applicant’s website by product category:

Credit: <https://www.theice.com/marketdata/reports/171>

Commodities: <https://www.theice.com/marketdata/reports/158>

3. SEF Participants; Jurisdiction and Access Criteria

- 3.1 The Applicant’s SEF enables market participants to access the SEF directly or in the alternative through an introducing broker, which can place and execute orders on the SEF. The Applicant has a wide range of sophisticated customers comprised of both buy- and sell-side market participants, including commercial and investment banks,

corporations, pension funds, money managers, proprietary trading firms, hedge funds and other institutional customers.

- 3.2 The Applicant has the following participant categories, as further defined/described in the Rulebook (https://www.theice.com/publicdocs/swap_trade/Rulebook.pdf): (i) Clearing Member, (ii) Customer, (iii) Non-Participant Broker, (iv) Participant, and (v) Participant Broker. Notwithstanding the separate participant categories identified above, an entity, regardless of which participant category an entity falls into, must be an Eligible Contract Participant (“ECP”). The CFTC defines an ECP as an entity, such as a “major swaps participant, swaps dealer, major security-based swap participant, security based-swap dealer and commodity pool” that satisfies the regulatory criteria to qualify for such ECP entity type recognition by either the CFTC or SEC, as applicable. This classification permits these persons to engage in transactions (such as trading on a derivatives transaction execution facility) not generally available to non-eligible contract participants, i.e., retail customers.. As used throughout this application, the term “Participant” is intended to apply, in the broadest sense, to the actual SEF Participant. The term “customer” is intended to apply and refer to a customer of said SEF Participant. The access criteria for Participants and customers is discussed in further detail in response to Question 4 “Access” of this application.
- 3.3 Pursuant to Rule 301 (“Applicability of Rules; Jurisdiction”) of the Applicant’s Rulebook, the Applicant may assert jurisdiction over all persons that access its SEF, including all Participants, clearing members, account managers, Authorized Traders,¹ customers, ISV and supervised persons.

4. SEF Trading Functionality

- 4.1 Participants engage in transactions primarily through the SEF’s central limit order book and block functionality. The Applicant provides flexible connectivity options, including a proprietary Graphical User Interface (“GUI”) and an Application Programming Interface (“API”) and supports access by independent software vendors (“ISV”). As required by CFTC Rule 37.3(a)(2), the SEF provides the minimum trading functionality, an order book, for its markets, as well as also providing market participant with the ability to submit trades through the Applicant’s block trade and voice broker provided functionality. Rule 525 (“Acceptable Orders”) provides a description of the acceptable order types and the manner in which they interact with the SEF order book.

A Central Limit Order Book or CLOB is a transparent execution method that matches customer orders (e.g. bids and offers) on a 'price time priority' basis. The highest ("best") bid order and the lowest ("cheapest") offer order constitutes the best market of a particular swap contract listed by the SEF. Authorized Traders can see market depth or the "stack" in which Authorized Traders can view bid orders for various sizes and prices on one side vs. viewing offer orders at various sizes and prices on the other side. The CLOB is by definition fully transparent to all Authorized Traders.

¹ An Authorized Trader is defined in the Rulebook as a natural person who is either employed by or is an agent of a Participant, Customer or an Account Manager and who is duly authorized by such entity to access the SEF and transact on the SEF or subject to the Rules of the SEF on behalf of such Participant, Customer or Account Manager, as applicable.

The Applicant accepts trades that satisfy the definition of a block trade, as defined in Part 43 of the CFTC Regulations. Block trades are defined as a publically reportable swap transaction that (i) involves a swap that is listed on a registered SEF or DCM; (ii) occurs away from the SEF or DCM's trading system or platform and is executed pursuant to the registered SEF or DCM's rules and procedures; (iii) has a notional or principal amount at or above the appropriate minimum block size to such swap; and (iv) is reported subject to the rules set forth in Part 43. Rule 701 ("Block Trades") describes the requirements for executing a block trade on the SEF, including the appropriate minimum block size.

The Applicant also provides a trading functionality whereby a trade in a Permitted Transaction² may be arranged away from the SEF and then presented to the SEF by a Participant Broker or Non-Participant Broker in accordance with the requirements set forth in Rule 702 ("**Brokered Trades**").

PART III APPLICATION OF EXEMPTION CRITERIA TO THE APPLICANT

The following is a discussion of how the Applicant meets the Commission Staff's criteria for exemption of a foreign exchange trading OTC derivatives from recognition as an exchange.

1. Regulation of the Exchange

1.1 Regulation of the Exchange – The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (Foreign Regulator).

1.1.1 On July 21, 2010, President Obama signed the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the "**Dodd-Frank Act**"), which amended the CEA to establish a comprehensive new regulatory framework for swaps and security-based swaps. Section 721 of the Dodd-Frank Act added Section 1a(50) of the CEA, which defines a SEF. Section 723 of the Dodd-Frank Act added Section 2(h)(8) of the CEA, which requires that the execution of certain swaps, those that are subject to the mandatory clearing requirement of CEA Section 2(h), occur on a designated contract market ("**DCM**") or SEF, unless no DCM or SEF makes the swap available to trade. Section 733 of the Dodd-Frank Act added Section 5h of the CEA, which provides registration and core principle requirements for SEFs ("**SEF Core Principles**").

1.1.2 The CFTC granted the Applicant permanent registration to operate a SEF in the United States pursuant to the CEA on January 22, 2016. The Applicant is subject to ongoing regulatory supervision by the CFTC. The Applicant is obligated to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces the Applicant's adherence to the CEA and the regulations thereunder on an ongoing basis, including the SEF Core Principles. The SEF Core Principles relate to the operation and oversight of the SEF, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection.

² Permitted transaction means any transaction not involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the CEA.

- 1.2 **Authority of the Foreign Regulator – The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.**
- 1.2.1 The CFTC carries out the regulation of SEFs in accordance with certain provisions of the CEA. To implement SEF regulation, the CFTC has promulgated regulations and guidelines (“**CFTC Regulations**”) that further interpret the SEF Core Principles (described below) and govern the conduct of SEFs. The CFTC also undertakes periodic in-depth audits or “rule reviews” of the Applicant’s compliance with certain of the SEF Core Principles.
- 1.2.2 The Applicant is required to demonstrate its compliance with the SEF Core Principles applicable to all U.S. SEFs. Among other things, the SEF Core Principles and CFTC Regulations require SEFs to have a rulebook (the “**SEF Rulebook**”) and a compliance program, including a Chief Compliance Officer and a compliance manual. A SEF’s participant access criteria must be impartial and transparent and must be applied in a fair and non-discriminatory manner. The CFTC requires each SEF to have certain required trading protocols, including, at a minimum, the availability of a limit order book for every contract that is listed by the SEF. A SEF must publish on its website certain daily trading data, including, but not limited to price and volume information, for each swap contract listed on the SEF and must report all transactions executed on the SEF to a CFTC registered swap data repository. The CFTC reviews, assesses and enforces a SEF’s adherence to CFTC regulations on an ongoing basis.
- 1.2.3 A SEF is a self-regulatory organization under CFTC rules. A SEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants and customers, including by means other than exclusion from the marketplace. The Applicant has contracted with ICE Futures U.S., Inc., a CFTC registered DCM and an affiliate to the SEF, to provide market supervision and certain regulatory services pursuant to a Regulatory Services Agreement.

2. **Governance**

- 2.1 **Governance – The governance structure and governance arrangements of the exchange ensure:**
- (a) **effective oversight of the Exchange,**
- 2.1.1 As a corporation, the Applicant is managed by or subject to the direction of its board of managers (the “**Board**”) and such officers as are appointed by the Board, in each case in accordance with the limited liability company agreement of the Applicant, as amended from time to time (the “**Operating Agreement**”). Without limiting the rights, powers, privileges and obligations of the Board as set forth in the Operating Agreement, the Board has the power to review, and to approve, modify, suspend or overrule, any and all decisions of committees of the SEF and any officers, subject to applicable law. Qualifications for Board members are set forth in the Operating Agreement.
- 2.1.2 The Applicant’s Board has adopted Conflict of Interest Rules and a Code of Business Conduct and Ethics, both of which are publicly available on the Applicant’s website, at

<http://ir.theice.com/investors-and-media/corporate-governance/corporate-governance-overview/default.aspx>

- 2.1.3 The Applicant has only one class of interest (equivalent of one class of shares for a limited liability company) and is wholly owned by ICE HoldCo, which itself is wholly owned by ICE.

Director Nominations

- 2.1.4 ICE HoldCo, as the sole member of the Applicant retains the sole right to appoint the members of the Board. The Applicant has two types of directors (or managers, in the case of an LLC) – public and non-public. Both type of directors are required to be nominated by the Board’s nominations committee. With respect to “Public Directors”, such directors must satisfy the independence criteria described in CFTC Regulation 1.64(b)(1), including that the public directors are not members, employees, or primarily performing services for the Applicant, and are not officers, principals or employees of a firm/participant which holds a membership at the Applicant. These criteria and requirements are also set out in the Applicant’s Operating Agreement. While both “Public Directors” and “Non-Public Directors” may not be subject to statutory disqualification, Non-Public Directors are not otherwise subject to additional regulatory criteria. Additionally there is a requirement that the number of public directors be the greater of 35% of the Board, or two directors, so depending upon the composition of the Board at the time that a director may be nominated, the criteria of whether the director must be a public director or not will depend upon the current Board composition.

Director Qualifications

- 2.1.5 The Applicant considers several factors in determining the composition of the Board, including whether directors, both individually and collectively, possess the required integrity, experience, judgment, commitment, skills and expertise to exercise their obligations of oversight and guidance over a SEF. Members of the Applicant’s Board must have the following attributes:
- (a) sufficiently good reputation;
 - (b) requisite skills and expertise to fulfill their responsibilities in the management and governance of a SEF;
 - (c) a clear understanding of such responsibilities; and
 - (d) the ability to exercise sound judgment regarding SEF affairs.

The Board’s Role in Risk Oversight

- 2.1.6 The Applicant’s Board plays an active and important role in the oversight of all risks at the SEF. This is primarily carried out by Board members at the committee level. Each of the Board’s standing committees are described in paragraph 2.1.7 below.

Board Committees

- 2.1.7 The Applicant has established three standing committees of the Board: the participation committee, the regulatory oversight committee (the “**ROC**”) and the nominating committee. All three committees report directly to the Board and the current membership of each committee is made up of the three public directors (as described in Section 2.1.4 above) on the Board.
- (a) The participation committee consists of three directors appointed from time to time by the Board, at least two of which shall be public directors. The participation committee determines the standards and requirements for initial and continuing Participant eligibility, reviews appeals of staff denials of Participant applications; and reviews and approve rules that would result in different categories or classes of Participants receiving disparate access to the SEF.
 - (b) The Applicant is required to establish a ROC or Regulatory Oversight Committee made up of all the public directors that sit on the Applicant’s Board. The role of the ROC is to monitor the regulatory program of the Applicant for sufficiency, effectiveness and independence and oversee the Applicant’s regulatory program. The ROC oversees trade practices, market surveillance, audits, examinations, compliance with financial integrity and reporting, recordkeeping, allocation of regulatory budget and compliance personnel. The Board delegates sufficient authority, dedicates sufficient resources and allows sufficient time for the ROC to fulfill its mandate.
 - (c) The nominating committee consists of three directors appointed from time to time by the Board, at least two of which shall be public directors. One of the public directors will serve as chair of the nominating Committee. The nominating committee: (i) identifies individuals qualified to serve on the Board as public directors, consistent with the criteria approved by the Board and the requirements of applicable law, and (ii) administers a process for the nomination of individuals to the Board.
- 2.1.8 The Board may from time to time constitute and appoint additional standing committees as it may deem necessary or advisable. The Applicant may also from time to time establish one or more advisory committees as it may deem necessary or advisable.
- (b) **that business and regulatory decisions are in keeping with its public interest mandate,**
- 2.1.9 The Applicant is committed to ensuring the integrity of its SEF and the stability of the financial system, in which market infrastructure plays an important role. The Applicant must ensure the integrity of swaps traded on the SEF under Core Principle 7 – *Financial Integrity of Transactions* (“**Core Principle 7**”). The Applicant fulfills this requirement in part through compliance with other SEF Core Principles, such as Core Principle 3 – *Swaps Not Readily Subject to Manipulation* (“**Core Principle 3**”). Stability of the market infrastructure is enhanced through compliance with Core Principle 13 – *Financial Resources* (“**Core Principle 13**”). Core Principle 13 requires a SEF to maintain adequate financial resources to discharge its responsibilities and ensure orderly operation of the

market. The rules, policies and activities of the Applicant are designed and focused on ensuring that they maintain best practices and fulfil this public interest mandate. The Applicant operates on a basis consistent with applicable laws and regulations, and best practices of other SEFs.

- (c) **fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:**
 - (i) **appropriate representation of independent directors, and**
 - (ii) **a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,**

Director Independence

2.1.10 Independent directors must meet the requirements for a public director as defined in the Proposed Rules to Part 40 of CFTC regulations, as well as having been proven to have no material relationship with Applicant. The Board of the Applicant is required under its own rules (Rule 201) and its Operating Agreement to maintain the greater of two independent directors or a number of independent directors that ensures that at least 35% of the Board are independent directors. The Applicant has adopted governance principles for its Board, which include criteria for Board composition and requirements around independence of directors. The Board of the Applicant currently consists of six directors, three of which are public directors.

- (d) **the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and**

2.1.11 The Applicant, through its conflicts of interest rules, policies and procedures, as well as its compliance with Core Principle 12 – *Conflicts of Interest* (“**Core Principle 12**”), has established a robust set of safeguards designed to ensure that the SEF operates free from conflicts of interest or inappropriate influence as described above. For example, independent directors are subject to rules relating to conflicts of interest of named persons, both on a day to day basis (Rule 207) and in cases where an emergency action is under discussion (Rule 209). The Applicant’s SEF Rulebook defines what information must be declared to the Board or the relevant committee, and the appropriate action to be taken by the Board/committee in the event that a conflict of interest is identified. The CFTC also conducts its own surveillance of the markets and market participants and actively enforces compliance with CFTC Regulations, including Core Principle 12. In addition to the CFTC’s oversight of the markets, the Applicant has separately established and enforces rules governing the activity of all Participants and Customers in its markets.

- (e) **there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.**

2.1.12 See paragraph 2.1.5 above for information on director qualifications. Members of the Applicant’s management team were identified and recruited for their particular position based upon their skills and expertise in the industry in which the Applicant operates. Their individual goals and performance are regularly assessed by their direct supervisor

as part of the Applicant's, as well as ICE's, performance management process. Employee directors do not receive compensation from the Applicant. Non-employee directors may receive compensation, as provided for in the Operating Agreement of the Applicant.

- 2.1.13 Rule 1103 of the Applicant's Rulebook disclaims all liability to Persons, Participants, Clearing Members, Non-Participant Brokers, Customers, Account Managers or Authorized Traders with respect to the Applicant, as well as its representatives (which includes the Applicant's directors, officers and employees) and affiliates. However, even in the event that the Applicant, or its representatives and/or affiliates were to be found liable, such liability is capped at an aggregate amount for all claims at \$2,000,000 annually.
- 2.1.14 Also, the Operating Agreement specifically disavows any director from all company liabilities and provides indemnification to directors and officers under all circumstances, with exceptions for fraud, intentional misconduct, gross negligence, or a knowing violation of law which was material to the cause of action. There are no direct employees of the Applicant. Depending on the employee and their respective support role, each employee that provides support to the Applicant is employed by a respective affiliate of the Applicant, such as Creditex Group Inc., Creditex UK Limited, ICE Markets Limited, or Intercontinental Exchange Holdings, Inc. The employees provide support to the Applicant under a secondment agreement, entered into between the Applicant, the respective affiliate and the respective employee being so seconded. There are no specific provisions for employees beyond those that would be automatically relevant by standard limitation of liability company law in the United States.
- 2.2 **Fitness – The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.**
 - 2.2.1 Directors and officers of the Applicant have each been selected to assume such role by virtue of their educational and industry experience. Further, in addition to ensuring that each director and officer of the Applicant possesses the minimal skills necessary to perform his/her duties with the Applicant, all employees, regardless of position, receive background screenings prior to their employment. Background screenings may include, but are not limited to: credit checks, criminal background checks, education and employment verifications. Periodic background screenings are conducted on all current employees after their fifth anniversary of employment. All potential directors are also subject to the same background checks that apply to employees.

3. Regulation of Products

3.1 Review and Approval of Products – The products traded on the exchange and any changes thereto are submitted to the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

3.1.1 17 C.F.R Section 37.4 provides the procedures for listing products on the SEF and the CFTC core principles relevant to products traded on the SEF include: Core Principle 2 – *Compliance with Rules* (“**Core Principle 2**”), Core Principle 3, Core Principle 4 – *Monitoring of Trading and Trade Processing* (“**Core Principle 4**”), Core Principle 6 – *Positions Limits or Accountability*, Core Principle 7 and Core Principle 9 – *Timely Publication of Trading Information* (“**Core Principle 9**”). In addition to compliance with these SEF Core Principles, the CFTC requires SEFs to demonstrate that new products are not susceptible to manipulation (see “**Core Principle 3**”).

3.1.2 The Applicant maintains its own proprietary process for determining which contracts it wishes to request regulatory approval to list on the SEF’s trading platform, including, but not limited to, customer demand, listings offered by competitors, volume of contracts traded, availability of pricing, whether clearing of the contract is offered by any clearing house, whether the contract meets the core principle requirements as set out above, and other factors as may be determined as relevant by Applicant’s management from time to time. Contract listings are considered a rule change/new rule filing by the CFTC, and as such are subject to the regulatory rule change filing process as described in Part 40 of the CFTC regulations. The criteria for self-certification of a new swap are detailed in Part 40.2 of the CFTC regulations, which requires an explanation and analysis of how the contract being listed complies with the SEF Core Principles. All products listed on the SEF have been self-certified with the CFTC.

3.1.3 The Applicant may also submit a product, prior to it being listed on the SEF’s trading system, under a voluntary request for approval by the CFTC pursuant to Part 40.3. The Applicant has not submitted any product listing under Part 40.3, which is typically reserved for novel product types that have never been traded on a SEF, DCM, or other related contract market. Pursuant to CFTC Rule 37.10, when a SEF determines to make a swap available to trade (“MAT”), it shall submit to the CFTC its determination with respect to such swap as a rule under Part 40 of the CFTC’s regulations. The CFTC will then determines whether to certify such rule and thereby allow such swap to be listed by the SEF.

3.2 Product Specifications – The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.2.1 Among other things, the requirement that new swaps comply with the SEF Core Principles means that they contain an analysis of the underlying cash market and the deliverable supply of the underlying product (where applicable for physically settled contracts). This ensures that the swaps listed on the Applicant’s SEF are based on deep and liquid cash markets and/or widely accepted benchmarks and indices. Platts (for

Energy Contracts) and Markit (for Credit Contracts), as the administrators of the referenced indices listed on the SEF, have established comprehensive rules governing their price assessments and indices, which are publically available, transparent, and widely accepted and understood by market participants. Further, the contract size, listing cycle, quotation basis, final settlement and minimum price fluctuation for new swaps are common amongst related contracts listed by other SEFs and DCMs. In response to a SEF's self-certification of a new product, the CFTC may follow-up with questions requesting additional information on the contract itself and the underlying market including, but not limited to: supply and demand characteristics, participant composition, market concentration, deliverable supply estimates, the relation of the swap size to the underlying market, the quality of the product across various delivery facilities and the delivery facilities used for the product. If a SEF is unable to provide satisfactory answers to the CFTC's questions, it may require the SEF to withdraw the product certification for failing to comply with the SEF Core Principles. As per CFTC regulations the SEF is required to perform a review of all contract listings on an annual basis to ensure ongoing conformity with listing requirements.

3.3 Risks Associated with Trading Products – The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls.

3.3.1 The Applicant maintains several methods to manage and mitigate trading risks. These methods include maintenance of pricing two bands around the most recently identifiable trade price (the “anchor price”), which are used to warn users that an input price may be “off-market”. The first band is a soft warning, meaning that the user is notified that the input price may be “off-market” but the platform will allow the user to still place the order if they acknowledge the notification and agree to continue. The second band is wider than the first, and orders outside of this band are automatically rejected without the user option to proceed and the user is notified that the order was rejected as being “off-market”. In the event of a significant price movement in the market, such as a spike in price (either up or down), the platform has automatic alerts that are triggered and a market supervision team that is responsible for monitoring platform activity in real-time throughout the trading day. This team is required to close the market in a particular contract in accordance with the Applicant's compliance manual, the SEF Rulebook and applicable law, where appropriate.

3.3.2 Participants on the platform are also provided a set of risk controls that can be set by an approved person at the Participant. These controls govern the maximum size of a single order, the maximum daily amount of notional that may be traded on the platform, and the maximum number of simultaneous orders that may be live on the platform at any one time.

3.3.3 For cash-settled swaps listed on the SEF where a third-party index serves as the reference price, the Applicant relies on the industry standard index definitions. With respect to credit default swaps listed on the SEF, such products reference indices administered by Markit and commodity swaps reference indices administered by Platts. The Markit and Platts indices are generally recognized in the industry as fair and accurate, and are published in accordance with a transparent set of rules. Bilaterally traded contracts listed

on the SEF are not settled based on a published index price. Additional information on the Markit and Platts index methodologies can be found at www.markit.com and www.platts.com/methodology-specifications, respectively.

4. Access

4.1 Fair Access

- (a) The exchange has established appropriate written standards for access to its services including requirements to ensure**
 - (i) participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,**
 - (ii) the competence, integrity and authority of systems users, and (iii) systems users are adequately supervised.**
- (b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.**
- (c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.**
- (d) The exchange does not**
 - (i) permit unreasonable discrimination among participants, or**
 - (ii) impose any burden on competition that is not reasonably necessary and appropriate.**
- (e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.**

4.1.1 Consistent with applicable law and relevant CFTC regulation, such as Part 37, the SEF provides access to Participants on a fair, non-discriminatory and open basis. Participant status, and access to, and usage of, the SEF in such capacity is available to all Participants that meet the criteria set forth by the Applicant in its SEF Rulebook (see Rule 303) and validly engage in transactions on the SEF. Chapter 3 of the SEF Rulebook sets out the admission and eligibility criteria that Participants are required to satisfy prior to being granted access to the SEF. Additional criteria apply to Participants that wish to trade for Customers, as described in Rule 304 of the SEF Rulebook. In general, the SEF Rulebook requires that the applicants desiring to be a Participant must be ECPs in good standing with the necessary documentation and possess relevant trading and clearing relationships (where necessary) in place in order to be able to execute the transactions that are entered into on the SEF, as well as meeting all requirements under applicable law. More specifically,

- A Participants must be an ECP at such time that it is admitted as a Participant and on an ongoing basis with respect to each transaction that it enters into either for its own account or the account of a customer, and it provides written confirmation of

such status or otherwise reasonably demonstrates such status to the satisfaction of the Applicant.

- A Participant must demonstrate business integrity and sound reputation satisfactory to the Applicant.
- A Participant must demonstrate, in a manner satisfactory to the Applicant, that it has sufficient financial resources to perform its obligations in connection with an uncleared swap, or has the financial capability to ensure a cleared swap will be cleared by the Participant or by a third-party clearing member that, in either case, has sufficient financial resources to perform the obligations thereunder.
- A Participant must have the legal capacity and authority to enter into transactions.
- A Participant must be located in an authorized jurisdiction (as defined in the Applicant's rulebook). If it is organized in a jurisdiction other than the United States, it must maintain an agent for service of process in the United States suitable to the Applicant and provides such other information and makes such representations or certifications as the Applicant determines necessary.
- A Participant must not be subject to disqualification under applicable law.
- If a Participant enters into transactions in cleared swaps for its own account, it must be either a clearing member of each relevant clearing house for such contracts, or it must have in effect an arrangement with such a clearing member to clear all such transactions (and such clearing member has so confirmed to the Applicant).
- If a Participant enters into transactions that are uncleared swaps for its own account, it must be either a swap dealer (as defined by CFTC) or it must have in effect a swap intermediation arrangement (as defined in the Applicant's rulebook) with a swap intermediary (except for commodity contracts).
- If a Participant is required to be registered in any capacity under applicable law, it must be duly registered in such capacity and such registration must be in effect and has not lapsed or been revoked, suspended or withdrawn.
- Participants must not legally or otherwise be prohibited from using the SEF or entering into transactions on the SEF or subject to the rules.
- Participants must demonstrate operational capacity to execute transactions.
- If a Participant is a swap dealer or a major swap participant (as defined by CFTC), it must be capable of complying (and will comply with) with (i) any pre-trade disclosure obligations it may owe to any other person when engaging in a transaction on the Applicant's SEF or subject to the Rules on a disclosed basis and (ii) any due diligence and analysis obligations it may owe to its counterparty.

- A Participant must not be an officer, employee or affiliate of the Applicant or one of its affiliates.
- A Participant must not be an ISV; unless such ISV participates in the SEF's market maker program.
- Participants must comply with the applicable technical access standards, security protocols and technical specifications for connection to the Applicant's electronic system as may be specified by the Applicant from time to time.
- Participants must not be subject to any economic or trade sanctions programs administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") or other relevant U.S. or non-U.S. authority, and must not be listed on OFAC's List of Specially Designated Nationals and Blocked Persons.
- A Participant must not be a swap execution facility, designated contract market or other trading facility.
- A Participant must access the SEF solely for purposes of entering into transactions for itself or for customers.
- A Participant must satisfy such other criteria as the Applicant may specify from time to time, subject to Rule 302 and applicable law.

A Customer is (i) an Eligible Contract Participant and is either a (ii) customer of a Participant that enters into Transactions on its behalf or authorizes it to enter into Transactions or (iii) customer of a Clearing Member from whom the Clearing Member provides clearing services for Transactions. Pursuant to Rule 403(d), a Participant is responsible for promptly informing the SEF of any material changes to its satisfaction of the above described eligibility criteria, and for informing the SEF if it ceases to be an Eligible Contract Participant as detailed in Rule 402(c). Section 3(b) of the ICE Swap Trade SEF Participant Agreement also requires a representation by a Participant that it is and will continue to be and Eligible Contract Participant. Further, a Participant must notify the SEF of any matter required to be notified to the CFTC, SEF, or FINRA within the time and in the manner specified by the applicable regulator's rules, as required by Rule 404.

The Applicant's Ontario based Participants must be registered, exempt from registration or not subject to the registration requirement. Many of the Applicant's such Participants are Canadian banks, which are automatically exempt from registration under section 35.1 of the *Securities Act* (Ontario).

- 4.1.2 In accordance with applicable law, if the SEF denies access to anyone that applies for access, the SEF is required to document and retain, in accordance with its record-keeping policies, the reasons for denial of access. For the avoidance of doubt, the Applicant also documents and retains, in accordance with its record-keeping policies, all access requests (regardless of eventual acceptance or denial) that have been submitted to the Applicant. Any appeal is referred to the participation committee of the Board, which is responsible for reviewing staff determinations and has the authority to overturn a staff determination

if the determination is not in accordance with the SEF Rulebook or applicable law. In the event that the participant committee of the Board upholds the SEF's determination to deny a SEF applicant's request to become a participant of the SEF, the affected SEF applicant may thereafter file a Notice of Appeal, in the manner provided in CFTC Rule 9.20, with the CFTC requesting that the CFTC review the SEF's access denial determination.

- 4.1.3 The Applicant's rules, policies and procedures are designed to ensure fair and equal treatment consistent with the requirements contained in numerous SEF Core Principles. Rules pertaining to Participant criteria or selection must be self-certified under CFTC regulations. The CFTC reviews all self-certifications of rules and rule amendments for compliance with the SEF Core Principles. Core Principle 11 requires that, unless necessary or appropriate to achieve the purposes of applicable law, a SEF should avoid (a) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or (b) imposing any material anticompetitive burden on trading. As such, the Applicant does not implement rules that would impose any burden on competition that is not reasonably necessary and appropriate because such rules would not meet SEF Core Principle requirements.

5. Regulation of Participants on the Exchange

- 5.1 **Regulation – The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.**

- 5.1.1 A SEF is a self-regulatory organization under CFTC rules. A SEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace. To ensure that the SEF meets its regulatory obligations, the Applicant has dedicated financial, managerial and operational resources to staffing and maintaining the following functions: compliance, legal, product development, operations, corporate compliance, accounting, information security, business continuity/disaster recovery, and internal audit. The Applicant expends considerable human, technological and financial resources that are focused on the maintenance of fair, efficient, competitive and transparent markets, and the protection of all SEF Participants from fraud, manipulation and other abusive trading practices. The Applicant's staff perform all of the market surveillance duties required under the applicable CFTC rules. With respect to disciplinary actions, the Applicant has contracted with ICE Futures U.S. Inc. to provide a hearing panel pursuant to a Regulatory Services Agreement.
- 5.1.2 The Applicant's daily trade monitoring activities include a broad range of interconnected efforts that include trade practice reviews, data quality assurance audits and enforcement activities. Participants are required to comply with a significant number of rules governing trading on the SEF pursuant to the SEF Rules. The applicable SEF Rules are primarily located in Chapter 5 (Trading Practices and Business Conduct) of the SEF Rulebook.

- 5.1.3 Investigating and enforcing rule violations are necessary components of regulatory safeguards. The SEF's disciplinary rules, including the conducting of investigations, prosecution of violations and imposition of sanctions are described Chapter 8 of the SEF Rulebook. The Applicant is dedicated to safeguarding the integrity of its SEF, and ensuring that it is free from manipulation and other abusive practices. These efforts are a necessary component of efficiently working markets, and so it is committed to ensuring that Participants and Customers are able to use the SEF with the knowledge that it remains open and transparent.
- 5.1.4 Specifically with reference to regulatory technology, the Applicant has made significant investments in this area, including staff dedicated solely to the support and continuous development of its regulatory technology infrastructure, ensuring that the Applicant's regulatory and market protection capabilities anticipate and evolve with the changing dynamics of the marketplace. The Applicant has developed an exceptionally granular audit trail of market activity and powerful and flexible data query and analytical tools that allow its regulatory staff to examine real-time and historical order, transaction and position data, maintain profiles of markets and Participants, and to detect trading patterns potentially indicative of market abuses. The Applicant has developed and implemented automated reports for identifying aberrant trading activity and market abuses, including, but not limited to, wash trade, price spike, money-pass, and block trade violations. In addition to trade practice exception reports, the Applicant monitors its credit and commodity swap markets via real-time market surveillance tools. In the event that the Applicant's regulatory staff receive a complaint regarding trading activity in its market, the Applicant is able to recreate the order book and transaction data through its technology infrastructure and quickly respond to any events of regulatory concern. The Applicant's regulatory staff are responsible for conducting any and all market surveillance and investigations relating to any potential trade violations. Please see Section 7 below for a description of the Applicant's rule enforcement and disciplinary procedures.
- 5.1.5 All of the commodity swaps listed on the Applicant's SEF, as well as all of the credit default swaps that have not otherwise been certified by the CFTC as a "made available to trade" or a MAT swap pursuant to Section 2(h)(8) of the CEA may be traded as uncleared, bilateral swaps. As further discussed in Section 3.1.2 of this application, the CFTC determines whether a product is required to be MAT.

6. Rulemaking

6.1 Purpose of Rules

- (a) **The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate.**

6.1.1 Pursuant to its obligations under the CEA and the CFTC Regulations, the Applicant has implemented rules, policies and other similar instruments that govern the operations and activities of its Participants. The Applicant's rules are covered in Chapters 1 through 13 of its SEF Rulebook, which include: Chapter 1 (Definitions), Chapter 2 (Ownership and Governance), Chapter 3 (Access), Chapter 4 (Obligations of Participants), Chapter 5 (Trading Practices and Business Conduct), Chapter 7 (Block Trades, Brokered Trades and Non-Competitive Transactions), Chapter 8 (Disciplinary Rules), Chapter 9 (Arbitration), Chapter 10 (Clearing and Financial Responsibility; Reporting), Chapter 11 (Miscellaneous), Chapter 12 (Credit Index Contracts Terms and Conditions) and Chapter 13 (Commodities Contract Terms and Conditions). The Applicant has established fair, transparent and non-discriminatory access criteria as required under the CFTC Regulations, and this criteria is applied in an impartial manner.

(b) The Rules are not contrary to the public interest and are designed to

- (i) ensure compliance with applicable legislation,**
- (ii) prevent fraudulent and manipulative acts and practices,**
- (iii) promote just and equitable principles of trade,**
- (iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,**
- (v) provide a framework for disciplinary and enforcement actions, and**
- (vi) ensure a fair and orderly market.**

6.1.2 The Applicant is obligated to comply with the CEA, the SEF Core Principles and the CFTC Regulations (collectively, the “**U.S. SEF Regulations**”). The U.S. SEF Regulations also require that the Applicant implements rules that require compliance with the U.S. SEF Regulations by its Participants.

6.1.3 The Applicant's SEF Rules are subject to the standards and requirements outlined by the SEF Core Principles. At a high level, the SEF Core Principles and Applicant's SEF Rules both seek to ensure fair and orderly markets accessible to all eligible Participants. This aim is accomplished by establishing rules that reflect the SEF Core Principle criteria discussed below:

The Rules are not contrary to the public interest and are designed to:

- (i) ensure compliance with applicable legislation.** SEF Core Principle 1 – *Compliance with Core Principles* requires a swaps trading facility to comply with all applicable CFTC requirements and CEA core principles to be designated a SEF and maintain such designation. The Applicant proactively ensures compliance with all applicable laws and regulations, evidenced in part by its regular dialogue with the CFTC, including public

commenting on proposed regulations. Core Principle 2 requires SEFs to ensure Participants consent to SEF rules and jurisdiction prior to accessing its markets. Chapter 3 of the Applicant's SEF Rulebook governs membership requirements and establishes compliance with the Applicant's SEF Rules that brings market participants within the jurisdiction of the CFTC and the scope of the SEF Core Principles.

- (ii) **prevent fraudulent and manipulative acts and practices.** Core Principle 2 requires a SEF to collect information, examine members' records, direct supervision of the market, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system. The Applicant has instituted all these controls. Core Principle 3 requires a SEF to ensure the swaps executed on its platform are not readily susceptible to manipulation. The Applicant complies with this Core Principle by listing products in accordance with the guidelines set forth in Appendix C to Part 38 of the CEA, which requires that new products are based on a deep and liquid cash market. The Applicant includes in its regulatory filing for new products a narrative description of the product terms and conditions as well as an analysis of the underlying cash market. Further, all products are subject to market surveillance by the Applicant's regulatory staff to detect and prevent attempted manipulation. Also, Chapter 5 of the Applicant's SEF Rulebook prescribes trading practices and trading conduct requirements, including prohibited trading activities and prohibitions on fictitious trades, fraudulent activity and manipulation.
- (iii) **promote just and equitable principles of trade.** Core Principle 9 requires a SEF to promote transparency by making timely public disclosures of trading information. The Applicant conforms to this Core Principle by publishing volume, open, high, low and close prices for all swap contracts listed on its platform. Core Principle 7 requires a SEF to ensure the financial integrity of transactions entered into on its markets. The Applicant's data and order entry feed systems offer simultaneous and equivalent access to all market participants. Core Principle 11 prohibits the imposition of unreasonable restraints or uncompetitive burdens on trade. Throughout its rulebook, the Applicant has established transparent and objective standards to prevent unreasonable restraints on trade and foster competitive and open market participation.
- (iv) **foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange.** Rule 211 of the SEF Rulebook authorizes the Applicant to enter into information-sharing arrangements as it determines necessary or advisable to obtain any necessary information, to perform any monitoring of trading or trade processing, to provide information to the CFTC upon request and to carry out such international information-sharing agreements

as the CFTC may require. Furthermore, the Applicant may enter into any arrangement with any other person (including the Ontario Securities Commission, any other governmental authority, trading facility or clearing organization) where the Applicant determines such person exercises a legal or regulatory function under any applicable law or considers the arrangement to be in furtherance of the operation or duties of the Applicant under applicable law.

- (v) **promote a framework for disciplinary and enforcement actions.** Core Principle 2 requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 8 of the Applicant's SEF Rulebook sets out the Applicant's disciplinary rules and Chapter 9 prescribes the Applicant's arbitration procedures.

- (vi) **ensure a fair and orderly market.** Core Principle 2 requires a SEF to establish and provide impartial access to its markets and market services. Core Principle 3 requires a SEF to ensure that swaps traded on the facility are not readily subject to manipulation. Core Principle 4 requires a SEF to establish procedures for monitoring of trading and trade process. The Applicant complies with these Core Principles by prescribing trading rules (see Rule 502 on prohibited trading activity and prohibitions on fictitious transactions, fraudulent activity and manipulation), collecting and evaluating market activity data, by maintaining and auditing its real-time monitoring program, and by auditing historical data to detect trading abuses. Core Principle 9 requires timely public disclosure of trade information, all of which is published daily. SEF Core Principle 14 – *System Safeguards* requires a SEF to establish and maintain risk analysis, emergency procedure, and periodic systems testing programs. The Applicant has implemented a robust information security risk assessment framework, which includes, among other things, processes and procedures for identifying and responding to system threats and vulnerabilities. In addition to system level monitoring of capacity and performance of resources, the Applicant also conducts standardized application or platform capacity tests on a regular basis. This ensures the platform is well positioned to provide adequate responsiveness to customers. The data generated from these tests are used to establish present and historical benchmarks to identify performance and/or capacity hot spots or deficiencies. Additional resources are deployed where appropriate to resolve performance or capacity issues outside of the benchmark to bring performance back in line with benchmark expectation. The Applicant has further adopted a comprehensive disaster recovery plan, which was presented to the CFTC during a Core Principle 20 Hearing on September 14, 2011, with no material changes since that time. The Applicant periodically reviews its programs and procedures, including risk analysis, emergency planning, and systems testing. The Applicant regularly audits systems and technology tests both for technical and regulatory compliance.

7. Due Process

7.1 Due Process – For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

- (a) parties are given an opportunity to be heard or make representations, and
- (b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

7.1.1 Core Principle 2 requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 8 of the Applicant's SEF Rulebook sets out the Applicant's disciplinary rules and Chapter 9 prescribes the Applicant's arbitration procedures. The Applicant keeps a record of all investigations pursuant to its record-keeping requirements, including an explanation of the investigation and its outcome.

7.1.2 The Applicant's investigative procedures can be summarized as follows:

- (a) If the Applicant's market regulation department has reasonable cause to believe that a rule violation may have been committed, or is alleged to have been committed, then it has the right to open an investigation.
- (b) If the Applicant's market regulation department determines that there is reasonable basis to believe a violation was committed and that disciplinary action should be pursued as a result of the investigation, the person that is the subject of the investigation is provided with a copy of the investigative report and provided the opportunity to submit a written response to the compliance department.
- (c) Once the person that is subject to the investigation has been given an opportunity to respond in writing, the Applicant's market regulation department may choose to: issue a warning letter, or negotiate and enter into a written settlement, with or without an admission of guilt, impose a summary fine, bring formal case to the disciplinary committee or close the investigation with no further action.
- (d) If the Applicant's chief compliance officer determines that a matter should be adjudicated in a formal hearing before a disciplinary panel, the market regulation department shall serve a notice of charges on the respondent, containing: the acts, practices or conduct that the respondent is alleged to have engaged in; the rule or provision of applicable law alleged to have been violated or about to be violated; the proposed sanctions; the respondent has a right to a hearing; notice that the respondent has the right to be represented by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process; the period of time within which the respondent can request a hearing on the notice of charges, which will not be less than 20 days after service of the notice of charges; that any failure to request a hearing within the period stated, except for good cause, will be deemed to constitute a waiver of the right to a hearing; that the failure of the respondent to file an answer within 20 days after service of the

notice of charges will be deemed an admission of all of the allegations in the notice of charges; and that any allegation in the notice of charges that is not expressly denied will be deemed to be admitted.

- (e) The respondent has 20 days to file a written response to the notice of charges, containing specific admission or denial of each charge as laid out in the notice of charges, or a statement that the respondent does not have sufficient information to be able to either admit or deny the charges.
- (f) At any time during this process the respondent may propose in writing an offer of settlement related to the anticipated or instituted disciplinary proceedings.

7.1.3 If it is determined that a matter should be adjudicated in a formal hearing before a disciplinary panel, then the disciplinary panel must conduct hearings in connection with any disciplinary proceedings, make findings, render decisions, and impose sanctions (other than summary fines under Rule 811) pursuant to Chapter 8 of the Applicant's SEF Rulebook. The disciplinary panel must meet the composition detailed in CFTC Regulation 1.64(c), which requires that (i) at least one member of the disciplinary panel is not a member of the SEF; (ii) more than 50% of the disciplinary panel includes persons representing membership interests other than that of the subject of the disciplinary proceeding being considered; and (iii) the disciplinary panel include sufficient different membership interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of the disciplinary panel's responsibilities.

These formal hearing procedures can be summarized as follows:

- (a) The chief compliance officer appoints the members of the disciplinary panels. Either of the chief compliance officer or the Board may remove a member of a disciplinary panel for cause.
- (b) Disciplinary panels shall not include any members of the SEF's market regulation department or any person involved in adjudicating any other stage of the same proceeding and must meet any applicable composition requirements under Part 40 of the CFTC rules.
- (c) Prior to a hearing, the respondent shall have the right to access and review all evidence, books and records etc. that the market regulation department may rely upon in making their case during the disciplinary hearing.
- (d) At the disciplinary hearing the market regulation department will present its case supporting the allegations and proposed sanctions to the disciplinary panel. If a respondent has filed a timely answer to the notice of charges they are entitled to attend and participate in the hearing.
- (e) At a hearing, the disciplinary panel or the market regulation department and each respondent (that is entitled to attend) may: present evidence and facts determined relevant and admissible by the chair of the disciplinary panel, call and examine witnesses, and cross-examine witnesses called by other parties.

- (f) Any person entitled, or required or called upon, to attend a disciplinary panel hearing will be given reasonable written notice. All individuals that are called as witnesses are required to appear at the hearing and, where applicable, produce evidence. The SEF will make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant.
- (g) The Applicant will arrange for any hearing conducted in connection with disciplinary proceedings to be recorded verbatim, or substantially verbatim, in a manner capable of accurate transcription. If the respondent requests a copy of all or portions of the recording of a hearing, the chair of the disciplinary panel may within his or her sole discretion require the respondent to pay the costs for transcribing the recording of the hearing.
- (h) As promptly as is reasonable following a hearing, the disciplinary panel will issue a written order rendering its decision. A decision by a majority of the disciplinary panel will constitute the decision of the disciplinary panel. The Applicant shall serve a copy of the order of the disciplinary proceedings to both the respondent and the Market Regulation department. There is no right to appeal a decision by the disciplinary panel to the SEF. A disciplinary action may, however, be appealed to the CFTC pursuant to Part 9 of the CFTC Regulations.

8. Clearing and Settlement

8.1 Clearing Arrangements – The exchange has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.

8.1.1 SEFs can allow trading of both “cleared” and “non-cleared” swaps. A swap is considered “cleared” if a clearing house will accept the swap for clearing, whereas a swap is “non-cleared” if no clearing house will get involved in the swap. Swaps that require clearing may be cleared at ICE Clear Credit, LLC or ICE Clear Europe Limited. Both clearing houses are registered as derivatives clearing organizations (“**DCO**”) with the CFTC, which requires that they have established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls as discussed in Section 8.2.1 below. In the event that a trade submitted for clearing is affirmatively rejected by the DCO, the trade will be deemed *void ab initio* in accordance with Rule 1002. The Applicant defers to the CFTC to ensure the DCOs to which it has a connection meet these regulatory requirements and has appropriate disaster recovery testing in place. ICE Clear Credit, LLC operates under an exemption from recognition as a clearing agency in Ontario and ICE Clear Europe Limited is a recognized clearing house under the U.K. Financial Services and Markets Act 2000 and is regulated by the Bank of England. The Applicant expects that Ontario-based Participants may either become clearing members of a clearing house and clear directly (provided such clearing house has obtained an exemption or interim exemption from recognition as a clearing agency in Ontario) or rely on another clearing member for clearing. In order to trade cleared credit swaps, Participants, including those based in Ontario, must demonstrate, as part of the Applicant’s onboarding process, that they are members of a clearing house or have made arrangements with a clearing member. Under Rule 303(c), a Participant is required to demonstrate that it has the financial capability to ensure that cleared swaps will be

cleared by the Participant or by a third-party Clearing Member. In the event that a Participant is unable to meet this clearing obligation, or if there are any material changes to its clearing member agreement, the Participant is required to promptly notify the Applicant.

8.2 Risk Management of Clearing House – The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

8.2.1 As noted above, both ICE Clear Credit, LLC and ICE Clear Europe Limited are registered as DCOs with the CFTC. As a DCO, the clearing houses must comply with the DCO Core Principles, including CFTC Regulation 39.13 – *Risk management* (“**CFTC Regulation 39.13**”), CFTC Regulation 39.10 – *Compliance with rules* (“**CFTC Regulation 39.10**”), and CFTC Regulation 39.18 – *System safeguards* (“**CFTC Regulation 39.18**”). Further, the Applicant defers to the CFTC to ensure the DCOs to which it has a connection meet these regulatory requirements and has appropriate disaster recovery testing, risk management policies and procedures, contingency plans, default procedures and internal controls in place.

8.2.2 CFTC Regulation 39.13 mandates the appointment of a chief risk officer whose duties include implementing a Board-approved written risk management framework. CFTC Regulation 39.10 mandates the appointment of a chief compliance officer (“**CCO**”) whose duties include review of the DCO’s written policies and procedures and compliance with each DCO Core Principle, including the risk management framework implemented by the CRO under CFTC Regulation 39.13. The CCO’s review of the DCO’s policies and procedures is included in an annual compliance report submitted to the CFTC.

8.2.3 CFTC Regulation 39.18(b) mandates the establishment and maintenance of a program of risk analysis and oversight with respect to the DCO’s operations and automated systems. CFTC Regulation 39.18(j) further requires that a DCO’s automated systems and business continuity and disaster recovery capabilities be tested by objective, independent and qualified professionals on a periodic basis. Service Organization Control 1 and 2 audits that meet the requirements of CFTC Regulation 39.18(j) are conducted annually.

9. Systems and Technology

9.1 **System and Technology – Each of the exchange’s critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:**

- (a) **order entry,**
- (b) **order routing,**
- (c) **execution,**

- (d) **trade reporting,**
- (e) **trade comparison,**
- (f) **data feeds,**
- (g) **market surveillance,**
- (h) **trade clearing, and**
- (i) **financial reporting.**

- 9.1.1 The Applicant's multi-tiered architecture provides a robust, scalable, high throughput foundation for the Applicant's trading platform. At the core, the architecture is messaging based. Individual components communicate by interactively sending business messages between corresponding components. The business components can be spread across the application server cluster and redundancy is automatically built in by allocating the business tasks among the live servers in the cluster. In the event of an individual server failure, business components are automatically re-allocated to a live server.
- 9.1.2 The same messaging system that empowers the server side of the service also supports client side communication. HTTP Tunneling and strong encryption ensure that connectivity into even the most secure environments is straightforward and requires minimal intervention from networking teams. The existing global private network that the Applicant has built with ICE direct lines is leveraged for connectivity into most of the global dealing community.
- 9.1.3 Behind the application servers, all data is stored in an Oracle Real Application Cluster (RAC) Database. Oracle RAC is the leading database clustering technology in the marketplace and adds both reliability and performance. Data is replicated in real-time to the global standby database in the disaster recovery datacenter over private, dedicated, redundant fibre.
- 9.1.4 It should be noted that the Applicant operates two trading platforms for credit and commodities. The system architecture and system features, including, but not limited to, backup and recovery, are generally identical across the two platforms or operate on a shared infrastructure. Where the answers to this section 9.1 are different for the two platforms, the different responses are separately identified below.

Order Entry and Routing

- 9.1.5 Order entry and routing may be through a direct API connection, or via any one (or more) of a number of ISVs that have connected their graphical user interfaces to the Applicant's trading platform. All orders received must be marked as orders for the SEF marketplace and will be routed to the appropriate matching engine.

Execution

- 9.1.6 The Applicant operates a matching platform that automatically matches orders in accordance with the order types and matching rules specified in Chapter 5 of the Applicant's SEF Rulebook.

Trade Reporting

- 9.1.7 Trade reporting to swap data repositories is required of all transactions executed on the SEF under CFTC Part 43 regulations. Cleared credit transactions, and cleared and uncleared commodity transactions are reported to ICE Trade Vault, through an automated process. Uncleared credit transactions are reported through both an automated and manual process (dependant on the contract) to the DTCC Swaps Data Repository.
- 9.1.8 Trade summary reports give the market operations staff the ability to generate summary reports of trading activity for a specified market participant either automatically, or on demand. These reports can be automatically communicated to the relevant market participant. Participants generally utilize them as a recap for daily trade activity on the platform, to enhance their daily reconciliation of trades executed.
- 9.1.9 Trade confirms provides the framework to automatically deliver trade confirmations to participants who have executed a trade on the platform.

Data Feeds

- 9.1.10 All market data is available to SEF platform Participants and third party data vendors via a direct FIX API connection provided by the Applicant. The market data feed contains all prices at all times (i.e. there are not "top of book" or "full stack/book" options). Data published includes bids, offers and trades.

System Capacity

- 9.1.11 The Applicant operates and provides to Participants a robust and scalable platform. ICE system engineering operates standard system metrics monitoring on every ICE server. Standard system monitoring metrics include capacity and performance level alerts, which are communicated to both System Engineering and SEF production support and development staff. Performance and/or capacity issues are tested in a production test environment, which matches production in size and scope.
- 9.1.12 Performance levels nearing or breaching production Service Level Agreements (if applicable) trigger investigations into the issues which would result in adding additional resources or appropriate software enhancements.
- 9.1.13 In addition to system level monitoring of capacity and performance of resources, the Applicant also conducts standardized application or platform capacity tests on a regular basis. This ensures the platform is well positioned to provide adequate responsiveness to customers. The data generated from these tests are used to establish present and historical benchmarks to identify performance and/or capacity hot spots or deficiencies. Additional resources are deployed where appropriate to resolve performance or capacity issues outside of the benchmark to bring performance back in line with benchmark expectation.

Trade Clearing

9.1.14 The Applicant does not provide a clearing service itself, nor does it outsource such a function.

Audit Trail

9.1.15 Please see paragraph 13.1.1 below.

9.2 **Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data feeds, trade reporting and trade comparison, the exchange:**

- (a) **makes reasonable current and future capacity estimates;**
- (b) **conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;**
- (c) **reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;**
- (d) **ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;**
- (e) **ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;**
- (f) **maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and**
- (g) **maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.**

9.2.1 Each of elements of 9.2 are described in turn below.

- (a) **makes reasonable current and future capacity estimates;**

9.2.2 The Applicant conducts regular performance and capacity tests in a production test (PT) environment which matches production in its size, scope and infrastructure. These tests are conducted with 1X, 2X and sometimes 3X production load to get current and future capacity estimates. Additional resources are deployed where appropriate to resolve future capacity issues outside the benchmark.

- (b) **conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;**

9.2.3 The Applicant's Quality Assurance (QA) team runs regular stress and regression tests after new development cycles to ensure performance, capacity and accuracy of the platform are met.

(c) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;

9.2.4 The Applicant runs regular audits to keep system vulnerabilities in check. These include internal audits as well as external PEN tests.

9.2.5 The ICE Information Security team maintains a list of common threat-sources that are considered for all systems. For each real threat, they look for specific applicability of the threat to the system being reviewed. After common threats are reviewed, specific threats unique to the system are considered and reviewed.

9.2.6 External threats such as physical hazards and natural disasters are addressed in the Applicant's Business Continuity Plan and Disaster Recovery document.

(d) ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;

9.2.7 The Applicant periodically conducts risk audits, internal physical security procedures compliance inspections and covert physical intrusion tests with independent security firms. Such tests are designed to periodically assess the operating effectiveness of physical security controls as well as to monitor internal compliance with security policies and procedures. These procedures are covered in the ICE Information Security Risk Assessment Framework and are conducted by ICE Internal Audit.

(e) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;

9.2.8 Configuration management is the subject of internal audits and is also included in the Applicant's quarterly Disaster Recovery tests. The Applicant performs annual failover testing pursuant to its Disaster Recovery Plan as well as quarterly system safeguard testing which evaluates information security, business continuity, capacity and performance planning, system operations and physical security in accordance with the Applicant's Compliance Manual. Further, the Applicant's internal audits program includes, but is not limited to ensuring that there are sufficient management controls for data center operations, that monitoring controls are in place and metrics are reviewed periodically by management, that physical controls around business information processing, storage and distribution facilities are housed in secure and protected areas, that environmental controls are in place, and that incident management for data center incidents are managed and resolved in a timely manner.

(f) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and

9.2.9 The Applicant employs a hybrid software development methodology drawing attributes from both the Agile and Waterfall software development methodologies. 6-week release cycles allow for efficient functionality roll out to clients, while maintaining a thoroughly tested product prior to production release. The systems development methodology consists of several functional groups as part of the Software Development Life Cycle (SDLC) including Product, Development, Database, Quality Assurance, and Change Management.

- (i) *Product* – The Product team is responsible for interfacing with business owners to interpret business requirements, and deliver technical specifications to the Development team.
- (ii) *Development* – The Development team is responsible for building to specification required functionality relating to business requirements, security features, and capacity/performance enhancements.
- (iii) *Database* – The Database team provides development support for new functionality similar to the Development team, but specifically related to data model and database software development and management.
- (iv) *Quality Assurance* – The Quality Assurance team maintains responsibility for thoroughly testing and vetting software before release to a production environment to ensure minimal bugs are introduced with each release, thus preventing client impact or interruption.
- (v) *Change Management* – The Change Management team independently manages software migration to the production environment from non-production. This ensures a distinct separation of responsibilities between development and software propagation. The Change Management team promotes code to production only upon approval from an independent Change Control Board.

(g) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

Data Backup

9.2.10 Complete and accurate backups are stored in an approved off-site storage facility as part of the disaster recovery plan. An incremental back-up of all database file systems is performed daily and a full backup is performed weekly. This data is retained off-site for an appropriate amount of time (daily, weekly, or monthly), depending on the specific need of the application. This will ensure that there will be the most recent and the previous version available, while that oldest could be in transit.

9.2.11 The recovery system will be up and running at the designated alternate site at all times (hot site loaded and running the mirror image of production), the recovery system will be

transaction updated every ten minutes. Data saved to tape resides in the secure facility managed by a 3rd party vendor.

Business Continuity

9.2.12 The Applicant maintains and frequently reviews its business continuity plan, considering the unavailability of primary employee offices or personnel, but is not limited to the use of Disaster Recovery sites. For non-pandemic scenarios, the strategy is summarized below:

- (i) Remote work via secure Virtual Private Network (VPN) - Remote work limited to email and phone can be accomplished without VPN as described in the document.
- (ii) Personnel at other offices – staff for many tasks such as client support, trade operations, product management, technology, IT support, systems engineering, network engineering, network operations, and human resources are split across multiple offices and can be transferred to the unaffected location in a disaster.
- (iii) Relocation – in the event that the above strategies are not sustainable for the duration of the disaster, staff may be relocated from New York to offices in Atlanta or Chicago.

9.2.13 In the unlikely event that the primary ICE data center becomes unavailable or inaccessible, the Applicant will initiate disaster recovery steps to activate the standby platform from the disaster recovery facility.

9.2.14 Customer access is automatically rerouted to the secondary data center if a changeover occurs, minimizing the need for coordinating with member plans. As applicable, the Applicant will participate in industry-wide tests, such as the annual Futures Industry Association disaster recovery test.

Facilities

9.2.15 The Applicant maintains data centers at two facilities. The primary production data center is in Chicago, Illinois and there is a Disaster Recovery data center in Atlanta, Georgia. Both data centers are staffed from 7am to 7pm local time Monday through Friday. There are Datacenter engineers that report to both facilities for the purpose of supporting all physical and environmental needs. Datacenter access is restricted to a core group of staff.

Recovery Procedures

9.2.16 The Applicant maintains a recovery time objective of between 1-4 hours following an event requiring failover to resume trading, market surveillance, availability of audit trail information and trade practice surveillance.

9.3 **Information Technology Risk Management Procedures – The exchange has appropriate risk management procedures in place including those that handle**

trading errors, trading halts and respond to market disruptions and disorderly trading.

- 9.3.1 The Applicant provides extensive market integrity controls to ensure fair and efficient markets and has implemented a trade error policy to manage potential error trades. For example, the SEF provides volume controls as described in paragraph 3.3.1 above.
- 9.3.2 Chapter 2 of the Applicant's Rulebook and the Applicant's Compliance Manual outline the parameters for the definition, the process for determining and the procedures to be taken in the case of an Emergency. As part of an Emergency, the SEF may take certain Emergency Actions, in accordance with its Rulebook in the interest of the marketplace and participants or at the behest of the CFTC, including, but not limited to: trading halts, the imposition of price or position limits, the imposition or change of intraday market restrictions, the imposition of special margin requirements, orders for liquidation or transfer of open positions, orders fixing settlement prices, changes to trading day hours, changes to contract settlement terms, platform access limitations, or other such actions as directed by the CFTC.
- 9.3.3 The SEF also plans to maintain a messaging policy. The messaging policy would count the number of orders placed on a contract by each Participant and weight the count according to how far from the best bid or best offer the order was at the time of entry. The further from the best bid or offer, the more the price count would be weighted. Participants would be subject to an additional surcharges if their weighted order count exceeds certain specified thresholds.

10. Financial Viability

10.1 Financial Viability – The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

- 10.1.1 The Applicant adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices. A SEF must submit financial statements to the CFTC and maintain adequate financial resources to cover its operating costs for a period of at least one year, calculated on a rolling basis, and the financial resources allocated by a SEF must include unencumbered, liquid financial assets equal to at least six months' operating costs. The Applicant maintains the current minimum capital amounts needed, and will maintain any future minimum capital amounts needed, to meet CFTC requirements. On a quarterly basis, the Applicant assesses its financial resources and provides a financial resources report to the CFTC pursuant to Core Principle 13.

11. Transparency

11.1 Trading Practices - Trading Practices are fair, properly supervised and not contrary to the public interest.

- 11.1.1 The Applicant is obligated to comply with U.S. SEF Regulations. The U.S. SEF Regulations also require that the Applicant implements rules that require compliance with the U.S. SEF Regulations by its Participants. The Applicant's SEF Rules, which address

SEF trading practices, are subject to the standards and requirements outlined by the SEF Core Principles. At a high level, the SEF Core Principles and Applicant's SEF Rules both seek to ensure fair and orderly markets accessible to all eligible Participants. Additionally, as discussed in Section 5 above, the SEF has established and maintains comprehensive trade practice surveillance, market surveillance and real-time market monitoring programs to ensure that trading on the SEF's markets are fair, properly supervised and not contrary to the public interest.

11.2 Orders - Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.2.1 Rules pertaining to order size and limits are set forth in Rule 406 of the SEF Rulebook. As noted in 11.1.1 above, the Applicant's SEF Rules, including Rule 406, are subject to the standards and requirements outlined by the SEF Core Principles, and are subject to periodic review by the Applicant to ensure that the limits are fair, equitable and appropriate for the market. The Applicant submits that its rules for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.3 Transparency – The exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.

11.3.1 Core Principle 9 requires a SEF to make public timely information concerning swaps transactions executed on the SEF. The Applicant's systems transmit market data, including trading data to market participants and market data quote vendors through the FIX protocol. Additionally, the Applicant makes daily volume and price information available for download via its website for all contracts traded on the SEF. Daily reports by asset class can be found at the links below.

Credit: https://www.theice.com/publicdocs/swap_trade/Credit_Daily_Market_Report.xls

Commodities: <https://www.theice.com/marketdata/reports/158>

Further, the SEF reports all transactions subject to reporting under applicable CFTC Regulations as soon as technologically practicable in accordance with Rule 1004 to ICE Trade Vault, LLC, with respect to a cleared swap in a Credit Contract and uncleared swaps in Commodity Contracts, or DTCC Data Repository (U.S.) LLC, with respect to an uncleared swap in a Credit Contract.

12. Compliance, Surveillance and Enforcement

12.1 Jurisdiction - The exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

12.1.1 The Applicant operates a SEF that is regulated by the CFTC. A SEF is a self-regulatory organization under CFTC rules and has certain obligations to monitor Participants'

trading activity on the SEF in accordance with Core Principle 2 of the CFTC Regulations. Additionally, Core Principle 2 requires SEFs to ensure Participants consent to SEF rules and jurisdiction prior to accessing its markets.

12.2 Member and Market Regulation - The exchange or the Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.

12.2.1 Core Principle 2 requires a SEF to collect information, examine members' records, direct supervision of the market, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system. The Applicant has instituted all these controls and has adequate resources available to ensure that controls are properly applied. The Applicant currently maintains a team of 10 compliance resources across the market supervision (5), compliance (2) and market regulation (2), including the chief compliance officer. Staffing levels for compliance and regulatory programs are subject to review by the ROC, which has the power to recommend increasing the resources associated with such functions. All other resources are managed through intercompany outsourcing arrangements which specify the level of services that are required to be delivered as part of the agreement. Core Principle 2 also requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 8 of the Applicant's SEF Rulebook sets out the Applicant's disciplinary rules and Chapter 9 prescribes the Applicant's arbitration procedures. In accordance with Core Principle 15, on an annual basis the Applicant prepares a Chief Compliance Officer Report for the CFTC ("Annual Report") wherein it assesses the quality of its compliance and disciplinary program under the SEF Core Principles. In preparing the Annual Report, the Applicant conducts a comprehensive review of its compliance program, including its investigation process to ensure that investigations were conducted in accordance with the Core Principles and resolved in a timely manner. As part of this review, the Applicant's compliance department meets with staff members involved in the SEF's compliance function, and implements various internal policies, procedures, and staff guidance aimed at ensuring the SEF complies with the Core Principles.

12.3 Availability of Information to Regulators - The exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the Commission, on a timely basis.

12.3.1 Please see response to 16.1 below.

13. Record Keeping

13.1 Record Keeping – The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

- 13.1.1 The Applicant collects a tremendous amount of data on a daily basis related to its regulated activity in compliance with Core Principle 10 – Recordkeeping and Reporting. The Applicant is required to maintain records of all activities relating to its business as a SEF, including data related to order messaging, order execution and pricing. Data is collected from across the SEF, independent of whether the transaction was privately negotiated or matched in the central limit order book. The Applicant maintains a precise and complete data history, referred to as the audit trail, for every order entered and transaction executed across the SEF. Audit trail information for each transaction includes the order instructions, entry time, modification time, execution time, price, quantity, account identifier and parties to the transaction. On a daily basis, files of all electronic order and cleared trade information are archived to non-rewritable media, and copies are stored at multiple locations to ensure redundancy and critical safeguarding of the data. Furthermore, as a safeguard, the CFTC and the Applicant require SEF Participants to maintain all audit trail data for a minimum of 5 years.
- 13.1.2 Audit trail captures all market participant interactions, trade and order details and STP (straight through processing) information. Auditing is accomplished via a combination of database tables and flat log files. The database tables stores a history of all order and trade activities that occurs on the system, as well as updates to reference data tables and all incoming messages from market participants. A simple database query can be used to quickly retrieve this information. The Applicant also maintains a web-based console for auditing to retrieve order and trade information. There is also an operations interface that is available for market surveillance purposes. If a more comprehensive audit report is required, the flat log files can be used to construct a timeline of all inbound and outbound messaging activities, as well as details on the application-level processing and all inter-server communications.

14. Outsourcing

- 14.1 **Outsourcing – Where the exchange has outsourced any of its key services or systems to a service provider, 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.**
- 14.1.1 The Applicant has entered into outsourcing arrangements with Creditex Group, Inc., Intercontinental Exchange, Inc., Creditex UK Limited, ICE Processing International Limited and ICE Markets Limited. The outsourcing arrangements cover the provision of staff, technology (provision of matching engine services, platform development and post-trade processing) and sales, marketing and business management (including finance and accounting, legal, and product management) services, all of which are operated under intercompany agreements. Additionally, the outsourcing arrangements set for terms that allow the SEF to monitor the services provided by each entity to ensure that the SEF meets its regulatory obligations with respect to the outsourced service and that the any services are provided in accordance with industry best practices.

Specifically, Creditex Group, Inc. provides certain services relating to the provision of management, legal, sale and marketing which assists the Applicant in meeting its obligations under Core Principle 15 (“Chief Compliance Officer”). Intercontinental Exchange, Inc. provides services relating to the provision of administration/management,

accounting, tax, corporate record keeping, insurance, payroll, human resources, information technology, legal, treasury/banking, sales and marking which assists the Applicant in meeting its obligations under Core Principle 2 (“Compliance With Rules”), 14 (“System Safeguards”), and 15. Creditex UK Limited provides services relating to the provision of administration/management and sales under Core Principle 2 and 15, and ICE Processing International Limited and ICE Markets Limited provide services related to the provision of sales, marketing and account services under Core Principle 15.

14.1.2 Also, with respect to swap trading, the Applicant has entered into an agreement with ICE Futures U.S., Inc. whereby ICE Futures U.S., Inc. provides disciplinary program, arbitration and financial surveillance services to the Applicant.

14.1.3 With respect to non-key functions, the Applicant may enter into outsourcing arrangements and have appropriate and formal arrangements and processes in place with respect to outsourcing of non-key functions.

15. Fees

15.1 Fees –

(a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

15.1.1 The CFTC requires that a SEF must charge comparable fees for Participants receiving comparable access to, or services from, the SEF. The Applicant complies with this requirement and therefore fees charged by the SEF do not create an unreasonable condition or limit on access by Participants.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

15.1.2 The Applicant’s Participant fees are identical for all persons within a class of Participant on the platform.³ Fee schedules are determined by the Applicant’s management, based on company strategy, competitor fee schedules for equivalent products, and other factors as may be appropriate and relevant to consider at the time. Fee schedules require approval by senior management and compliance and legal prior to submission to the CFTC. All fee schedules require submission to the CFTC prior to implementation.

15.1.3 Under certain circumstances the Applicant may create liquidity provision or other incentive programs. These programs may include a variety of fee incentives in return for the provision of liquidity or similar services. Such programs require submission to the CFTC prior to implementation.

16. Information Sharing and Oversight Arrangements

³ Currently, the Applicant has two classes of Participant on the SEF: Participants are one class and their customers (if applicable) are a second class..

16.1 Information Sharing and Regulatory Cooperation – The exchange has mechanisms in place to enable it to share information and otherwise cooperate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

16.1.1 Rule 211 of the SEF Rulebook – *Information Sharing* authorizes the Applicant to enter into information-sharing arrangements as it determines necessary or advisable to obtain any necessary information, to perform any monitoring of trading or trade processing, to provide information to the CFTC upon request and to carry out such international information-sharing agreements as the CFTC may require. Rule 211 also permits the Applicant to share information with regulatory authorities other than the CFTC, such as the Ontario Securities Commission, “to fulfill its self-regulatory and reporting responsibilities”, and will make information furnished under any such request available in a timely manner.

16.2 Oversight Arrangements – Satisfactory information sharing and oversight agreements exist between the Ontario Securities Commission and the Foreign Regulator.

16.2.1 The CFTC has entered into memorandum of understanding (“MOU”) arrangements for co-operative enforcements with foreign regulatory authorities in numerous jurisdictions. The MOUs typically provide for access to non-public documents and information already in the possession of the regulatory authorities, and often include undertakings to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting regulatory authority. The CFTC and the Commission have entered into two separate MOUs dated July 7, 1992 and March 25, 2014.

17. IOSCO Principles

17.1 IOSCO Principles – To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivatives Markets” (2011).

17.1.1 The Applicant adheres to the standards of IOSCO by virtue of the fact that it must comply with the CEA and CFTC Regulations, which reflect the IOSCO standards. The Applicant is regularly examined by the CFTC and during these examinations the IOSCO standards to which they are subject are taken into account.

PART IV SUBMISSIONS BY THE APPLICANT

1. Submissions Concerning the Exchange Relief

1.1 The swaps that trade on the Applicant’s SEF fall under the definition of “derivative” set out in subsection 1(1) of the Act. The SEF operated by the Applicant falls under the definition of “marketplace” set out in subsection 1(1) of the Act because it brings together buyers and sellers of derivatives and uses established, non-discretionary methods under which orders interact with each other.

- 1.2 An “exchange” is not defined under the Act; however, subsection 3.1(1) of the companion policy to National Instrument 21-101 – *Marketplace Operation* provides that a “marketplace” is considered to be an “exchange” if it, among other things, sets requirements governing the conduct of marketplace participants or disciplines marketplace participants. A SEF is a self-regulatory organization under CFTC rules and has certain obligations to monitor participants' trading activity on the SEF. Because a SEF regulates the conduct of its participants, it is considered by the Commission to be an exchange for purposes of the Act.
- 1.3 Pursuant to OSC Staff Notice 21-702 – *Regulatory Approach for Foreign-Based Stock Exchanges*, the Commission considers an exchange located outside Ontario to be carrying on business as an exchange in Ontario if it provides Ontario Participants with direct access to the exchange. Since the Applicant provides Ontario Participants with direct access to trading derivatives on its SEF, it is considered by the Commission to be “carrying on business as an exchange” in Ontario and therefore must either be recognized or exempt from recognition by the Commission. The Applicant is currently permitted to operate its SEF in Ontario under the Interim Order.
- 1.4 The Applicant satisfies all the criteria for exemption from recognition as an exchange set out by Commission Staff, as described under Part III of this application. Ontario market participants that trade in swaps would benefit from the ability to trade on the Applicant’s SEF, as they would have access to a range of swaps and swap counterparties that otherwise may not be available in Ontario. Stringent CFTC oversight of the Applicant’s SEF as well as the sophisticated information systems, regulations and compliance functions that have been adopted by the Applicant will ensure that Ontario users of the SEF are adequately protected in accordance with international standards set by IOSCO.
- 1.5 Based on the foregoing, we submit that it would not be prejudicial to the public interest to grant the Requested Relief.

PART V OTHER MATTERS

1. Consent to Publication

- 1.1 The Applicant consents to the publication of this application for public comment.

Yours Truly,



Robert Laorno
General Counsel, ICE Swap Trade