

13.1.2 Notice and Request for Comment – ICE Futures’ Application for Exemption from Recognition and Registration as an Exchange

A. Background

ICE Futures has applied to the Commission for an exemption from the requirement to be registered as an exchange pursuant to section 15 of the *Commodity Futures Act (Ontario)*(CFA) and the requirement to be recognized as an exchange pursuant to section 21 of the *Securities Act (Ontario)*(OSA).

ICE Futures is a private company governed by the laws of the United Kingdom (U.K.) and is a Recognized Investment Exchange (RIE) subject to supervision by the U.K. Financial Services Authority (FSA). As an RIE, ICE Futures offers electronic trading of a variety of energy commodity derivatives contracts including commodity futures contracts and futures contract options (collectively, ICE Futures Contracts). ICE Futures proposes to offer direct electronic access to trading in ICE Futures Contracts to market participants in Ontario.

As ICE Futures will be carrying on business in Ontario, it is required to be recognized as an exchange under the OSA and registered as an exchange under the CFA or apply for exemptions from both requirements. ICE Futures has applied for an exemption from the registration and recognition requirements on the basis that it is already subject to regulatory oversight by the FSA.

In assessing ICE Futures’ application, staff followed the process set out in OSC Staff Notice 21-702 *Regulatory Approach for Foreign-Based Stock Exchanges* (Staff Notice 21-702). As discussed in that notice, a similar approach is applicable to commodity futures exchanges as well.

Staff are aware of the current debate in the U.S., where the Commodity Futures Trading Commission is looking at what constitutes a U.S. versus foreign futures exchange. We are following these issues but do not expect them to impact upon our current practices, as we do not differentiate between domestic and foreign futures exchanges to the extent the CFTC does. A foreign exchange applying for exemptive relief is required to demonstrate how it meets the same criteria that any domestic exchange applying for recognition or an exemption from recognition has to meet. If appropriate in the circumstances, Staff will then recommend an exemption be granted on the basis of reliance on the foreign regulator, as is also the case with domestic exchanges regulated by other Canadian securities regulatory authorities.

B. Related Relief

ICE Futures expects that most Ontario market participants that will be interested in trading on ICE Futures will be engaged in the business of trading commodity futures in Ontario and will, therefore, be registered as Futures Commission Merchants (FCMs) under section 22 of the CFA. However, ICE Futures also seeks to provide trading access to other participants, including utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity. Therefore, ICE Futures is requesting exemptive relief from the registration requirements under section 22 of the CFA for trades in ICE Futures Contracts by “hedgers” (as defined in section 1 of the CFA).

ICE Futures is also seeking relief from the requirements in section 33 of the CFA for trades in contracts on ICE Futures by FCMs, because by virtue of being an exempted exchange, ICE Futures would not be registered or recognized and its contracts would not be approved by the Director, and therefore trading by FCMs would be prohibited without a further exemption.

C. Draft recognition order

In the application, ICE Futures has demonstrated how it meets each of the criteria for exemption from recognition and from registration. Subject to comments received, Staff will recommend that the Commission grant an exemption order with terms and conditions based on the proposed draft order attached.

The draft exemption order requires that ICE Futures notify the staff of the Commission of any material changes to the facts in its application and establishes terms and conditions in the following areas:

1. Regulation of ICE Futures
2. Access
3. Non-Registrants
4. Submission to Jurisdiction and Agent for Service
5. Disclosure

6. Filing Requirements
 7. Financial Viability
 8. Information Sharing
- D. Comment process**

The Commission is publishing for comment the application of ICE Futures and the proposed draft exemption order. We are seeking comment on all aspects of ICE Futures' application for an exemption, as well as the draft exemption order.

You are asked to provide your comments in writing and delivered on or before **August 21, 2006** addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8.

We request that you submit a diskette containing an electronic copy of your submission. The confidentiality of submissions cannot be maintained as a summary of written comments received during the comment period will be published.

Questions may be referred to:

Barbara Fydell
Senior Legal Counsel, Market Regulation
(416) 593-8253
email: bfydell@osc.gov.on.ca

Cindy Petlock
Manager, Market Regulation
(416) 593-2351
email: cpetlock@osc.gov.on.ca

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8
416.362.2111 MAIN
416.862.6666 FACSIMILE

Jacob Sadikman
Direct Dial: 416.862-4931
jsadikman@osler.com
Our Matter Number: 1039305

July 5, 2006

Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, ON M5H 3S8

Attention: Barbara Fydell, Senior Legal Counsel, Market Regulation

Dear Sirs and Mesdames:

ICE Futures – Application for Exemption from Recognition as a Stock Exchange and Registration as a Commodity Futures Exchange

We are acting as counsel to and are filing this application with the Ontario Securities Commission (the “OSC”) on behalf of ICE Futures for the following decisions (collectively, the “Requested Relief”):

- (a) a decision under Section 147 of the *Securities Act* (Ontario) (the “OSA”) exempting ICE Futures from the requirement to be recognized as a stock exchange under Section 21 of the OSA;
- (b) a decision under Section 80 of the *Commodity Futures Act* (Ontario) (the “CFA”) exempting ICE Futures from the requirement to be registered as a commodity futures exchange under Section 15 the CFA;
- (c) a decision under Section 38 of the CFA exempting trades in contracts on ICE Futures by registered futures commission merchants (“FCMs”) from the requirement under Section 33 of the CFA, which prohibits trading in all contracts (other than by hedgers) except contracts that are (a) traded on a registered or recognized commodity futures exchange, (b) qualified by prospectus under the OSA or (c) traded on an exchange situate outside of Ontario as a result of an unsolicited order placed by a dealer that does not carry on business in Ontario; and
- (d) a decision under Section 38 of the CFA exempting trades in contracts on ICE Futures by “hedgers” (as defined in Section 1 of the CFA) from the registration requirement under Section 22 of the CFA (the “Hedger Relief”).

The OSA, CFA and all regulations, rules, policies and notices of the OSC made thereunder are collectively referred to as the “Legislation”.

Approval Criteria

OSC Staff has prescribed criteria that it will apply when considering applications by foreign-based commodity futures exchanges for registration (or exemption from registration) under Section 15 of the CFA. These criteria are similar to those prescribed in OSC Staff Notice 21-702 *Regulatory Approach for Foreign Based Stock Exchanges* (“Staff Notice 21-702”) in relation to applications for recognition (or exemption from recognition) by foreign stock exchanges under Section 21 of the OSA. For convenience, this Application is divided into the following Parts, Part II of which describes how ICE Futures satisfies OSC Staff’s criteria for registration (or exemption from registration) of foreign-based commodity futures exchanges.

Part I Background

Part II Application of Approval Criteria to ICE Futures

1. Regulation and Oversight
2. Corporate Governance
3. Fees
4. Regulation of Products
5. Access
6. Rulemaking
7. Systems And Technology
8. Financial Viability
9. Clearing And Settlement
10. Trading Practices
11. Compliance, Surveillance and Enforcement
12. Information Sharing and Oversight Arrangements
13. IOSCO Principles

Part III Submissions

Part IV Other Matters

Background

1. ICE Futures is a private company governed by the laws of the United Kingdom and is a Recognised Investment Exchange ("RIE") subject to supervision by the U.K. Financial Services Authority (the "FSA") pursuant to the U.K.'s *Financial Services and Markets Act 2000* ("FSMA"). ICE Futures is an indirect, wholly-owned subsidiary of IntercontinentalExchange, Inc ("ICE, Inc."), a public company governed by the laws of the State of Delaware and listed on the New York Stock Exchange. ICE Inc. and its affiliates are collectively referred to as the "ICE Group".
2. As a Recognised Investment Exchange, ICE Futures offers a variety of energy commodity derivatives contracts including commodity futures contracts and futures contract options (collectively, "ICE Futures Contracts") which are traded electronically on a platform (known as the "ICE Platform") owned and operated by ICE, Inc.. Currently, ICE Futures offers three categories of ICE Futures Contract: (i) oil contracts (ICE Futures Brent Crude Futures and Options Contracts, ICE Futures Gasoil Futures and Options Contracts, ICE Futures New York Harbour Heating Oil Futures Contract, ICE Futures New York Harbour Unleaded Gasoline Blendstock (RBOB) Futures Contract and ICE Futures West Texas Intermediate Light Sweet Crude Oil Futures Contract), (ii) utility contracts (ICE Futures UK Natural Gas Futures Contract, ICE Futures UK Base Electricity Futures Contract and ICE Futures UK Peak Electricity Futures Contract) and (iii) emissions contracts (ICE Futures ECX CFI Futures Contract).
3. In addition to being a RIE in the United Kingdom, ICE Futures has secured relevant regulatory approvals or statements of non-objection, or has satisfied itself that it does not require regulatory approvals, to allow direct access to the ICE Platform from Australia, Austria, Belgium, Bermuda, Canada (Provinces of Alberta and British Columbia), Cayman Islands, Cyprus, the Czech Republic, Denmark, the Dubai International Financial Centre, Estonia, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, India, Ireland, Israel, Japan, Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovenia, Singapore, South Africa, Spain, Sweden, Switzerland, the United Arab Emirates and the United States. No jurisdiction has denied a request by ICE Futures for an approval or a statement of non-objection of this type.
4. As noted in paragraph 4, ICE Futures received regulatory approval from the British Columbia Securities Commission dated May 4, 2005 and from the Alberta Securities Commission dated February 3, 2006 to permit it to offer direct

electronic access to trading in ICE Futures Contracts through the ICE Platform to market participants in those jurisdictions.

5. ICE Futures proposes to offer direct electronic access to trading in ICE Futures Contracts through the ICE Platform to market participants in Ontario, either by way of membership in ICE Futures or through order-routing arrangements. ICE Futures expects that its potential members and order-routing clients in Ontario will be (i) dealers that are engaged in the business of trading commodity futures in Ontario and (ii) utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity. By offering ICE Futures membership and providing direct trading access to market participants in Ontario, ICE Futures may be carrying on business in Ontario as a stock exchange for the purposes of Section 21 of the OSA and as a commodity futures exchange for the purposes of Section 15 of the CFA.

Application of Approval Criteria to ICE Futures

1. REGULATION AND OVERSIGHT

1.1 Regulation of the Exchange – The Exchange is regulated in an appropriate manner in another jurisdiction by a Foreign Regulator. The regulatory scheme of the Foreign Regulator is transparent and generally comparable to that in Ontario.

- 1.1.1 ICE Futures is recognized by Her Majesty's Treasury ("HM Treasury"), on the recommendation of the FSA, as a Recognised Investment Exchange under the FSMA. ICE Futures has never been declared to be in breach of its regulatory responsibilities by the FSA.

1.2 Authority of the Foreign Regulator – The Foreign Regulator has the appropriate authority and procedures for oversight of the Exchange. This oversight includes regular, periodic regulatory examinations of the Exchange by the Foreign Regulator.

- 1.2.1 Part XVIII of the FSMA prescribes legislation for the U.K. relating to investment exchanges and clearing houses (collectively, "Recognised Bodies" or "RBs"). Section 286(1) of the FSMA empowers HM Treasury to make regulations setting out the requirements to be satisfied by an investment exchange in order to be recognized as a Recognised Investment Exchange, by a clearing house in order to be recognized as a Recognised Clearing House ("RCH") as well as ongoing compliance requirements for Recognised Bodies in *The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001* (the "Recognition Requirements"). The FSA administers and makes recommendations to HM Treasury regarding the recognition of Recognised Bodies that satisfy the Recognition Requirements.

- 1.2.2 Section 296 of the FSMA empowers the FSA to enforce the ongoing compliance requirements set out in the Recognition Requirements to ensure that Recognised Bodies continue to satisfy the Recognition Requirements. The FSA discharges this responsibility on behalf of HM Treasury by conducting ongoing assessment of ICE Futures' regulations (the "ICE Futures Regulations"), procedures and practices to confirm that they meet the Recognition Requirements in relation to financial resources, fitness and properness, systems and controls, the maintenance of an orderly market, investor protection, rule-making and other matters. The FSA's approach to the supervision of Recognised Bodies is outlined in the FSA's *Sourcebook for RIEs and RCHs* (the "REC Sourcebook").

- 1.2.3 The REC Sourcebook reflects standards set by the International Organisation of Securities Commissions ("IOSCO"), such as "Objective and Principles of Securities Regulation" (1998 and 2002) and "Report on Co-operation between Market Authorities and Default Procedures" as well as the "Standards for Regulated Markets" published by the Forum of European Securities Commissions in December 1999.

2. CORPORATE GOVERNANCE

2.1 Fair Representation – The governance structure of the Exchange provides for:

- i appropriate, fair and meaningful representation on its Board and any committee thereof; and**
- ii appropriate representation by independent directors on the Board and any committee thereof.**

- 2.1.1 The Articles of Association of ICE Futures provide that the number of directors on the Board of Directors of ICE Futures (the "Board") shall be not less than two and not more than 16, including at least two and not more than five independent directors. The Board currently comprises seven directors, four of whom, including the Chairman, are considered independent by the FSA. The President and Chief Operating Officer is the only ICE Futures executive officer on the Board. The Board delegates certain functions to sub-committees, comprised of independent directors for

example the Risk and Audit Committee (the "RAC") and comprised of independent directors and representatives of members of ICE Futures ("ICE Futures Members") for example the Authorization, Rules and Conduct Committee (the "ARC").

2.1.2 The ARC is chaired by an independent director and is comprised of approximately 12 representatives from a cross-section of ICE Futures Members. The ARC is responsible for approving all new ICE Futures Members, conducting disciplinary investigations and hearings, imposing sanctions and supervising ICE Futures' regulatory and compliance functions.

2.1.3 In order to maintain its status as a Recognised Investment Exchange, ICE Futures must continue to satisfy the Recognition Requirement to be a "fit and proper person". The FSA monitors ICE Futures on an ongoing basis to confirm compliance with this requirement by reviewing ICE Futures' constitution documents, the effectiveness of its Board in overseeing regulatory functions, avenues of communication between the compliance department of ICE Futures ("ICE Futures Compliance") and the Board, Board size, composition and the proportion of independent directors, distribution of responsibilities among Board committees and the independence of the regulatory department from the commercial business of ICE Futures.

2.2 Appropriate Provisions for Directors and Officers – There are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors and officers.

2.2.1 The directors of ICE Futures are selected by a Nominations Committee chaired by an independent director. The executive officers of ICE Futures are appointed by the Board.

2.2.2 The remuneration of directors and officers of ICE Futures is reviewed on an annual basis by the Compensation Committee of ICE, Inc., which is comprised entirely of directors that are independent of ICE, Inc. and ICE Futures.

2.2.3 The ICE Group's global insurance program provides professional indemnity and directors and officers coverage to all directors and executive officers of ICE Futures. The RAC reviews the potential exposure of ICE Futures' directors to claims on a quarterly basis to ensure that indemnity limits are adequate and appropriate. The Chair of the RAC elevates any concerns identified relating to the level of coverage to the Audit Committee of ICE, Inc., the meetings of which he attends. ICE Futures and ICE, Inc. hold quarterly insurance review meetings during which such issues are discussed with the ICE Group's insurance brokers.

2.3 Fitness – The Exchange takes reasonable steps to ensure that each officer and director 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.

2.3.1 Nominees to the Board of ICE Futures are scrutinized by the Nominations Committee to ensure that all directors have adequate levels of competence and integrity so that ICE Futures will continue to be a "fit and proper person" in accordance with the Recognition Requirements. The Nominations Committee conducts a due diligence investigation of each candidate's past conduct, including, with respect to former employees of ICE Futures Members, a review of any disciplinary history under ICE Futures Regulations.

2.3.2 All employees and officers of ICE Futures are subject to detailed pre-employment screening which is conducted by an external, independent agency and includes, *inter alia*, credit review, verification of academic qualifications and employment history and a review of the information supplied in support of the individual's application (including references). In addition, senior management appointees are subject to further checks on their professional memberships, qualifications and directorships and, where appropriate, checks of any criminal records.

2.3.3 The ICE Futures Articles of Association provide for the automatic dismissal of any director that is, or is employed by an ICE Futures Member that is, found guilty of a serious disciplinary offence under ICE Futures Regulations or the rules of any other regulatory body, disqualified for serving as a director or found guilty of any criminal offence that adversely affects such director's ability to act in a "fit and proper" manner as a director.

2.4 Conflicts of Interest – The Exchange has appropriate conflict of interest provisions for all directors, officers and employees.

2.4.1 As a Recognised Investment Exchange, ICE Futures complies with the FSA's guidance on the management of conflicts of interest set out in REC 2.5.10 of the REC Sourcebook. Factors subject to the FSA's scrutiny include the size and composition of the Board and relevant committees; responsibilities of key individuals, especially where they also have responsibilities in other organizations; arrangements for transferring decisions or responsibilities to alternates; and arrangements to exclude individuals with a permanent conflict of interest from the process of making regulatory decisions about matters in which the conflict of interest would be relevant.

2.4.2 ICE Futures has appropriate procedures for ensuring that its directors, officers and employees comply with its conflicts of interest and confidentiality policies. For example, in cases where an ICE Futures Member is subject to disciplinary action, any employee of such ICE Futures Member that sits on the ARC must declare his or her conflict of interest and withdraw from the process.

2.4.3 A strict information barrier is maintained between ICE Futures Compliance and its commercial and administrative operations.

3. FEES

3.1 The Exchange's process for setting fees is fair, transparent and appropriate. Any and all fees imposed by the Exchange on its participants are equitably allocated, do not have the effect of creating barriers to access and are balanced with the criteria that the Exchange has sufficient revenues to satisfy its responsibilities.

3.1.1 All changes in fee levels (including incentive schemes or market-making arrangements) are approved by the ICE Futures Board. Fees are applied equally across all ICE Futures Members trading the relevant ICE Futures Contract. All proposed changes to fees and incentives are communicated in advance by a circular distributed to all ICE Futures Members and to the FSA (a "Circular"), as required under REC 3.9.2.R of the REC Sourcebook. A full list of transaction charges, subscriptions, entrance fees and other relevant charges is located on ICE Futures website at www.theice.com.

4. REGULATION OF PRODUCTS

4.1 Approval of Products – The products traded on the Exchange are approved by the appropriate authority.

4.1.1 Prior to listing any new ICE Futures Contract, ICE Futures conducts a substantial market review to confirm that there will be a "proper market" for the product, as required under Sections 4(2)(b) and 4(2)(c) of the Recognition Requirements. ICE Futures' evaluation of proposed new contracts is informed by guidelines set out in REC 2.12 of the REC Sourcebook as well as the "Guidance on standards of best practice for the design and/or review of commodity contracts" given in the Tokyo Communiqué on Supervision of Commodity Futures Markets.

4.1.2 ICE Futures distributes a Circular to all ICE Futures Members and the FSA regarding any proposed new contract, as required under REC 2.14 of the REC Sourcebook. After completing a consultation process with ICE Futures Members, industry specialists and other interested parties, each new contract must be approved by the Board prior to being admitted to trading on ICE Futures. Any changes to ICE Futures Regulations as a result of a new ICE Futures Contract are also subject to a Member consultation process and must be approved by the ARC.

4.2 Product Specifications – The terms and conditions of trading the products are in conformity with normal commercial business practices for the trade in the product.

4.2.1 Extensive market consultation and Board approval processes to which all ICE Futures Contracts are subject ensures that the terms and conditions of ICE Futures Contracts are in conformity with normal business practices for trades in such products, that they meet the needs of the relevant commodity sector and have widely acceptable specifications.

4.3 Risks Associated with Trading Products – The Exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the Exchange, including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.

4.3.1 All ICE Futures Contracts are cleared and settled by LCH.Clearnet Limited ("LCH.Clearnet"), which is recognized by HM Treasury, on the recommendation of the FSA, as a Recognised Clearing House under Part XVIII of the FSMA. LCH.Clearnet acts as counterparty and guarantor to each transaction executed on ICE Futures. ICE Futures therefore cooperates with LCH.Clearnet when developing new ICE Futures Contracts to ensure that all potential risks have been thoroughly evaluated and can be managed. LCH.Clearnet sets margin requirements for and makes margin calls of ICE Futures Members that are also members of LCH.Clearnet ("ICE Futures Clearing Members").

4.3.2 ICE Futures Members must have risk management procedures in place that comply with ICE Futures' ETS Trading Procedures (the "Trading Procedures"), which form part of the ICE Futures Regulations, including procedures that confirm qualification to trade, control access to the ICE Platform, impose reasonability limits, govern trading conduct, provide for error correction and address emergencies. ICE Futures Clearing Members are required to set trading, price and position limits for those ICE Futures Members that have entered into clearing arrangements with them ("ICE Futures Non-Clearing Members") using specific web-based clearing support functionalities. ICE Futures Members have access to user guides and Circulars published by ICE Futures to assist them in using these risk management tools.

4.3.3 Both ICE Futures and LCH.Clearnet prescribe default rules applicable to ICE Futures Members that set out the circumstances under which an ICE Futures Member may be declared in default and the actions that may be taken in the event of default. LCH.Clearnet rules take precedence in relation to ICE Futures Contracts to which LCH.Clearnet is a party in the event of a default.

5. ACCESS

5.1 **Fair Access – The requirements of the Exchange relating to access to the facilities of the Exchange, the imposition of limitations or conditions on access and denial of access are approved by the Foreign Regulator and are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of records, the giving of reasons and the provisions for appeals.**

5.1.1 As a Recognised Investment Exchange, ICE Futures is required under REC 2.7 to ensure that access to ICE Futures is subject to criteria designed to protect the orderly functioning of its market and the interests of investors. In assessing whether ICE Futures' access criteria satisfy these requirements, the FSA evaluates, among other things, whether its membership criteria are objective and applied in an objective and non-discriminatory manner. ICE Futures has developed a rigorous membership approval process supervised by the ARC, the details of which are outlined in Section 5.2 below. This process is designed to ensure that all ICE Futures Members are appropriately identified, are qualified to trade in commodity futures in their jurisdiction, have adequate financial resources and have exhibited proper conduct in other capital markets activities.

5.1.2 Any applicant that is denied membership to ICE Futures and any ICE Futures Member whose membership or access to the ICE Platform is suspended is entitled to an explanation/reasons for the decision, the opportunity to make representations and to appeal the decision. The ARC maintains records of its membership application reviews and any resulting hearings or appeals.

5.2 Details of Access Criteria – In particular, the Exchange

- i. **has written standards for granting access to trading on its facilities to ensure users have appropriate integrity and fitness;**
- ii. **has and enforces financial integrity standards for those persons who enter orders for execution on the system, including, but not limited to, credit or position limits and clearing membership;**
- iii. **does not unreasonably prohibit or limit access by a person or company to services offered by it;**
- iv. **keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access; and**
- v. **restricts access to adequately trained system users who have demonstrated competence in the functions that they perform.**

ICE Futures Membership

5.2.1 ICE Futures has developed rigorous membership criteria that must be complied with by all applicants before their applications are considered by the ARC. Specifically, Rule BB.3.1 of the ICE Futures Regulations provides that each applicant for ICE Futures membership must: (a) satisfy ICE Futures that it is fit and proper; (b) maintain a properly established office for the conduct of its business on the ICE Futures; (c) provide details of the locations of all "Responsible Individuals" (described in Section 5.2.5) and ensure that such details remain current throughout the period of membership; (d) be able to demonstrate, to the satisfaction of ICE Futures, that it has adequate systems and controls in place to ensure that all employees, agents and representatives who may act on its behalf or in its name in the conduct of business on ICE Futures are fit and proper with suitable qualifications and experience and adequately trained and properly supervised to perform such functions; (e) be a clearing member of LCH.Clearnet or be a party to a clearing agreement with an ICE Futures Clearing Member; (f) be a party to an Electronic User Agreement which is in full force and effect; (g) be authorized or otherwise exempt, licensed or permitted by the appropriate regulatory body to trade on ICE Futures; (h) hold all necessary licences, authorizations and consents, or benefit from available exemptions, so as to allow it to carry on business as an ICE Futures Member in accordance with all applicable laws and regulations; (i) satisfy ICE Futures that it has suitable financial standing by providing copies of the last 3 years' (and thereafter the latest) audited financial statements or such evidence as the Board may require; and (j) provide any further information, and satisfy any further requirements, that ICE Futures may require.

5.2.2 ICE Futures applies its membership criteria by subjecting each applicant to an intensive due diligence process, including review of constituent documentation and financial statements, verification of regulatory authorization in the

applicant's home jurisdiction, verification of membership with a trade or industry association in the applicant's home jurisdiction (where applicable), confirmation that all Responsible Individuals have appropriate qualifications in place (including any registration or licensing requirements for trading in commodity futures), verification of credit ratings (where applicable), conducting searches of relevant international and domestic financial services information databases and conducting other know-your-client and anti-fraud procedures. Where appropriate, a third party agency may be commissioned to prepare a company report regarding an applicant. Once the due diligence review is complete, each prospective member must be approved by the ARC.

- 5.2.3 All ICE Futures Members must be clearing members of LCH.Clearnet ("LCH.Clearnet Members") or have entered into clearing arrangements with an ICE Futures Clearing Member. LCH.Clearnet Members are subject to minimum capital requirements (currently net assets of £5 million) and other financial resource requirements. ICE Futures seeks confirmation from LCH.Clearnet on a quarterly basis regarding the compliance by ICE Futures Clearing Members with these requirements.
- 5.2.4 ICE Futures Regulations prescribe rules for ICE Futures Members, including requirements to register one or more "Responsible Individuals" that are responsible for all business conducted through their assigned trader mnemonic and to enter into a prescribed form of User Agreement that prohibits users from tampering with the system interface. ICE Futures Members may require Responsible Individuals to complete an online tutorial and examination to ensure that they have been adequately trained in the use of the ICE Platform.
- 5.2.5 ICE Futures Regulations include specific rules relating to international ICE Futures Members and applicants, including requirements to disclose on request the locations of all screens, access points and order-routing arrangements and to ensure that the ICE Platform is only accessed from jurisdictions that have granted approval or provided a statement of non-objection, or relating to which ICE Futures has obtained a legal opinion, with respect to the trading of ICE Futures Contracts in that jurisdiction.

Order-routing Access

- 5.2.6 Rather than seeking ICE Futures Membership, a market participant may choose to access trading on ICE Futures by becoming an order-routing client of an existing ICE Futures Member. Under this approach, clients' orders are routed to ICE Futures via the trader mnemonic of a Responsible Individual registered with the ICE Futures Member. The ICE Futures Member takes responsibility for such trades and accepts all contingent liabilities for those orders when routed onto the ICE Platform. The ICE Futures Member must conduct its own due diligence of prospective order-routing clients to ensure that they satisfy relevant regulatory, financial resource, risk and anti-money laundering standards.
- 5.2.7 Rule B.11.3 of the ICE Futures Regulations provides that ICE Futures Members are responsible for all acts and conduct on the ICE Platform of each Responsible Individual registered to it and any person acting through such Responsible Individual (including order-routing clients). Rule B.11.2 prohibits ICE Futures Members from routing orders to ICE Futures in or from a jurisdiction where ICE Futures does not have the relevant regulatory status (if required) if to do so would bring ICE Futures into disrepute with the regulatory authority within such jurisdiction or put ICE Futures into breach of any regulatory obligations to which it might be subject within that jurisdiction. ICE Futures provides specific guidance to ICE Futures Members regarding the regulatory requirements of each jurisdiction in which ICE Futures is authorized to carry on business.
- 5.2.8 In Circular 04/05, ICE Futures outlined an ICE Futures Member's obligations under the ICE Future Regulations when providing order-routing access in an overseas jurisdiction, including restrictions on the types of firms that can trade directly over the ICE Platform, the requirement to periodically report trading statistics originating from that jurisdiction and, if applicable, the obligation to notify the relevant regulatory authority of the location of screens and the date of installation in that jurisdiction. Circular 04/05 states that ICE Futures expects ICE Futures Members to assume all responsibility for keeping themselves fully apprised of all regulations, rules, requirements, policies and laws applicable in overseas jurisdictions when facilitating direct access to ICE Futures for clients based in such jurisdictions. Further, in Circular 04/29, ICE Futures reminded ICE Futures Members of their systems and controls obligations in relation to offering order-routing access to ICE Futures for their clients.
- 5.3 **Access for Ontario Persons – The Exchange provides direct access, either through terminals, data feeds or third party provided interfaces, to only those Ontario persons that are duly registered or licensed under Ontario laws.**
 - 5.3.1 Ontario market participants seeking access to trade ICE Futures Contracts would have to apply for ICE Futures Membership or enter into an order-routing arrangement with an ICE Futures Member. As described in Section 5.2.1 above, any Ontario applicant for ICE Futures Membership would be required to confirm to ICE Futures that it is registered or exempt from registration to trade in commodity futures in Ontario in accordance with Rule B.3.1 of the ICE Futures Regulations.

- 5.3.2 ICE Futures Members that provide order-routing access to customers will be responsible for ensuring that all Ontario market participants to which they grant access are registered or exempt from registration to trade in commodity futures in Ontario. As described in Section 5.2.7 above, Rule B.11.2 of the ICE Futures Regulations and various Circulars prescribe rules and guidelines for ICE Futures Members that seek to provide order-routing access to customers, including limitations on the types of information systems that may be used to offer such order-routing access.
- 5.3.3 ICE Futures will ensure that the guidance that it provides to ICE Futures Members respecting its regulatory approval in Ontario (the "Ontario Circular") indicates that an ICE Futures Member is permitted to grant access to ICE Futures to a client in Ontario provided that (i) the client is a registered FCM under the CFA, (ii) the ICE Futures Member is a registered FCM under the CFA or (iii) the ICE Futures Member is regulated as a dealer in its home jurisdiction and the client is a hedger (as defined in the CFA) or is able to rely on another exemption from registration under the CFA.
- 5.3.4 ICE Futures expects that most Ontario market participants seeking ICE Futures membership will apply to become ICE Futures Non-Clearing Members due to the capital and other requirements imposed on applicants for membership of LCH.Clearnet, as described in Section 9.4 below. However, Ontario market participants that satisfy the LCH.Clearnet's membership requirements would be permitted to become ICE Futures Clearing Members.
- 5.3.5 ICE Futures expects that most Ontario market participants that will be interested in trading on ICE Futures will be engaged in the business of trading commodity futures in Ontario and will, therefore, be registered as FCMs under Section 22 of the CFA. However, ICE Futures also seeks to provide trading access to utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity. Therefore, ICE Futures has requested exemptive relief from the registration requirement under Section 22 of the CFA for trades in ICE Futures Contracts by "hedgers" (as defined in Section 1 of the CFA). Submissions in support of our request for the Hedger Relief are set out under "Submissions" below.

6. RULEMAKING

6.1 Purpose of Rules – The Exchange maintains rules, policies and other similar instruments as are necessary or appropriate to govern and regulate all aspects of its business and affairs and that such rules are designed to, in particular,

- i. ensure compliance with the rules of the Exchange and securities legislation;**
- ii. prevent fraudulent and manipulative acts and practices;**
- iii. promote just and equitable principles of trade;**
- iv. foster cooperation and coordination 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 for appropriate discipline;**
- vi. ensure a fair and orderly market; and**
- vii. ensure that the Exchange business is conducted in a manner so as to afford protection to investors.**

- 6.1.1 All trading in ICE Futures Contracts is conducted in accordance with ICE Futures Regulations (including the Trading Procedures) and the rules of LCH.Clearnet. ICE Futures Regulations are applicable to ICE Futures Members without regard to jurisdictional boundaries as such obligations arise by virtue of the contractual relationship between ICE Futures and its members. ICE Futures Regulations contain substantive provisions relating to membership requirements, training and competence, risk management, trading procedures, reporting and business conduct standards, procedural provisions relating to discipline, arbitration, the default of ICE Futures Members and other provisions. ICE Futures Members are required to act in accordance with the spirit as well as the letter of ICE Futures Regulations.
- 6.1.2 ICE Futures Regulations are designed to enable ICE Futures to fulfil the Recognition Requirements, most notably the requirement to provide a fair and orderly market that is operated with due regard to investor protection. ICE Futures Regulations also impose the FSA's high-level "Statements of Principle" and other regulatory guidance issued by the FSA relevant to ICE Futures business.
- 6.1.3 ICE Futures Members and their Responsible Individuals are subject to disciplinary action in the event of failure to comply with ICE Futures Regulations. Disciplinary action may result in suspension, expulsion or unlimited fines. ICE

Futures Members are accountable for the actions of their Responsible Individuals. Firms that cease to be ICE Futures Members and Responsible Individuals who are de-registered remain subject to ICE Futures' disciplinary jurisdiction for a period of one year after the deregistration becomes effective or for as long as disciplinary proceedings continue.

6.2 No Discrimination or Burden on Competition – The rules of the Exchange do not

- i. permit unreasonable discrimination among issuers and participants; or**
- ii. impose any burden on competition that is not reasonably necessary or appropriate.**

6.2.1 ICE Futures Regulations apply equally to all ICE Futures Members. They differ for ICE Futures Clearing Members and ICE Futures Non-Clearing Members *only* in relation to membership criteria (largely driven by financial resource requirements and clearing arrangements). The U.K. Office of Fair Trading has reviewed the ICE Futures Regulations to ensure that these regulations do not create any barriers to competition.

6.2.2 The ARC is responsible for reviewing the ICE Futures Regulations to ensure they are compliant with ICE Futures' legal and regulatory obligations, including the Recognition Requirements, the REC Sourcebook, other FSA rules and policies and applicable international law such as the European Convention on Human Rights. The ARC is comprised of representatives from a cross-section of ICE Futures Members. This structure ensures that all constituents in ICE Futures' trading community are represented in order to benefit from the widest possible range of expertise and also to avoid discrimination or any burden on competition when considering an applicant for ICE Futures Membership. The ICE Futures Complaints Resolution Procedure permits any person to submit a complaint about ICE Futures' regulatory functions, contracts or business to the ICE Futures Independent Complaints Commissioner in accordance with the Recognition Requirement to have effective arrangements for the investigation and resolution of complaints. Once the ICE Futures Independent Complaints Commissioner has completed an investigation, a report and recommendations are published, which may include recommendations that ICE Futures make a compensatory payment to the complainant or take remedial action.

7. SYSTEMS AND TECHNOLOGY

7.1 System Capability/Scalability – For each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, the Exchange:

- i. makes reasonable current and future capacity estimates;**
- ii. conducts capacity stress tests of critical systems to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;**
- iii. reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;**
- iv. ensures that safeguards which 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;**
- v. ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;**
- vi. maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and**
- vii. maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.**

7.1.1 All ICE Futures Contracts are traded solely electronically on the ICE Platform, which is owned and operated by ICE, Inc.

7.1.2 ICE, Inc. developed the ICE Platform technology in compliance with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of IOSCO.

- 7.1.3 Prior to migrating each ICE Futures Contract to the ICE Platform, the operational integrity of the ICE Platform was thoroughly tested. The FSA rigorously evaluated the capability of the ICE Platform prior to its launch to ensure that it adequately supports order entry, order-routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements.
- 7.1.4 The RAC reviews the performance of the ICE Platform and its associated and legacy systems, backup and disaster recovery arrangements on a quarterly basis.
- 7.1.5 ICE, Inc. subjects the ICE Platform's critical systems to regular stress tests based on reasonable current and future capacity estimates. The ICE Platform is also tested for a range of externalities which may damage or impair the operation of the system, including, but not limited to, vulnerability to internal and external threats, including physical hazards and natural disasters and safeguarded against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service. The ICE Platform is subject to independent and ongoing audit review by ICE, Inc.'s auditors and an annual Statement of Auditing Standards 70 ("SAS 70") review by an independent auditing firm. These reviews cover the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans, business contingency/disaster recovery arrangements and other matters. ICE Futures Members and other users may use the SAS 70 assessment of the ICE Platform as part of their own assessment of internal controls as they relate to the ICE Futures Member's or user's financial statements.

7.2 Information Technology Risk Management Procedures – Procedures are in place that:

- i. handle trading errors, trading halts and circuit breakers;**
- ii. ensure the competence, integrity and authority of system users;**
- iii. ensure that the system users are adequately supervised; and**
- iv. ensure the competence, integrity and authority of system users, to ensure that system users are adequately supervised.**

7.2.1 The Trading Procedures referred to in Section 4.3.2 set out processes to effectively deal with trading errors, trading halts and circuit breakers, ensure the competence, integrity and authority of users on the ICE Platform and ensure that users on the ICE Platform are adequately supervised. In addition, ICE Futures' Error Trade Policy includes a range of systems functionalities and procedures in order to prevent and, if necessary, handle trading errors. The Trading Procedures require ICE Futures Members to have adequate arrangements to ensure that all staff involved in the trading of ICE Futures Contracts are fit and proper, suitable, adequately trained and properly supervised. Routing Members are required to control and supervise all access to the ICE Platform and must be able to check all orders entered on the ICE Platform prior to their submission to the trading server.

7.2.2 ICE Futures Regulations impose appropriate sanctions for breaches of the Trading Procedures.

8. FINANCIAL VIABILITY

8.1 The Exchange has sufficient financial resources for the proper performance of its functions.

8.1.1 As a Recognised Investment Exchange, ICE Futures must satisfy the FSA on an ongoing basis that it has a minimum level of liquid financial resources and a minimum level of net capital, as set out in REC 2.3.7 of the REC Sourcebook. The FSA typically expects RIEs to calculate their regulatory capital based on six months of operating expenditures, although it recognizes that alternative approaches may be appropriate in certain circumstances. As a matter of policy, ICE Futures presently maintains a minimum level of liquid financial resources equal to 150% of the value of six months of operating expenditures.

8.1.2 In determining whether ICE Futures has financial resources sufficient for the proper performance of its functions, the FSA assesses, among other things, the operational and other risks to which ICE Futures is exposed; the amount and composition of its capital, liquid financial assets and other financial resources; and the financial benefits, liabilities, risks and exposures arising from ICE Futures' connection with any person, including its affiliates, shareholders and any person with whom it has a significant contractual relationship. ICE Futures provides the FSA with its monthly management accounts in accordance with its financial reporting obligations under REC 3.8.4 of the REC Sourcebook.

9. CLEARING AND SETTLEMENT

9.1 Relationship with Clearing House – The Exchange has a clearing relationship with an established clearing house and all transactions executed on the Exchange are cleared through the Clearing House.

9.1.1 As described in Section 4.3 above, all trades in ICE Futures Contracts are settled and cleared through LCH.Clearnet and all ICE Futures Clearing Members must also be members of LCH.Clearnet. ICE Futures Non-Clearing Members must have clearing agreements in place with ICE Futures Clearing Members. LCH.Clearnet acts as counterparty and guarantor to each transaction executed on ICE Futures.

9.1.2 LCH.Clearnet funds its own guaranteed backing of more than £570 million (plus insurance coverage) and enables LCH.Clearnet Members, including all ICE Futures Clearing Members, to control their own risk without the additional uncertainty of the counterparty risk associated with mutual agreements. By virtue of LCH.Clearnet's independence, there is no common bond liability placed on LCH.Clearnet Members. This insulates ICE Futures Clearing Members from the effects of a default by another LCH.Clearnet Member.

9.1.3 ICE Futures is entitled to appoint a director to the Board of Directors of LCH.Clearnet Group Ltd. (the current nominee is the President and Chief Operating Officer of ICE Futures). ICE Futures is also represented on the Risk Committee of LCH.Clearnet (currently by the Head of Compliance of ICE Futures).

9.2 Regulation of Clearing House – The Clearing House and direct clearing members are subject to acceptable regulation.

9.2.1 As described in Section 4.3 above, LCH.Clearnet is recognized by the FSA as a Recognised Clearing House under FSMA and is subject to the regulation and oversight of the FSA.

9.3 Authority of the Foreign Regulator – The Foreign Regulator has the appropriate authority and procedures for oversight of the Clearing House. This oversight includes regular, periodic regulatory examinations of the Clearing House by the Foreign Regulator.

9.3.1 Part XVIII of the FSMA prescribes legislation for the U.K. relating to Recognised Bodies. Section 286(1) of FSMA empowers HM Treasury to make regulations setting out Recognition Requirements for a clearing house.

9.3.2 Section 296 of the FSMA empowers the FSA to enforce the ongoing compliance requirements set out in the Regulations to ensure that RCHs, such as LCH.Clearnet, continue to satisfy the Recognition Requirements. The FSA discharges this responsibility by conducting ongoing assessment of LCH.Clearnet's regulations, procedures and practices to confirm that they are adequate for the protection of investors and the maintenance of an orderly market. The FSA's supervisory approach is outlined in Section 4 of the REC Sourcebook.

9.4 Restrictions on Access to a Foreign Member – Any restrictions on access to the clearing system by a foreign member are adequately disclosed and justified by the legislation of the home jurisdiction, are not anti-competitive and do not unreasonably impose barriers to access.

9.4.1 A foreign applicant seeking membership to LCH. Clearnet is subject to the same application process and requirements as U.K. applicants, including financial resource, capital, risk management and fitness requirements, as well as requirements to confirm regulatory status and compliance. All LCH. Clearnet Members must be licensed and supervised as either a credit institution or an investment firm by a competent regulatory authority. If the regulatory authority is not within a member state of the European Union, the credit institution or investment firm must be subject to prudential rules that are equivalent to those applicable in the European Union.

9.5 Sophistication of Technology of Clearing House – The Exchange has assured itself that the information technology used by the Clearing House has been adequately reviewed and tested and provides at least the same level of safeguards as required of the Exchange.

9.5.1 Because LCH.Clearnet and ICE Futures are both Recognised Bodies regulated by the FSA, ICE Futures takes comfort that the FSA subjects the technology and risk management systems of LCH.Clearnet to the same degree of scrutiny and oversight to which the technology and risk management systems of ICE Futures is subject.

9.5.2 Furthermore, as stated in Section 9.1.3, ICE Futures is represented on the Board of LCH.Clearnet Group Ltd. and the Risk Committee of LCH.Clearnet and is therefore aware of and involved in decisions that affect the technology and risk management systems of LCH.Clearnet.

9.5.3 As part of the software testing program leading up to the launch of each new ICE Futures Contract, ICE Futures arranges for joint system tests with LCH.Clearnet to ensure that the matching and clearing systems used when processing trades in ICE Futures Contracts work appropriately in relation to the new ICE Futures Contract. ICE Futures works with LCH.Clearnet to resolve any technical problems or other difficulties that are uncovered as a result of this advance testing program.

9.6 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.

9.6.1 As described in Section 9.5 above, ICE Futures takes comfort that the FSA subjects the risk management systems of LCH.Clearnet, including policies and procedures, contingency plans, default procedures and internal controls, to the same degree of scrutiny and oversight to which the risk management systems of ICE Futures is subject. Furthermore, ICE Futures is represented on the Board of LCH.Clearnet Group Ltd. and the Risk Committee of LCH.Clearnet and is therefore aware of and involved in decisions that affect the risk management systems of LCH.Clearnet.

10. TRADING PRACTICES

10.1 Trading practices are fair, properly supervised and not contrary to the public interest.

10.1.1 The FSA monitors trading practices on ICE Futures to confirm compliance with the FSMA and the Recognition Requirements.

10.1.2 The Trading Procedures set out in the ICE Futures Regulations ensure that all trades are fair, properly supervised and not contrary to the public interest. The Trading Procedures prescribe specific requirements applicable to block trades and trades on ICE Futures' Exchange of Futures for Physical ("EFP") and Exchange of Futures for Swaps ("EFS") facility to ensure that market integrity is maintained.

10.2 Market Making Provisions – Market making provisions and other provisions to ensure market liquidity, if any, are fair and equitable to all market participants.

10.2.1 In compliance with REC 3.9 of the REC Sourcebook, the FSA must assess all market making or incentive schemes proposed or anticipated by ICE Futures to ensure that such schemes are not contrary to the operation of a fair and orderly market. ICE Futures is required to advise all ICE Futures Members in advance by way of a Circular of the implementation of any market making scheme and to invite all ICE Futures Members to participate, with the caveat that the scheme may be terminated at any time in order to maintain ICE Futures' RIE status with the FSA or to meet its regulatory obligations.

10.2.2 Currently, ICE Futures has market making schemes in place in relation to the ICE Futures New York Harbour Heating Oil Futures Contract, ICE Futures New York Harbour Unleaded Gasoline Blendstock (RBOB) Futures Contract, ICE Futures West Texas Intermediate Light Sweet Crude Oil Futures Contract and ICE Futures ECX CFI Futures.

10.3 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.

10.3.1 The ICE Platform's order-handling functionality was thoroughly assessed for fairness, robustness and transparency by the FSA prior to its launch in 2002.

10.3.2 The ARC approves all rules pertaining to order size and limits. All proposed rule changes are described in a Circular distributed to ICE Futures Members and are subject to a 14 day consultation period. ICE Futures typically consults with industry specialists prior to developing or revising order rules.

10.4 Transparency – Adequate provision has been made to record and publish details of pricing and trading.

10.4.1 All direct users of ICE Futures have access on a real-time basis via information vendors such as Reuters, Bloomberg, Comstock and Telerate, to the following information: ICE Futures Contract, bid/offer (including depth of market), daily high/low, last traded price (including volume and type of trade – i.e. whether it was part of a spread or an outright trade) and weighted-average price. This data is also provided to information subscribers through the ICE, Inc. subsidiary "ICE Data". Globally, there are approximately 21,000 quote vendor screens that receive ICE Futures trading information. Post-trade information, including end-of day price and settlement volumes, is located on the ICE Futures website at www.theice.com.

10.5 Market Limits – Market limits have been established as to ensure the integrity of the Exchange during times of volatility.

10.5.1 As a matter of policy, ICE Futures does not impose any price or position limits on users of its markets. However, to safeguard a fair and orderly market, Rule G.13 of the ICE Futures Regulations enables ICE Futures to implement procedures to establish maximum price fluctuations on ICE Futures in respect of each ICE Futures Contract and to provide for any consequential restriction or suspension of business.

10.5.2 ICE Futures sets price and volume reasonability limits to reduce the likelihood of erroneous trades, prevent the execution of trades at unrepresentative prices and reduce the market impact of such trades. ICE Platform users may also configure their systems to provide pre-confirmation messages that appear before the execution of all trades and to designate quantities, rather than trading the total quantity that is available at a specified price.

11. COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

11.1 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.

11.1.1 As a Recognised Investment Exchange, ICE Futures is a “front-line regulator” with jurisdiction over its markets and ICE Futures Members, extending to rulemaking, compliance, market supervision and enforcement. As described in Section 6.1, ICE Futures Regulations are applicable to ICE Futures Members without regard to jurisdictional boundaries, as such obligations arise by virtue of the contractual relationship between ICE Futures and its members.

11.1.2 ICE Futures and the FSA entered into an agreement relating to operating arrangements dated November 20, 2001 (the “Operating Arrangements”), which prescribes circumstances in which the FSA, rather than ICE Futures, might have jurisdiction over an alleged case of market abuse on ICE Futures under the FSA Code of Market Conduct.

11.2 Member and Market Regulation – The Exchange or its Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with the Exchange and legislative requirements and disciplining participants.

11.2.1 Trading on the ICE Platform is monitored in real time by ICE Futures’ market supervision team (“Market Supervision”). Market surveillance is conducted by analysing the positions of ICE Futures Members on a monthly basis to identify any unusual exposure, reviewing daily reports on the exposure of clients of ICE Futures Members and reviewing ICE Futures Member reports regarding their open interests in all ICE Futures Contracts. Market Supervision also conducts trade audits of and routine visits to ICE Futures Members, monitors the delivery process of deliverable ICE Futures Contracts and the settlement of large orders on the EFP/EFS facility.

11.2.2 ICE Futures Compliance investigates reports of suspected misconduct and also carries out real-time monitoring on the ICE Platform to identify suspicious trades or patterns of trading. In order to facilitate its investigations, ICE Futures Compliance produces a suite of bespoke daily reports that analyze possible price spikes, settlement trading and/or questionable trading or other business conduct practices. The data used to generate these daily reports is sourced from ICE Futures’ databases, the trade registration system, ICE Futures Members’ trading documentation and, where relevant, audio and telephone records. Upon detecting evidence of misconduct, ICE Futures Compliance will commence a formal investigation.

11.2.3 The ICE Futures Compliance Officer reports directly to the President and Chief Operating Officer of ICE Futures. The ICE Futures Compliance Officer may report directly to the Chair of the ARC in the event of any potential or actual conflict of interest.

11.2.4 The ARC supervises ICE Futures’ compliance and regulatory functions, ensuring oversight that is independent from ICE Futures’ management. ICE Futures Member representatives on the ARC include legal and compliance specialists as well as market practitioners. The Board receives regular reports regarding the discharge of ICE Futures’ regulatory and compliance functions.

11.2.5 The ARC considers the results of investigations and determines appropriate next steps, which may include the initiation of disciplinary proceedings, further investigation, a warning issuance or no further action. Disciplinary proceedings may be conducted by a Summary Panel made up of members of the ARC or a Disciplinary Panel that is independent of ICE Futures. Sanctions for breach of ICE Futures Regulations range from a reprimand to a fine to suspension and, in extreme cases, revocation of ICE Futures membership, as set out in Rule E.4.11 of the ICE Futures Regulations.

- 11.2.6 In the event that a breach of ICE Futures Regulation is also a breach of the FSA's Code of Market Conduct (or involves markets outside ICE Futures' regulatory jurisdiction, such as the underlying physical oil market), ICE Futures will refer the case to the FSA, as outlined in the Operating Arrangements.
- 11.2.7 The FSA holds monthly supervisory meetings with the ICE Futures Compliance Officer to discuss, among other things, the adequacy of the resources devoted to Market Supervision, ICE Futures Compliance and enforcement. The ARC also monitors the workloads and responsibilities of these departments to ensure that adequate resources are provided. Generally, the Chair of the ARC will raise any concerns with the Risk and Audit Committee and/or the Board, although elevation to the FSA would be appropriate if the ARC were concerned about a potential breach of the Recognition Requirements.
- 11.3 Record Keeping – The Exchange maintains adequate provisions for keeping of books and records, including operations of the Exchange, audit trail information on all trades and compliance and/or violations of the Exchange requirements and securities legislation.**
- 11.3.1 The Recognition Requirements require Recognised Bodies to ensure that satisfactory arrangements are made for recording transactions effected by, or cleared through, their facilities. When considering whether arrangements are satisfactory, the FSA considers whether arrangements are in place to create, maintain and safeguard an audit trail of transactions for a minimum of three years, and the quality and extent of the information recorded.
- 11.3.2 ICE Futures is also required to maintain various records pursuant to anti-money laundering legislation in force in the U.K., which forms the basis of the FSA Money Laundering Sourcebook. ICE Futures is required to maintain for five years records containing evidence of customer identification details; information on the grounds for insolvency when a client becomes insolvent and the steps taken to recover the debt; transactions; internal and external suspicion reports and full details of the action taken; and information considered by the ICE Futures Money Laundering Reporting Officer but not reported.
- 11.4 Availability of Information to Regulator – The Exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available to the relevant regulatory authorities on a timely basis.**
- 11.4.1 The FSA's Notification Rules in REC 3 of the REC Sourcebook impose numerous reporting obligations on ICE Futures. ICE Futures is required to advise the FSA of disciplinary actions taken against any ICE Futures Members, third party investigations of business transacted on the ICE Platform and defaults by ICE Futures Members. The FSA also has access, upon request, to all records maintained by ICE Futures as described in Section 11.3.
- 11.4.2 Currently, ICE Futures is not under any legislative obligation to provide regular transaction reports or similar information to the FSA, although it does provide open interest data on a weekly basis. The Operating Arrangements address how the FSA and ICE Futures would cooperate regarding investigations of market abuse, including leadership of investigations and information sharing.
- 11.4.3 In certain jurisdictions (including the United States, The Netherlands, Singapore and Switzerland), ICE Futures is required as a condition of authorization to provide the local regulatory authority with regular reports regarding the trading activities of ICE Futures Members in their jurisdiction.

12. INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

- 12.1 Satisfactory information sharing and oversight agreements exist among the OSC and the Foreign Regulator.**
- 12.1.1 The ICE Futures Regulations require ICE Futures to cooperate with any other regulatory authority, including making arrangements for information sharing.
- 12.1.2 ICE Futures is a signatory to the Declaration on Co-operation and Supervision of International Futures Exchanges and Clearing Organisations as amended, March 1998 (commonly known as the "Boca Declaration") and the FSA is a signatory to the IOSCO Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information. The FSA is a signatory to the Tokyo Communiqué on Supervision of Commodity Futures Markets, which provides best practice guidance for exchanges and regulators in relation to information sharing (including international information sharing) and a framework for undertaking market surveillance.

13. IOSCO PRINCIPLES

13.1 The Exchange adheres to the IOSCO principles to the extent consistent with the law of the foreign jurisdiction.

13.1.1 Although not a member of IOSCO, ICE Futures adheres to IOSCO principles by virtue of the fact that it must comply with the REC Sourcebook, which reflects those principles. The FSA applies the Federation of European Securities Commission Standards consistently to all RIEs, including ICE Futures.

Submissions

ICE Futures satisfies all criteria for recognition (or exemption from recognition) as an exchange set out in Staff Notice 21-702, as described above under "Application of Approval Criteria to ICE Futures". Ontario market participants that trade in commodity futures would benefit from the ability to trade on ICE Futures, as they would have access to a range of exchange-traded commodity derivative products that are not currently available in Ontario. The ICE Platform offers a transparent, efficient and liquid market for Ontario market participants to trade in ICE Futures Contracts. Stringent FSA oversight of ICE Futures as well as the sophisticated information systems, regulations and compliance functions that have been adopted by ICE Futures will ensure that Ontario users of the ICE Platform are adequately protected in accordance with international standards set by IOSCO. We therefore submit that it would be in the public interest to grant the Requested Relief.

ICE Futures seeks the Requested Relief for the following reasons:

Exemption from Recognition and Registration as an Exchange

1. All contracts traded on ICE Futures fall under the definitions of "commodity futures contract" or "commodity futures option" set out in Section 1 of the CFA. ICE Futures is therefore considered a "commodity futures exchange" as defined in Section 1 of the CFA and is prohibited from carrying on business in Ontario unless it is registered or exempt from registration under Section 15 of the CFA. ICE Futures seeks to provide Ontario market participants with direct, electronic access to trading in ICE Futures Contracts and may therefore be considered to be "carrying on business as a commodity futures exchange" in Ontario.
2. ICE Futures is not registered with or recognized by the OSC as a commodity futures exchange under the CFA and no ICE Futures Contracts have been accepted by the Director (as defined in the OSA) under the CFA. Therefore, ICE Futures Contracts are considered "securities" under paragraph (p) of the definition of "security" set out in Section 1(1) of the OSA and ICE Futures is considered a "stock exchange" under the OSA and is prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under Section 21 of the OSA. ICE Futures seeks to provide Ontario market participants with direct, electronic access to trading in ICE Futures Contracts and may therefore be considered to be "carrying on business as a stock exchange" in Ontario.
3. We submit that the Requested Relief from the requirements to be recognized as a stock exchange under the OSA and to be registered as an exchange under the CFA is appropriate because ICE Futures is recognized as a RIE under the FMSA and regulated in its home jurisdiction by the FSA. OSC Staff acknowledge in Staff Notice 21-702 that, in the case of foreign exchanges, "[f]ull regulation, similar to that applied to domestic exchanges, may be duplicative and inefficient when imposed in addition to the regulation of the home or another jurisdiction." If the OSC were to recognize ICE Futures as a stock exchange under the OSA and/or register ICE Futures as an exchange under the CFA, this type of duplication and inefficiency would likely occur as the OSC would be required to oversee ICE Futures to the same extent as it oversees domestic exchanges in Ontario. FSA oversight of ICE Futures as well as the sophisticated information systems, regulations and compliance functions that have been adopted by ICE Futures will ensure that Ontario users of the ICE Platform are adequately protected in accordance with international standards set by IOSCO. We therefore submit that it would be in the public interest to grant the Requested Relief from the requirements to be recognized and registered under the OSA and CFA respectively.

No Prospectus or Registration Relief under the OSA

4. Provided that the OSC exempts ICE Futures from registration as a commodity futures exchange under the CFA, ICE Futures will be an "exempt exchange" as defined in OSC Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* ("Rule 91-503") and ICE Futures Contracts will be "exempt exchange contracts" under Rule 91-503. Therefore, all trades in ICE Futures Contracts will be exempt from the registration requirement in Section 25 of the OSA and the prospectus requirement in Section 53 of the OSA pursuant to Part II of Rule 91-503 and no registration or prospectus relief will be required under the OSA for trades in ICE Futures Contracts in Ontario.

Relief from Section 33 of the CFA

5. By granting ICE Futures the Requested Relief from the requirements to be recognized as a stock exchange under the OSA and to be registered as an exchange under the CFA, the OSC will effectively be authorizing ICE Futures to carry on business as a commodity futures exchange in Ontario. The OSC will grant the Requested Relief from the exchange recognition and registration requirements based on the fact that ICE Futures satisfies all of its criteria for recognition (or exemption from recognition) of an exchange as set out in Staff Notice 21-702 and under "Approval Criteria" above. However, because the CFA does not contemplate that the OSC may exempt exchanges from its registration and/or recognition requirements, it does not include contracts traded on an exchange that has been exempted from the registration and/or recognition requirements as a category of "permitted contract" under Section 33 of the CFA. As a result, registered FCMs will not be permitted to trade in ICE Futures Contracts even though ICE Futures has been authorized to carry on business in Ontario. ICE Futures expects that many of its prospective participants in Ontario will be FCMs. We therefore request relief from Section 33 of the CFA for trades in ICE Futures Contracts by FCMs.
6. As described in Section 5.3.3, ICE Futures Members will only grant order-routing access to an Ontario client if: (i) the client is a registered FCM under the CFA; (ii) the ICE Futures Member is a registered FCM under the CFA; or, (iii) the ICE Futures Member is regulated as a dealer in its home jurisdiction, and the client is a hedger (as defined in the CFA) or, is able to rely on another exemption from registration under the CFA.

Hedger Relief

7. ICE Futures seeks to provide direct, electronic access to trading in ICE Futures Contracts to Ontario market participants. ICE Futures expects that many of its potential members in Ontario will be engaged in the business of trading commodity futures in Ontario and will, therefore, be registered as FCMs under Section 22 of the CFA. However, ICE Futures also seeks to provide access to "hedgers" as defined in Section 1 of the CFA, which may not be registered as FCMs. Section 32(1)(a) of the CFA provides an exemption from registration for trades "by a hedger through a dealer". This exemption will be available for trades in ICE Futures Contracts by Ontario resident hedgers that route orders to ICE Futures through ICE Futures Members that are dealers, however, this exemption will not be available for trades in ICE Futures Contracts by Ontario resident hedgers that become ICE Futures Members since they will have direct electronic access to ICE Futures and will not execute trades through dealers. To qualify for ICE Futures membership, any Ontario resident hedger would have to satisfy the ICE Futures membership criteria.
8. We submit that the ICE Futures Membership criteria and due diligence screening process described in Sections 5.2.1 through 5.2.5 above will ensure that all Ontario resident hedgers that become ICE Futures Members have been subject to appropriate know-your-client, anti-money laundering and other anti-fraud procedures and have the requisite sophistication and proficiency in the trading of commodity futures to satisfy any investor protection concerns.
9. In addition to the due diligence screening process completed by ICE Futures, LCH.Clearnet, or the relevant ICE Futures Clearing Member with which an Ontario hedger seeks to open an account for the purpose of trading on ICE Futures, will complete credit, know-your-client and anti-money laundering checks, suitability analyses and other account supervision procedures prior to entering into clearing agreements with all clients and on an ongoing basis in accordance with FSA and LCH.Clearnet requirements.
10. ICE Futures intends to confirm that Ontario applicants that seek to rely on the Hedger Relief are "hedgers" as defined in Section 1 of the CFA by obtaining a representation to that effect from such applicants as a part of the application documentation. The documentation will specify that this representation is deemed to be repeated by the applicant each time it enters an order for an ICE Futures Contract and that the applicant must be a hedger for the purposes of each trade resulting from such an order. This requirement will likely be outlined in the Ontario Circular.
11. An ICE Futures Member that is not a registered FCM under the CFA will be required to obtain a representation from any Ontario client to which it seeks to provide order-routing access (which will be deemed to be repeated each time the client enters an order for an ICE Futures Contract) that the Ontario client is: (i) a registered FCM under the CFA; or, (ii) a hedger (as defined in Section 1 the CFA); or, (iii) able to rely on another exemption from registration under the CFA. This requirement will also be outlined in the Ontario Circular.

Other Matters

12. Enclosed is a certificate of an officer of ICE Futures certifying the truth of the facts contained herein and authorizing us to prepare and file this Application.
13. ICE Futures consents to the publication of this Application for public comment in the OSC Bulletin.

Thank you for your assistance with this matter.

Yours very truly,

Jacob Sadikman

JS:jh

Enclosure

c: Johnathan Short, *ICE, Inc.*
 Mark Woodward/Patrick Davis, *ICE Futures*
 Mark Smith/Francois Leblanc, *Osler, Hoskin & Harcourt LLP*

**IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5,
AS AMENDED (OSA)**

AND

**IN THE MATTER OF
THE COMMODITY FUTURES ACT, R.S.O. 1990, CHAPTER C.20,
AS AMENDED (CFA)**

AND

IN THE MATTER OF ICE FUTURES

ORDER

(Section 147 of the OSA and sections 38 and 80 of the CFA)

WHEREAS ICE Futures has filed an application dated June 7, 2006 (Application) with the Ontario Securities Commission (Commission) requesting:

- (a) an order pursuant to section 147 of the OSA exempting ICE Futures from the requirement to be recognized as a stock exchange under section 21 of the OSA;
- (b) an order pursuant to section 80 of the CFA exempting ICE Futures from the requirement to be registered as a commodity futures exchange under section 15 of the CFA;
- (c) an order pursuant to section 38 of the CFA exempting trades in contracts on ICE Futures by registered futures commission merchants (FCMs) from the requirements of section 33 of the CFA; and
- (d) an order pursuant to section 38 of the CFA exempting trades in contracts on ICE Futures by "hedgers" from the registration requirement under section 22 of the CFA (Hedger Relief);

AND WHEREAS the term "hedger" has the meaning ascribed to it in section 1(1) of the CFA (Hedger);

AND WHEREAS Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* exempts trades of commodity futures contracts or commodity futures options made on commodity futures exchanges not registered with or recognized by the Commission under the CFA from sections 25 and 53 of the OSA;

AND WHEREAS ICE Futures has represented to the Commission that:

1. ICE Futures is a private company governed by the laws of the United Kingdom (U.K.) and is an indirect, wholly-owned subsidiary of Intercontinental Exchange, Inc. (ICE Inc.), a public company governed by the laws of the State of Delaware and listed on the New York Stock Exchange,
2. ICE Futures is recognized by Her Majesty's Treasury as a Recognized Investment Exchange (RIE) under the U.K.'s Financial Services and Markets Act 2000 (FSMA) and is subject to supervision by the U.K. Financial Services Authority (FSA) pursuant to the FSMA,
3. As an RIE, ICE Futures offers a variety of energy commodity derivatives contracts including commodity futures contracts and commodity futures options (collectively, ICE Futures Contracts) which are traded electronically on a platform (known as the ICE Platform) owned and operated by ICE Inc.,
4. As part of its regulatory oversight of ICE Futures, the FSA reviews, assesses and enforces on-going compliance with the recognition requirements under the FSMA relating to financial resources, fitness and properness, systems and controls, maintenance of an orderly market, investor protection, rule-making and other matters including ICE Futures' regulations, procedures and practices (collectively, ICE Futures Regulations),
5. ICE Futures is required under its regulations to provide to the FSA on request access to all records and to cooperate with any other regulatory authority, including making arrangements for information-sharing,

6. All ICE Futures Contracts are cleared and settled by LCH.Clearnet Limited (LCH.Clearnet), which is a recognized clearing house (RCH) under the FSMA and which acts as counterparty and guarantor to each ICE Futures Contract traded on the ICE Platform,
7. The FSA discharges its regulatory oversight over RCHs such as LCH.Clearnet by conducting an ongoing assessment of the RCH's regulations, procedures and practices to confirm that they provide the proper protection of investors and include satisfactory arrangements for the settlement of transactions,
8. ICE Futures proposes to offer direct electronic access to trading in ICE Futures Contracts through the ICE Platform to market participants in Ontario, either by way of membership in ICE Futures to entities that meet its eligibility criteria or through order-routing arrangements,
9. ICE Futures Contracts fall under the definitions of "commodity futures contract" or "commodity futures option" set out in Section 1 of the CFA. ICE Futures is therefore considered a "commodity futures exchange" as defined in Section 1 of the CFA and is prohibited from carrying on business in Ontario unless it is registered or exempt from registration as an exchange under Section 15 of the CFA,
10. ICE Futures seeks to provide Ontario market participants with direct, electronic access to trading in ICE Futures Contracts and as a result, is considered to be "carrying on business as a commodity futures exchange" in Ontario,
11. ICE Futures is not registered with or recognized by the Commission as a commodity futures exchange under the CFA and no ICE Futures Contracts have been accepted by the Director (as defined in the OSA) under the CFA, therefore, ICE Futures Contracts are considered "securities" under paragraph (p) of the definition of "security" set out in Section 1(1) of the OSA and ICE Futures is considered a "stock exchange" under the OSA and is prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under section 21 of the OSA,
12. As above, since ICE Futures seeks to provide Ontario market participants with direct, electronic access to trading in ICE Futures Contracts it is considered to be "carrying on business as a stock exchange" in Ontario,
13. ICE Futures expects that its potential members and order-routing clients in Ontario will be (i) dealers that are engaged in the business of trading commodity futures in Ontario, (ii) utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity and, to the extent applicable, (iii) institutional investors and proprietary trading firms,
14. ICE Futures maintains rigorous membership criteria that all applicants must satisfy before their applications are considered by its Authorization, Rules and Conduct Committee, including, among others: fitness criteria; suitable qualifications and experience; adequate training and supervision; proper authorizations, or exemptions to trade; and suitable financial standing,
15. ICE Futures applies its membership criteria by subjecting each applicant to an intensive due diligence process, which includes: review of constituent documentation and financial statements; verification of regulatory authorization in the applicant's home jurisdiction; confirmation of qualifications; conducting searches of relevant international and domestic financial services information databases; and conducting other know-your-client and anti-fraud procedures,
16. Each applicant for ICE Futures membership that intends to rely on the Hedger Relief will be required, as part of the application documentation to:
 - (a) represent that it is a Hedger;
 - (b) acknowledge that ICE Futures deems the Hedger representation to be repeated by the applicant each time it enters an order for an ICE Futures Contract, and that the applicant must be a Hedger for the purposes of each trade resulting from such an order; and
 - (c) agree to notify ICE Futures if the applicant ceases to be a Hedger,
17. With respect to order-routing access, ICE Futures will ensure that the guidance that it circulates to its members (ICE Futures Members) respecting Ontario participation (Ontario Guidance) indicates that an ICE Futures Member is permitted to grant access to ICE Futures to a client in Ontario provided that (i) the client is a registered FCM under the CFA, (ii) the ICE Futures Member is a registered FCM under the CFA, or (iii) the ICE Futures Member is regulated as a dealer in its home jurisdiction and the client is a Hedger or is able to rely on another exemption from registration under the CFA,
18. Based on the facts set out in the Application, ICE Futures satisfies the criteria set out in Schedule "A" to this order;

AND WHEREAS based on the Application and the representations ICE Futures has made to the Commission, the Commission has determined that ICE Futures satisfies the criteria set out in Schedule "A" and that the granting of exemptions from recognition and registration to ICE Futures would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that pursuant to section 147 of the OSA, ICE Futures is exempt from recognition as a stock exchange under section 21 of the OSA, and pursuant to section 80 of the CFA, ICE Futures is exempt from registration as a commodity futures exchange under section 15 of the CFA;

AND IT IS FURTHER ORDERED by the Commission that, pursuant to section 38 of the CFA, trades in contracts on ICE Futures by FCMs are exempt from the requirements of section 33 of the CFA;

AND IT IS FURTHER ORDERED by the Commission that, pursuant to section 38 of the CFA, trades in ICE Futures Contracts by Hedgers who are ICE Futures Members are exempt from the registration requirement under section 22 of the CFA;

PROVIDED THAT ICE Futures complies with the terms and conditions attached hereto as Schedule "B".

SCHEDULE "A"

Criteria for Exemption from Recognition/Registration as an Exchange

PART 1 REGULATION AND OVERSIGHT OF THE EXCHANGE

1.1 Regulation of the Exchange

The Exchange is regulated in an appropriate manner in another jurisdiction by a Foreign Regulator. The regulatory scheme of the Foreign Regulator is transparent and generally comparable to that in Ontario.

1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the Exchange. This oversight includes regular, periodic regulatory examinations of the Exchange by the Foreign Regulator.

PART 2 CORPORATE GOVERNANCE

2.1 Fair Representation

The governance structure of the Exchange provides for:

- (i) appropriate, fair and meaningful representation on its Board and any committee thereof; and
- (ii) appropriate representation by independent directors on the Board and any committee thereof.

2.2 Appropriate Provisions for Directors and Officers

There are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors and officers.

2.3 Fitness

The Exchange takes reasonable steps to ensure that each officer and director 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.

2.4 Conflicts of Interest

The Exchange has appropriate conflict of interest provisions for all directors, officers and employees.

PART 3 FEES

3.1 Fees

The Exchange's process for setting fees is fair, transparent and appropriate. Any and all fees imposed by the Exchange on its participants are equitably allocated, do not have the effect of creating barriers to access and are balanced with the criteria that the Exchange has sufficient revenues to satisfy its responsibilities.

PART 4 REGULATION OF PRODUCTS

4.1 Approval of Products

The products traded on the Exchange are approved by the appropriate authority.

4.2 Product Specifications

The terms and conditions of trading the products are in conformity with normal commercial business practices for the trade in the product.

4.3 Risks Associated with Trading Products

The Exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the Exchange, including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.

PART 5 ACCESS

5.1 Fair Access

The requirements of the Exchange relating to access to the facilities of the Exchange, the imposition of limitations or conditions on access and denial of access are approved by the Foreign Regulator and are fair and reasonable, including in respect of notice, an opportunity to be heard or make representations, the keeping of records, the giving of reasons and the provisions for appeals.

5.2 Details of Access Criteria

In particular, the Exchange

- i. has written standards for granting access to trading on its facilities to ensure users have appropriate integrity and fitness;
- ii. has and enforces financial integrity standards for those persons who enter orders for execution on the system, including, but not limited to, credit or position limits and clearing membership;
- iii. does not unreasonably prohibit or limit access by a person or company to services offered by it.
- iv. keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access; and
- v. restricts access to adequately trained system users who have demonstrated competence in the functions that they perform.

5.3 Access for Ontario Persons

The Exchange provides direct access, either through terminals, data feeds or third party provided interfaces, to only those Ontario persons that are duly registered or licensed under Ontario.

PART 6 RULEMAKING

6.1 Purpose of Rules

The Exchange maintains rules, policies and other similar instruments as are necessary or appropriate to govern and regulate all aspects of its business and affairs and such rules are designed to, in particular,

- i. ensure compliance with the rules of the Exchange and securities legislation;
- ii. prevent fraudulent and manipulative acts and practices;
- iii. promote just and equitable principles of trade;
- iv. foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, the products trade on the Exchange;
- v. provide for appropriate discipline;
- vi. ensure a fair and orderly market; and
- vii. ensure that the Exchange business is conducted in a manner so as to afford protection to investors.

6.2 No Discrimination or Burden on Competition

The rules of the Exchange do not

- i. permit unreasonable discrimination among issuers, if applicable, and participants; or
- ii. impose any burden on competition that is not reasonably necessary or appropriate.

PART 7 SYSTEMS AND TECHNOLOGY

7.1 System Capability/Scalability

For each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements, the Exchange:

- i. makes reasonable current and future capacity estimates;
- ii. conducts capacity stress tests of critical systems to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
- iii. reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;
- iv. ensures that safeguards which 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;
- v. ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;
- vi. maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and
- vii. maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

7.2 Information Technology Risk Management Procedures

Procedures are in place that:

- i. handle trading errors, trading halts and circuit breakers;
- ii. ensure the competence, integrity and authority of system users;
- iii. ensure that the system users are adequately supervised; and
- iv. ensure the competence, integrity and authority of system users, to ensure that system users are adequately supervised.

PART 8 FINANCIAL VIABILITY

8.1 Financial Viability

The Exchange has sufficient financial resources for the proper performance of its functions.

PART 9 CLEARING AND SETTLEMENT

9.1 Relationship with Clearing House

The Exchange has a clearing relationship with an established clearing house and all transactions executed on the Exchange are cleared through the Clearing House.

9.2 Regulation of the Clearing House

The Clearing House and direct clearing members are subject to acceptable regulation.

9.3 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the Clearing House. This oversight includes regular, periodic regulatory examinations of the Clearing House by the Foreign Regulator.

9.4 Restrictions on Access to a Foreign Member

Any restrictions on access to the clearing system by a foreign member are adequately disclosed and justified by the legislation of the home jurisdiction, are not anti-competitive and do not unreasonably impose barriers to access.

9.5 Sophistication of Technology of Clearing House

The Exchange has assured itself that the information technology used by the Clearing House has been adequately reviewed and tested and provides at least the same level of safeguards as required of the Exchange.

9.6 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.

PART 10 TRADING PRACTICES

10.1 Trading Practices

Trading practices are fair, properly supervised and not contrary to the public interest.

10.2 Market Making Provisions

Market making provisions and other provisions to ensure market liquidity, if any, are fair and equitable to all market participants.

10.3 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.

10.4 Transparency

Adequate provision has been made to record and publish details of pricing and trading.

10.5 Market Limits

Market limits have been established as to ensure the integrity of the Exchange during times of volatility.

PART 11 COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

11.1 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.

11.2 Member and Market Regulation

The Exchange or its Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with Exchange and legislative requirements and disciplining participants.

11.3 Record Keeping

The Exchange maintains adequate provisions for keeping books and records, including operations of the exchange, audit trail information on all trades and compliance and/or violations of Exchange requirements and securities legislation.

11.4 Availability of Information to Regulator

The Exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available to the relevant regulatory authorities on a timely basis.

PART 12 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

12.1 Information Sharing and Oversight Agreement

Satisfactory information sharing and oversight agreements exist among the OSC and the Foreign Regulator.

PART 13 IOSCO PRINCIPLES

13.1 IOSCO Principles

The Exchange adheres to the IOSCO principles to the extent consistent with the law of the foreign jurisdiction.

SCHEDULE "B"

Terms and Conditions

REGULATION OF ICE FUTURES

1. ICE Futures will maintain its recognition by Her Majesty's Treasury and will continue to be subject to the supervision of the FSA, or any successor regulatory body, as an RIE, or any successor category of recognition.
2. ICE Futures will continue to comply with its ongoing compliance requirements set out in the FSMA (Recognition Requirements), or any successor compliance requirements.
3. ICE Futures will continue to meet the criteria for exemption from registration as an exchange, as set out in Schedule "A".

ACCESS

4. ICE Futures will not provide direct access to Ontario participants unless they are appropriately registered to trade in ICE Futures Contracts or operating pursuant to an exemption from registration; ICE Futures may reasonably rely on a written representation from each ICE Futures Member in Ontario (Ontario Member) in making this determination and will notify such Ontario Member that this representation is deemed to be repeated each time it enters an order for an ICE Futures Contract.
5. Each applicant for ICE Futures membership that intends to rely on the Hedger Relief will be required, as part of the application documentation to:
 - (a) represent that it is a Hedger;
 - (b) acknowledge that ICE Futures deems the Hedger representation to be repeated by the applicant each time it enters an order for an ICE Futures Contract and that the applicant must be a Hedger for the purposes of each trade resulting from such an order; and
 - (c) agree to notify ICE Futures if the applicant ceases to be a Hedger.
6. All orders for ICE Futures Contracts transmitted to the ICE Platform by a Hedger that is operating pursuant to the Hedger Relief will be solely for their own account.
7. ICE Futures will require Ontario Members to notify ICE Futures if their registration or exemption from registration has been revoked, suspended or amended by the Commission and, following notice from the Ontario Member or the Commission and subject to applicable laws, ICE Futures will promptly restrict access to ICE Futures if the Ontario Member is no longer appropriately registered with or exempted by the Commission.
8. With respect to order-routing access, ICE Futures will ensure that the Ontario Guidance indicates that an ICE Futures Member is permitted to grant access to ICE Futures to a client in Ontario provided that (i) the client is a registered FCM under the CFA; (ii) the ICE Futures Member is a registered FCM under the CFA or (iii) the ICE Futures Member is regulated as a dealer in its home jurisdiction and the client is a Hedger or is able to rely on another exemption from registration under the CFA.
9. ICE Futures makes available to ICE Futures Members appropriate training for each person who has access to trade in ICE Futures Contracts on the ICE Platform.

NON-REGISTRANTS

10. ICE Futures will require each Ontario Member that is not registered with the Commission as an FCM to file with ICE Futures a written representation, executed by a person with the authority to bind the Ontario Member, stating that as long as it operates pursuant to the Hedger Relief provided herein, the Ontario Member (a) agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to the Hedger Relief, and (b) will provide, upon the request of the Commission, prompt access to the books and records of the Ontario Member. ICE Futures will make such representations available to the Commission upon the request of staff of the Commission.

SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE

11. ICE Futures submits to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of ICE Futures in Ontario.
12. ICE Futures will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning ICE Futures' activities in Ontario.

DISCLOSURE

13. ICE Futures will provide to all Ontario Members, and also require ICE Futures Members that are registered FCMs under the CFA to distribute to Ontario clients, prior to the first trade by each client that is executed through the facilities of ICE Futures, disclosure that states that:
 - (a) rights and remedies against ICE Futures may only be governed by the laws of the U.K., rather than the laws of Ontario and may be required to be pursued in the U.K rather than in Ontario;
 - (b) the rules applicable to trading on ICE Futures may be governed by the laws of the U.K., rather than the laws of Ontario; and
 - (c) ICE Futures is regulated by the FSA, rather than the OSC.

FILING REQUIREMENTS

Prompt Notice

14. ICE Futures will promptly notify staff of the Commission of any of the following:
 - (a) any material change to the information provided in the Application, including, but not limited to:
 - (i) changes to the regulatory oversight by the FSA,
 - (ii) the corporate governance structure of ICE Futures,
 - (iii) the access model, including eligibility criteria, for Ontario participants,
 - (iv) systems and technology, and
 - (v) the clearing and settlement arrangements for ICE Futures;
 - (b) any change in the ICE Futures Regulations or the laws, rules and regulations in the U.K. relevant to futures and options on futures where such change may materially affect the ability of ICE Futures to meet the criteria set out in Schedule "A" to this order;
 - (c) any known investigations of, or disciplinary action against, ICE Futures by the FSA or any other regulatory authority to which ICE Futures is subject;
 - (d) any matter known to ICE Futures that may affect the financial or operational viability of ICE Futures, including, but not limited to, any significant system failure or interruption;
 - (e) any default, insolvency or bankruptcy of any ICE Futures Member known to ICE Futures or its representatives that may have a material, adverse impact upon ICE Futures, the ICE Futures clearing system or any Ontario Member.

Quarterly Reporting

15. ICE Futures will maintain the following updated information and submit such information to the Commission on at least a quarterly basis, and at any time promptly upon the request of staff of the Commission:
 - (a) a current list of all Ontario Members;

SRO Notices and Disciplinary Proceedings

- (b) a list of all Ontario Members against whom disciplinary action has been taken in the last quarter by ICE Futures or the FSA with respect to activities on ICE Futures;
- (c) a list of all investigations by ICE Futures relating to Ontario Members;
- (d) a list of all Ontario applicants who have been denied membership to ICE Futures;
- (e) for each ICE Futures Contract, the total trading volume originating from Ontario Members and the proportion of worldwide trading volume on ICE Futures conducted by Ontario Members.

Annual Reporting

- 16. ICE Futures will arrange to have the annual SAS 70 for ICE, Inc. filed with the Commission.

FINANCIAL VIABILITY

- 17. ICE Futures will file with the Commission all annual financial statements required to be filed with the FSA, within the same timeframes as required by the FSA.

INFORMATION SHARING

- 18. ICE Futures will, subject to applicable laws, share any and all information within the care and control of ICE Futures and otherwise co-operate wherever reasonable with the Commission or its staff.