

Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 ICE Bonds Securities Corporation (ICE Bonds), formerly Creditex Securities Corporation – Application for Exemptive Relief – Notice of Commission Order

ICE BONDS SECURITIES CORPORATION (ICE BONDS), FORMERLY CREDITEX SECURITIES CORPORATION

APPLICATION FOR EXEMPTIVE RELIEF

NOTICE OF COMMISSION ORDER

On June 19, 2020, the Alberta Securities Commission (**ASC**) issued an order under section 15.1 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), section 12.1 of National Instrument 23-101 *Trading Rules* (**NI 23-101**), and section 10 of National Instrument 23-103 *Electronic Trading and Direct Access to Marketplaces* (**NI 23-103** and, together with NI 21-101 and NI 23-101, the **Marketplace Rules**) exempting ICE Bonds from the application of all provisions of the Marketplace Rules that apply to a person or company carrying on business as an alternative trading system (**ATS**) in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec, and Saskatchewan (**Order**), subject to terms and conditions as set out in the Order.

The Ontario Securities Commission published ICE Bonds' application and draft exemption order for comment on April 8, 2020 on the OSC website at https://www.osc.gov.on.ca/en/Marketplaces_at_foreign_index.htm and at (2020), 43 OSCB 3781. Two comment letters were received from CanDeal.ca Inc. (**CanDeal**). A copy of the comment letters are posted at https://www.osc.gov.on.ca/documents/en/Marketplaces/com_20200424_macintyre.pdf and at https://www.osc.gov.on.ca/documents/en/Marketplaces/com_20200602_macintyre.pdf. We summarize below the main comments and Staff's responses to them. ICE Bonds' response to the comments is included at Appendix A to this Notice. In issuing the Order, no substantive changes were made to the draft order published for comment.

A copy of the Order is published in Chapter 2 of this Bulletin.

Comment	Response
CanDeal comments that CSA Staff Notice 21-328 <i>Regulatory Approach to Foreign Marketplaces Trading Fixed Income Securities</i> (the Notice), outlining the guidance which ICE Bonds relied upon in seeking the exemption from the Marketplace Rules, should have been subject to public consultation.	The CSA notes that the Notice sets out guidance regarding the policy considerations that will be taken into account when the CSA evaluates a request for an exemption from the Marketplace Rules by entities seeking to offer trading in fixed income products to Canadian participants. The Notice provides Staff's interpretation of the Marketplace Rules and is therefore not open to public consultation.
CanDeal comments that the Notice should have addressed the treatment of fixed income products that trade in Canadian dollars.	The CSA is still considering the policy implications of allowing an exemption for the trading of Canadian-dollar, fixed income products. Any such applications for exemptions will be evaluated on a case-by-case basis.
CanDeal comments that ICE Bonds' regulatory regime is not sufficiently like the Canadian regime to be duplicative and warrant granting the exemption.	As a matter of policy, the CSA's mandate is to provide protection to investors from unfair, improper, or fraudulent practices, to foster fair and efficient capital markets and confidence in capital markets, and to contribute to the stability of the financial system and the reduction of systemic risk. Consistent with past practices granting exemptions for foreign derivatives exchanges, swap execution facilities, and multilateral trading facilities, we allow foreign entities to enter the Canadian market under an exemption from the applicable requirements provided we are satisfied that the risks are managed in a manner that is comparable to how they are managed under

	<p>Canadian securities laws. This approach necessitates that the foreign entity is subject to an appropriate and comparable regulatory oversight regime in their home jurisdiction and we have information sharing arrangements in place with the home regulator(s). Furthermore, the Order imposes terms and conditions on the exemption which are aimed at further mitigating these risks.</p>
<p>CanDeal comments that the effect of the exemption sought, if granted, would be to offer a registration exemption to ICE Bonds.</p>	<p>As set out in the Notice, foreign fixed income ATSS may be subject to the registration requirement under applicable Canadian securities laws as a result of engaging in the business of trading. An exemption from the Marketplace Rules does not provide relief from the registration requirement. Foreign fixed income ATSS are encouraged to work with counsel to consider the registration requirement and available exemptions when deciding how to operate in Canada.</p>

APPENDIX A

ICE Bonds' Summary of Comments and Responses

Comment	Response
<p>CanDeal comments that because of ICE Bonds' relatively small market share in relation to the securities it trades, it is not subject to the same level of regulation that an ATS would be subject to under NI 21-101.</p>	<p>ICE Bonds is subject to a comprehensive regulatory regime in the United States as an ATS and as a broker-dealer registered with the Securities and Exchange Commission (SEC). For its securities business, ICE Bonds is regulated by the SEC, the Financial Industry Regulatory Association (FINRA) and the Municipal Securities Regulatory Board. For its futures business, ICE Bonds is regulated by the Commodity Futures Trading Commission and the National Futures Association. In complying with the rules and standards of practice of all such regulatory bodies, particularly FINRA rules and the TRACE reporting requirements for transactions in fixed income securities, ICE Bonds is subject to regulation that is substantially similar in outcome to regulation under the Marketplace Rules. In addition, ICE Bonds is also subject to terms and conditions to the Order, including access and systems reporting requirements.</p>
<p>CanDeal comments that quality of governance, including conflicts of interest, is insufficiently detailed in ICE Bonds' application.</p>	<p>We note that the governance requirements applicable to ATSs in the Marketplace Rules are quite limited. That said, ICE Bonds' directors and officers are duly appointed in the manner provided in ICE Bonds' By-laws and are subject to the fiduciary duties and obligations imposed under Delaware law. Additionally, ICE Bonds' directors are FINRA registered principals of the firm. There is no overlap of principals between ICE Bonds and its parent company. Lastly, as set out in Part II, section 2 of the application, ICE Bonds' conflict of interest policies are publically available at the hyperlink provided therein.</p>
<p>CanDeal comments that the method of setting fees for the ATSs is insufficiently detailed in ICE Bonds' application.</p>	<p>ICE Bonds' description of fees is set out in Part II, section 11 of the application. Further, ICE Bonds is subject to FINRA rules, standards and guidance governing fair pricing which require that ICE Bonds implement its fees in a manner that is fair and reasonable. Further, ICE Bonds' standard fee schedule is provided to participants at the time of onboarding and ICE Bonds is required to provide any changes to its fee schedules to the SEC and FINRA quarterly and upon a material change to the operation of its ATSs.</p>