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**VIA EMAIL AND COURIER**

Ontario Securities Commission  
20 Queen Street West  
Suite 1800  
Toronto ON M5H 3S8

**Attention: Secretary to the Commission**

Dear Sirs/Mesdames:

**Re: MarketAxess SEF Corporation (the “Applicant”) - Application for an order pursuant to section 147 of the *Securities Act* (Ontario) (the “Act”) exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act**

**Background and Purpose**

We are counsel to MarketAxess SEF Corporation. On behalf of the Applicant, we make this Application for an order pursuant to section 147 of the Act exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act (the “**Exchange Relief**”).

On November 20, 2013, the Ontario Securities Commission (“**Commission**”) issued an interim order under section 147 of the Act exempting the Applicant from the requirement in subsection 21(1) of the Act to be recognized as an exchange (“**Interim Order**”), subject to terms and conditions as set out in the Interim Order<sup>1</sup>. The filing of this Application is a condition of the Interim Order. The Exchange Relief is being sought on a basis consistent with the Interim Order and the criteria set out by Commission Staff as the relevant criteria to be addressed in an application by a SEF for the Exchange Relief in a document titled “*Criteria For Exemption Of A Foreign Exchange Trading OTC Derivatives From Recognition As An Exchange.*” These criteria are discussed in Part III of this Application.

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<sup>1</sup> Commission Bulletin (2013), 36 OSCB 11385

For convenience, this Application is divided into the following Parts I to V. In particular, Part III describes how the MarketAxess swap execution facility (“**MarketAxess SEF**”) satisfies the criteria for registration (or exemption from registration) of foreign-based swap exchange facilities which were provided by Commission Staff for the purposes of this Application:

Part I	Introduction
	1. Services to Ontario Residents
Part II	Background to the MarketAxess SEF
	1. Ownership of MarketAxess SEF
	2. Products Traded on the MarketAxess SEF
	3. MarketAxess SEF Members
Part III	Application of Approval Criteria to the MarketAxess SEF
Part IV	Submissions
	1. Submissions Concerning the Exchange Relief
Part V	Other Matters
	1. Enclosures
	2. Consent to Publication

## **PART I - INTRODUCTION**

### **1.0 Services to Ontario Residents**

1.1 The Applicant operates a swap execution facility named MarketAxess SEF, a marketplace for trading credit default swaps that are regulated by the Commodity Futures Trading Commission (“**CFTC**”). In the United States, the Applicant operates under the jurisdiction of the CFTC and obtained permanent registration with the CFTC on January 22, 2016 to operate a swap execution facility. The MarketAxess SEF trading platform supports Order Book, Request-for-Quote (“**RFQ**”) and Click-To-Trade (streaming indicative quotes) trading protocols for permitted transactions and Order Book and RFQ trading protocols for required transactions (when applicable).

The Applicant has participants located in Ontario (“**Ontario Participants**”) and makes the MarketAxess SEF available for trading to Ontario Participants. As a result, it is considered by the Commission to be carrying on business as an exchange in Ontario and is required to be recognized as such or exempted from recognition pursuant to section 21 of the Act. The Interim Order granted the Applicant a temporary exemption from the requirement in subsection 21(1) of the Act to be recognized as an exchange, subject to certain terms and conditions. The filing of this Application is a condition of the Interim Order.

1.2 Most MarketAxess SEF Ontario Participants are banks, registered dealers and advisers and other large financial institutions.

1.3 Access to the MarketAxess SEF is restricted to qualifying Participants. To be eligible for admission as a Participating Firm, an applicant must demonstrate to the satisfaction of the MarketAxess SEF that it:

- (a) is an Eligible Contract Participant (as defined in Section 1a(18) of the U.S. *Commodity Exchange Act* (“**CEA**”));
- (b) is of good reputation and business integrity;
- (c) maintains adequate financial resources and credit;
- (d) is validly organized, in good standing and authorized by its governing body and, if relevant, documents of organization to trade swaps;
- (e) has not filed for bankruptcy;
- (f) is not prohibited from using the services of the MarketAxess SEF for any reason whatsoever;
- (g) holds all registrations required under applicable law, if any;
- (h) is not an individual;
- (i) is not subject to statutory disqualification under Section 8a(2) or (3) of the CEA; and

- (j) satisfies any other criteria that the MarketAxess SEF may require from a Participant.

1.4 A "Participant" means a Participant Firm, any natural person who is either employed by or an agent of a Participant Firm, or any natural person who is authorized to access or utilize the MarketAxess SEF trading system pursuant to the applicable user ID.

1.5 The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described above. An affiliate of the Applicant, MarketAxess Canada Corporation, operates a fixed income alternative trading system in Ontario, Quebec and British Columbia.

## **PART II - BACKGROUND TO THE MARKETAXESS SEF**

### **1.0 Ownership of MarketAxess SEF**

1.1 The Applicant is a corporation organized and existing under the laws of the State of Delaware in the United States and is a wholly owned subsidiary of MarketAxess Holdings Inc., a corporation listed on the NASDAQ Stock Market. The Certificate of Incorporation and the By-laws of MarketAxess SEF Corporation govern the management and operation of the MarketAxess SEF.

### **2.0 Products Traded on MarketAxess SEF**

2.1 MarketAxess SEF is a marketplace for trading credit default swaps (“**CDS**”) that are regulated by the CFTC. MarketAxess SEF is an electronic trading platform focused on credit, currently offering market participants the ability to trade U.S. indices (CDX) and European and global indices (iTraxx), using a broad range of trading protocols and functionality designed specifically for the credit markets.

### **3.0 MarketAxess SEF Members**

3.1 MarketAxess SEF has a wide range of sophisticated institutional customers, including banks, registered dealers and advisers and other large financial institutions.

**PART III - CRITERIA FOR EXEMPTION OF A FOREIGN SWAP EXECUTION FACILITY FROM RECOGNITION AS AN EXCHANGE**

**1. REGULATION OF THE EXCHANGE**

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

1.1.1 MarketAxess SEF is a SEF within the meaning of that term under CEA. The Applicant is subject to regulatory supervision by the CFTC. The CFTC regulates commodity futures trading activity in the United States. The CFTC reviews, assesses and enforces the Applicant's adherence to the CEA and the regulations thereunder on an ongoing basis, including the SEF core principles ("**SEF Core Principles**") relating to the operation and oversight of the MarketAxess SEF market, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection and is obligated under the CEA to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege.

1.1.2 The Applicant is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace.

1.1.3 The Applicant has retained the National Futures Association to be a regulatory services provider.

**1.2 Authority of the Foreign Regulator - The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.**

1.2.1 The CFTC carries out the regulation of swap execution facilities in accordance with the provisions of the CEA. The CFTC is subject to reauthorization by the U.S. Congress every five years, which most recently occurred in 2008.

1.2.2 The CFTC has been charged with administering and enforcing the CEA. Accordingly, the CFTC is the U.S. government agency that has direct regulatory and oversight responsibility over SEFs. To implement the CEA, the CFTC has promulgated regulations and guidelines ("**CFTC Regulations**") that further interpret the SEF Core Principles (described below) and govern the conduct of U.S. SEFs, such as the MarketAxess SEF. SEFs, such as MarketAxess SEF, are required to make certain daily, quarterly, annual, and ad hoc filings with the CFTC. In this connection, the CFTC is able to review material and housekeeping changes in the SEF's business and can monitor trading on the MarketAxess SEF. In aid of its day to day surveillance, the CFTC receives daily transaction and other reports from the Applicant and has access to real time reports made to the SEF's swap data repository (MarketAxess SEF currently reports to the DTCC).

## 2. **GOVERNANCE**

### 2.1 **Governance - The governance structure and governance arrangements of the exchange ensure:**

#### (a) **effective oversight of the exchange**

2.1.1 The Applicant has established a governance structure and arrangements that ensure effective oversight of the MarketAxess SEF. These structures and arrangements are described in further detail below and include:

- (1) an effective board of directors with public director quotas;
- (2) a management structure that is designed to allow the Applicant to satisfy regulatory requirements;
- (3) a standing Regulatory Oversight Committee to oversee the MarketAxess SEF's regulatory program on behalf of the Board.

#### ***The Board***

2.1.2 The board of directors of the Applicant ("**Board**") has a mandate that includes responsibility for overseeing the management and conduct of the business and affairs of MarketAxess SEF. The Board has the power and authority to call for review, and to affirm, modify, suspend or overrule, any and all decisions and actions of standing committees or special committees of the Board, or of any panel of Officers, related to the day-to-day business operations of the MarketAxess SEF. The Officers (as defined below), manage the day-to-day business operations of the MarketAxess SEF.

2.1.3 Board decisions are made by majority vote.

2.1.4 At least 35%, but no less than two, of the Directors must be Public Directors in accordance with the criteria set out in section 2.1.5 of this Application. As of the date of this Application, there are two Public Directors on the Board.

2.1.5 To qualify as a Public Director, an individual must be found, by action of the Board, to have no material relationship with the MarketAxess SEF. The Board must make such finding upon the nomination or appointment of the Director and as often as necessary in light of all circumstances relevant to such Director, but in no case less than annually.

A "material relationship" is one that reasonably could affect the independent judgment or decision-making of the Director. In making the finding specified in this Rule, the Board need not consider previous services as a Director of the MarketAxess SEF to constitute a "material relationship." A Director is considered to have a "material relationship" with the MarketAxess SEF if any of the following circumstances exist or have existed within the past year:

- (1) Such Director is an Officer or an employee of the MarketAxess SEF, or an officer or an employee of an Affiliate of the MarketAxess SEF;
- (2) Such Director is a Participant or owner of the MarketAxess SEF;

- (3) Such Director, or an entity with which the Director is a partner, an officer, an employee or a director, receives more than \$100,000 in combined annual payments for legal, accounting or consulting services from the MarketAxess SEF or its affiliate, any Participant of the MarketAxess SEF or any Affiliate of such Participant. Compensation for services as a Director of the MarketAxess SEF or as a director of an Affiliate thereof does not count toward the \$100,000 payment limit, nor does deferred compensation for services rendered prior to becoming a Director, *provided* that such compensation is in no way contingent, conditioned or revocable; or
  - (4) Notwithstanding section 2.1.5(3) above, in the case of a Public Director that is a member of the Regulatory Oversight Committee of the Board, such Public Director accepts, directly or indirectly, any consulting, advisory or other compensatory fee from the MarketAxess SEF or its Affiliate or any Participant of the MarketAxess SEF or the Participant's Affiliate, other than deferred compensation for service rendered prior to becoming a member of the Regulatory Oversight Committee, *provided* that such compensation is in no way contingent, conditioned or revocable. This subsection does not apply to compensation received in the public director's capacity as a member of the Regulatory Oversight Committee.
- 2.1.6 Any of the relationships set forth in section 2.1.5(1) through (4) apply to the "immediate family" of such Director, i.e., spouse, parents, children, and siblings, in each case, whether by blood, marriage, or adoption, or any person residing in the home of the Director or that of his or her "immediate family."
- 2.1.7 A Public Director of the MarketAxess SEF may also serve as a Public Director of an Affiliate of the MarketAxess SEF if he or she otherwise meets the requirements set forth in section 2.1.5(1) through (4).
- 2.1.8 The compensation of the Public Directors and any other non-executive members of the Board is not linked to the business performance of the MarketAxess SEF.
- 2.1.9 The Board shall review its performance and that of its individual members annually, and may use external facilitators for such reviews.
- 2.1.10 The Board has adopted procedures to remove a Director, where the conduct of such Director is likely to be prejudicial to the sound and prudent management of the MarketAxess SEF.
- 2.1.11 The Board appoints a Chief Executive Officer, a Chief Compliance Officer and such other officers of MarketAxess SEF Corporation (each an "**Officer**") as it may deem necessary or appropriate from time to time.

**Chief Compliance Officer**

- 2.1.12 The role of the Chief Compliance Officer is particularly relevant to this Application. The duties of the Chief Compliance Officer are to:
- (1) establish and administer written policies and procedures required under certain CFTC Regulations;



- (2) establish and administer written policies and procedures reasonably designed to prevent violations of the CEA or CFTC Regulations;
- (3) oversee, review, and take reasonable steps to ensure MarketAxess SEF's compliance with the CEA and CFTC Regulations;
- (4) in consultation with the CEO, the Board and/or Regulatory Oversight Committee, resolve any conflicts of interest that may arise between:
  - (i) business considerations and compliance requirements;
  - (ii) business considerations and the requirement that the MarketAxess SEF provide fair, open, and impartial access in accordance with its Rulebook<sup>2</sup>; and
  - (iii) the management of the MarketAxess SEF and the Directors of the Board.
- (5) establish and administer a compliance manual and procedures that:
  - (i) address the remediation of noncompliance issues identified by the Chief Compliance Officer through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;
  - (ii) address the handling, management response, remediation, retesting, and closing of noncompliance issues;
  - (iii) are designed to promote compliance with Applicable Law, the Rules, and administering a written code of ethics designed to prevent ethical violations and to promote honesty and ethical conduct; and
  - (iv) protect material, non-public information from unauthorized disclosure, misuse, espionage, loss and theft.
- (6) supervise the MarketAxess SEF program, including supervision of trade practice surveillance, market surveillance, real-time market monitoring, compliance with audit trail requirements, enforcement and disciplinary proceedings, audits, examinations, financial integrity, financial reporting, sales practice, and recordkeeping; and
- (7) supervise the effectiveness and sufficiency of the regulatory services provider.

2.1.13 The Chief Compliance Officer has available to him/her at all times the resources of the Market Regulation Department and such other MarketAxess SEF resources as may be necessary to conduct investigations of alleged Rule violations and market conditions.

2.1.14 The Chief Compliance Officer:

- (1) reports to the Chief Executive Officer and meets with the Board at least annually;

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<sup>2</sup> The MarketAxess SEF Rulebook is available at <http://www.marketaxess.com/about/legaldisclaimers.php> under the heading "MarketAxess SEF Rules and Filings".

- (2) has his or her performance reviewed by the Regulatory Oversight Committee and meets with the Regulatory Oversight Committee at least quarterly;
- (3) provides the Board or Regulatory Oversight Committee information regarding the MarketAxess SEF's self-regulatory program upon request; and
- (4) prepares and signs an annual compliance report, as prescribed in CEA and CFTC Regulations, and submits such report to the Board and the CFTC.

2.1.15 The Chief Compliance Officer has the authority to inspect the books and records of all Participants and the authority to require any Participant to appear before him/her and produce its books and records and answer questions regarding alleged violations of MarketAxess SEF Rules, at the time, place and in the manner that he/she designates. The Chief Compliance Officer may also delegate such authority to staff of the Market Regulation Department or the regulatory services provider.

### ***Regulatory Oversight Committee***

2.1.16 The Regulatory Oversight Committee oversees the MarketAxess SEF's regulatory program on behalf of the Board. The Regulatory Oversight Committee consists of two Public Directors.

2.1.17 The Board has delegated sufficient authority, dedicated sufficient resources and allowed sufficient time for the Regulatory Oversight Committee to fulfill its mandate. The Regulatory Oversight Committee makes such recommendations to the Board as will, in its judgment, best promote the interests of the MarketAxess SEF. The Board may delegate further powers and assign additional duties to the Regulatory Oversight Committee.

2.1.18 Without limiting the generality of the foregoing the Regulatory Oversight Committee:

- (1) monitors the regulatory program of the MarketAxess SEF for sufficiency, effectiveness and independence;
- (2) oversees all facets of the regulatory program, including:
  - (i) trade practice and market surveillance; audits, examinations and other regulatory responsibilities with respect to Participants (including compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping and other requirements), and the conduct of investigations;
  - (ii) reviewing the size and allocation of the regulatory budget and resources, and the number, hiring, termination and compensation of regulatory personnel;
  - (iii) reviewing the performance of the Chief Compliance Officer of the MarketAxess SEF;
  - (iv) recommending changes that would ensure fair, vigorous and effective regulation; and

- (v) reviewing all regulatory proposals prior to implementation and advising the Board as to whether and how such changes may impact regulation; and
  - (3) resolves any conflicts of interest that may arise involving the Chief Compliance Officer.
- 2.1.19 The Regulatory Oversight Committee reports to the Board and prepares an annual report assessing, for the Board and the CFTC, the regulatory program of the MarketAxess SEF. Such report:
- (1) describes the self-regulatory program;
  - (2) sets forth the expenses of the self-regulatory program;
  - (3) describes the staffing and structure of same;
  - (4) catalogues investigations and disciplinary actions taken during the year; and
  - (5) reviews the performance of the disciplinary panel of the Board and of the Chief Compliance Officer.
- 2.1.20 In the event that the Board rejects a recommendation or supersedes an action of the Regulatory Oversight Committee, the MarketAxess SEF shall submit a written report to the CFTC detailing:
- (1) the recommendation or action of the Regulatory Oversight Committee;
  - (2) the rationale for such recommendation or action;
  - (3) the rationale of the Board for rejecting such recommendation or superseding such action; and
  - (4) The course of action that the Board decided to take contrary to such recommendation or action.
- (b) that business and regulatory decisions are in keeping with its public interest mandate**
- 2.1.21 The governance structures of the Applicant as well as the rules, policies and activities of MarketAxess SEF are designed and focused on ensuring that MarketAxess SEF maintains best practices and fulfils its public interest mandate, including a stable market infrastructure and orderly operation of the market. MarketAxess SEF operates on a basis consistent with applicable laws and regulations, and best practices of other SEFs.
- (c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:**
- (i) appropriate representation of independent directors, and**
- 2.1.22 See section 2.1.4 above.

**(ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,**

2.1.23 Candidates for Board membership are evaluated for their expertise, experience, ethics, independence, commitment to enhancing shareholder value, understanding of the Applicant's business, and lack of material conflicts of interest, in accordance with the criteria described under the heading "Fitness" in section 2.2 of this Application. Directors elected to the Board of Directors have open access to senior management and, as appropriate, to the Applicant's outside advisors. This access enables directors to gather input from a diverse pool of market participants, employees, and advisors. The Applicant believes its leadership structure provides a well-functioning and effective balance between management leadership and appropriate safeguards and oversight by non-employee board members.

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

2.1.24 MarketAxess SEF Corporation is subject to the Code of Conduct that its parent company, MarketAxess Holdings Inc., has adopted. The Code of Conduct is a set of guidelines for the Applicant's employees, officers and directors which is intended to focus the Board and the Applicant's management on areas of ethical risk, provide guidance to personnel to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, and help to foster a culture of honesty and accountability. Specifically, the Code of Conduct prohibits conflicts of interest as a matter of policy and specifies that an employee, officer or director must never use or attempt to use his or her position with the Applicant to obtain any improper personal benefit for himself or herself, or a member of his or her family, or for any other person, including loans or guarantees of obligations, from any person or entity. The Code of Conduct specifies that service to the Applicant should never be subordinated to personal gain and advantage and that conflicts of interest should, to the extent possible, be avoided. Since conflicts are not always clear-cut, the Code of Conduct directs any employee, officer or director who becomes aware of a material transaction or relationship that could reasonably be expected to give rise to a conflict of interest, or has a question as to a potential conflict, to discuss the matter promptly with a member of the Applicant's compliance team, which includes the chief executive officer, chief financial officer and the general counsel.

2.1.25 The MarketAxess SEF Rulebook specifies that the Chief Compliance Officer, in consultation with the CEO, the Board and/or Regulatory Oversight Committee, is responsible for resolving any conflicts of interest that may arise between: (i) business considerations and compliance requirements; (ii) business considerations and the requirement that the MarketAxess SEF provide fair, open, and impartial access as set forth in the Rulebook; and (iii) the management of the MarketAxess SEF and the Directors of the Board. The Regulatory Oversight Committee is responsible for resolving any conflicts of interest that may arise involving the Chief Compliance Officer.

2.1.26 Furthermore, a Director, Officer, disciplinary panel member or other person authorized to exercise the MarketAxess SEF's authority concerning any inquiry, investigation, disciplinary proceeding or any appeal from a disciplinary proceeding, summary suspension or other summary action (any such action, a "**MarketAxess SEF Proceeding**"), or emergency actions (each such MarketAxess SEF Proceeding or

emergency action, a “**Self-Regulatory Action**”), who knowingly has a “material conflict of interest”<sup>3</sup> between his or her position with respect to the exercise of authority concerning a Self-Regulatory Action and his or her personal interests (each, an “**Interested Person**”) may not participate in any deliberations or vote of the Board Committee or panel or exercise any authority with respect to such Self-Regulatory Action involving his or her personal interest, except as specifically provided for in the Rulebook.

2.1.27 Before considering any Self-Regulatory Action, an Interested Person must disclose in writing to the Board the material facts concerning his or her relationship or interest in the matter.

2.1.28 If a determination is made by the Board in accordance with procedures set out in the Rulebook that an Interested Person may participate in deliberations prior to a vote, then the minutes of the meeting of the Board or committee thereof will reflect the determination and the reasons for the determination.

2.1.29 If a determination is made that all Directors are Interested Persons with respect to a matter subject to a vote by the Board, the Chief Executive Officer will appoint a panel of individuals who are not Interested Persons with respect to such matter, which will have the same authority and powers over such matter that the Board would have if the Directors were not Interested Persons with respect to such matter.

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

***Qualifications of Directors, Disciplinary Panel Members, Appeal Panel Members, Committee Members, Owners and Officers***

2.1.30 MarketAxess SEF Corporation has established written policies that set out the fitness standards and composition of the Board as further described above in section 2.2 of this Application. In addition, Directors and Officers must meet the qualifications set forth from

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<sup>3</sup> For purpose of this section, a “material conflict of interest” means a Director, Officer, disciplinary panel member or other person:

- (1) is named as a respondent or potential respondent in the Self-Regulatory Action;
- (2) is an employer, employee, fellow employee or an Affiliate of a respondent or potential respondent in the Self-Regulatory Action;
- (3) has any significant, ongoing business relationship with a respondent or potential respondent in the Self-Regulatory Action;
- (4) has a family relationship with a respondent or potential respondent in a Self-Regulatory Action (including the individual’s spouse, co-habitator, former spouse, parent, step-parent, child, step-child, sibling, step-brother, step-sister, grandparent, grandchild, uncle, aunt, nephew, niece, father-in-law, mother-in-law, brother-in-law or sister-in-law);
- (5) has a “direct and substantial financial interest” in the result of the deliberations or vote based upon either MarketAxess SEF or non-MarketAxess SEF positions (as referenced in Section 1.69(b)(2) of the CFTC Regulations), other than a direct or indirect equity or other interest in MarketAxess Holdings, that could reasonably be expected to be affected by the action. A direct and substantial financial interest includes positions in MarketAxess SEF Swaps in accounts of, controlled by, or affiliated with the Interested Person or in any other types of direct and substantial financial positions of the Interested Person that are reasonably expected to be affected by the deliberations or vote; and/or
- (6) any other circumstance that gives rise to a conflict between the Director’s, Officer’s, disciplinary panel member’s or other person’s exercise of authority concerning any Self-Regulatory Action and his or her personal interests.

time to time by the Board, including qualifications and sufficient expertise in financial services, risk management, and clearing services.

- 2.1.31 An individual may not serve as a Director or an Officer, or serve on a Board committee, disciplinary panel or appeal panel, or hold a 10% or more ownership interest in the MarketAxess SEF, in certain circumstances, including if the individual has, within the prior three years, been found to have committed a disciplinary offense, entered into a settlement agreement involving a disciplinary offense, or has been subject to a revocation or suspension of registration by the CFTC.
- 2.1.32 An individual would similarly be restricted if the individual is subject to certain regulatory suspensions and disqualifications, owes certain fines or penalties or has been convicted of certain felonies.
- 2.1.33 Each Director is entitled to indemnification pursuant to the Certificate of Incorporation and By-laws with respect to matters relating to the MarketAxess SEF or otherwise relating to MarketAxess SEF Corporation. Directors and Officers receive no remuneration directly from MarketAxess SEF. Directors and Officers are remunerated at other levels of the MarketAxess organization.

**2.2 Fitness - The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.**

- 2.2.1 MarketAxess SEF Corporation has established written policies that set out the fitness standards and composition of the Board. These policies mandate that the directors of MarketAxess SEF Corporation must have:
  - (1) substantial experience working as an executive officer for, or serving on the board of, a public company; or
  - (2) significant accomplishment in another field of endeavour related to the strategic running of the Applicant's business; and
  - (3) an ability to make a meaningful contribution to the oversight and governance of a company having a scope and size similar to that of the Applicant.
- 2.2.2 A MarketAxess SEF Corporation director is also required to have an exemplary reputation and record for honesty in his or her personal dealings and business or professional activity. All directors must demonstrate strong leadership skills and should possess a basis understanding of financial matters; have an ability to review and understand the Applicant's financial and other reports; and be able to discuss such matters intelligently and effectively. He or she also needs to exhibit qualities of independence in thought and action. A director should be committed first and foremost to the interests of the stockholders of the Applicant. The Board of Directors of the Applicant must contain at least 35%, but not less than two, public directors.
- 2.2.3 Every individual employed by, or seconded to, the MarketAxess SEF goes through the following background checks: social security number trace, criminal background check,

education and employment verifications, sanctions background check and pre-employment drug screening.

- 2.2.4 For a further discussion of fitness standards applicable to MarketAxess SEF Directors and Officers, also see sections 2.1.30 to 2.1.32 above, under heading “*Qualifications of Directors, Disciplinary Panel Members, Appeal Panel Members, Committee Members, Owners and Officers*”.

### **3. REGULATION OF PRODUCTS**

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

- 3.1.1 Pursuant to 7 U.S.C. 1a, 2, 5, 6, 7, 7a, 8 and 12, the CFTC implemented Part 40 (Provisions Common to Registered Entities) (“**Part 40**”), which deals with the process for review of new products traded on CFTC-registered SEFs and DCMs. Part 40 requires that all new products and changes to products be self-certified with the CFTC under CFTC Regulations 40.2 – *Listing products for trading by certification* (“**CFTC Regulation 40.2**”) and 40.6 – *Self-certification of rules* (“**CFTC Regulation 40.6**”), respectively. A SEF may voluntarily submit new products for CFTC review and approval pursuant to CFTC Regulation 40.3 – *Voluntary submission of new products for Commission review and approval* (“**CFTC Regulation 40.3**”).

- 3.1.2 The process for making a new product submission pursuant to CFTC Regulation 40.2 requires that the SEF file an electronic submission that is to be received by the CFTC by the open of business on the business day preceding the product’s listing and that must include, among other items, a copy of the product’s rules, including all rules related to its terms and conditions, the intended listing date, a certification that the product complies with the CEA and CFTC regulations, a concise explanation and analysis of the product and its compliance with the applicable provisions of the CEA, including its core principles, and the CFTC’s regulations, and a certification that the SEF posted a notice of pending product certification with the CFTC and a copy of the submission on its website. CFTC Staff may request additional evidence, information or data that demonstrates that the product meets, initially or on a continuing basis, the requirements of the CEA or CFTC regulations or policies.

- 3.1.3 The process for making a new product submission pursuant to CFTC Regulation 40.3 is similar to that described above. The CFTC will approve a new product submitted under CFTC Regulation 40.3 unless the terms and conditions of the product violate the CEA or CFTC regulations.

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

- 3.2.1 The Applicant has instituted terms and conditions that govern the trading of products that trade on the MarketAxess SEF. These terms and conditions are in conformity with the

usual commercial customs and practices for the trading of such products and include set trading hours and minimum increment and contract sizes.

3.2.2 The Applicant uses the cash settlement method. This method is commonly used for credit default swaps and accepted by market participants.

3.2.3 The Applicant uses indices to determine the exchange of cash flows for the products it lists. These indices are highly liquid indices that are not readily susceptible to manipulation. Each index used by the Applicant for its contracts is a reliable indicator of market values and conditions. Each index is highly regarded by the industry.

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

3.3.1 The MarketAxess SEF maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on its exchange, including the following:

- (1) **Position Limits:** The MarketAxess SEF Rulebook stipulates that the MarketAxess SEF must adopt and make available on its website at [www.marketaxess.com](http://www.marketaxess.com) for each of the MarketAxess SEF swaps, as is necessary and appropriate, speculative position limits or position accountability levels. To date, MarketAxess SEF has not found it necessary or appropriate to adopt speculative position limits or position accountability levels. For any MarketAxess SEF swap that is subject to a position limit established by the CFTC pursuant to the CEA, the MarketAxess SEF has set its position limit at a level no higher than the CFTC limit and monitors positions established on or through the MarketAxess SEF for compliance with the limit set by the CFTC and the limit, if any, set by the MarketAxess SEF.
- (2) **Pre-Execution Credit Checks:** At the time of submitting an RFQ or order for any MarketAxess SEF swap that is intended to be cleared, a MarketAxess participant must designate a Futures Commission Merchant (“FCM”) to clear the trade. The MarketAxess SEF will, promptly upon receipt of such RFQ or Order, facilitate pre-execution screening by the FCM identified by the person on behalf of which the RFQ or order is placed. Upon receiving confirmation that the RFQ or order satisfies the FCM's pre-execution limits, the MarketAxess SEF will place the RFQ or order on the MarketAxess SEF trading system.
- (3) **Trading Monitoring:** The Applicant conducts real-time monitoring of trading to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process.
- (4) **Authority to Adjust Trade Prices or Cancel Trades:** The MarketAxess Control Center (which is a technical support center established and maintained by the MarketAxess SEF to provide technical support and control over the operations of the MarketAxess SEF trading system) has the authority to adjust trade prices or cancel trades when necessary to mitigate market disrupting events caused by the improper or erroneous use of the MarketAxess SEF trading system or by malfunctions in its systems or platforms.



- (5) **Authority to Pause or Halt Trading:** The MarketAxess SEF has the authority to pause trading in any MarketAxess SEF swap or restrict the trading of any participant in any or all MarketAxess SEF swap(s) if doing so: (i) serves the purpose of preventing market disruptions or price distortions or (ii) if requested to do so by the CFTC or any clearing house.

#### **4. ACCESS**

##### **4.1 Fair Access**

- (a) **The exchange has established appropriate written standards for access to its services including requirements to ensure**

- (i) **participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,**
- (ii) **the competence, integrity and authority of systems users, and**
- (iii) **systems users are adequately supervised.**

4.1.1 The MarketAxess SEF Rulebook restricts access to the MarketAxess SEF only to qualifying Participants who demonstrate to the satisfaction of the MarketAxess SEF that they are eligible for admission in accordance with the criteria described in section 1.3 of Part I of this Application, which criteria include that the applicant is of good reputation and business integrity, holds all registrations required under applicable law, if any, is validly organized, in good standing and authorized by its governing body and, if relevant, documents of organization to trade swaps, and is not prohibited from using the services of the MarketAxess SEF for any reason whatsoever. Most MarketAxess SEF Ontario Participants are banks, registered dealers and advisers and other large financial institutions.

4.1.2 MarketAxess SEF does not provide direct access to an Ontario Participant unless the Ontario Participant is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, and qualifies as an “eligible contract participant” under the CEA.

4.1.3 For each Ontario Participant provided direct access, MarketAxess SEF will require, as part of its application documentation or continued access to the MarketAxess SEF, the Ontario Participant to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.

4.1.4 MarketAxess SEF requires Ontario Participants to notify MarketAxess SEF if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, MarketAxess SEF will promptly restrict the Ontario Participant’s access to MarketAxess SEF if the Ontario Participant is no longer appropriately registered or exempt from those requirements.

4.1.5 An applicant wishing to become a Participant Firm must provide such information and documentation as may be reasonably requested by the MarketAxess SEF, and follow

the procedures established by the MarketAxess SEF for admission. In considering an application from a potential Participant Firm, the MarketAxess SEF may require additional information from the applicant, conduct an investigation to verify information submitted by the applicant, or both.

- 4.1.6 Prior to being granted access to the MarketAxess SEF, each qualifying Participant must enter into a MarketAxess SEF User License Agreement which sets out the terms on which the Participant may access the MarketAxess SEF.
- 4.1.7 The MarketAxess SEF User License Agreement permits a Participant to register one or more agents to access the MarketAxess SEF trading system on behalf of the Participant. Participants must register their agents prior to permitting the agents to access the MarketAxess trading system. Following such registration, the MarketAxess SEF issues one or more user IDs and passwords (collectively, the “**Passwords**”) for use exclusively by the Participant or its agents on behalf of the Participants for transactions in SEF contracts as authorized by the SEF. By registering an agent, a Participant agrees to be bound by any and all actions taken by such agent in connection with the SEF.
- 4.1.8 Pursuant to the MarketAxess SEF User License Agreement, the Participant is responsible for controlling and monitoring the use of the Passwords and must not disclose, or permit any other person to disclose, the Passwords to any third party. Participants must immediately notify the SEF of: (i) any unauthorized disclosure or use of a Password; (ii) any unauthorized access to the MarketAxess SEF site or trading system; and (iii) any loss of a Password.
- 4.1.9 The Applicant has established disciplinary rules, investigative procedures as well as sanctions in connection with violations, alleged violations or attempted violations of any rule of the MarketAxess SEF or any provision of applicable law, as further described below.
- (b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.**
- 4.1.10 MarketAxess SEF provides eligible contract participants impartial access to its market and market services. MarketAxess SEF's access criteria are transparent and available in the Rulebook. MarketAxess SEF applies access criteria in a fair and non-discriminatory manner. Each participant firm must demonstrate to MarketAxess SEF that it is an Eligible Contract Participant. MarketAxess SEF provides comparable fee structures for participants receiving comparable access to, or services from, MarketAxess SEF. MarketAxess SEF requires all participants to consent to MarketAxess SEF's jurisdiction. See also section 7 of this Application on due process.
- (c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.**
- 4.1.11 The MarketAxess Rules stipulate that MarketAxess SEF must not restrict access or impose burdens on access in a discriminatory manner among similarly situated Participants. There is only one category of Participant on the MarketAxess SEF.

**(d) The exchange does not**

**(i) permit unreasonable discrimination among participants, or**

**(ii) impose any burden on competition that is not reasonably necessary and appropriate.**

4.1.12 The MarketAxess SEF Rules are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate. For example, the Rules stipulate that MarketAxess SEF must not restrict access or impose burdens on access in a discriminatory manner among similarly situated Participants. The Rules also prohibit any Participant from creating fictitious transactions, wash transactions or non-competitive transactions except, in the case of non-competitive transactions, as otherwise authorized by the MarketAxess SEF Rules, or executing any order with knowledge of its nature as a fictitious transaction, wash transaction or non-competitive transaction.

**(e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.**

4.1.13 The MarketAxess SEF keeps, or causes to be kept, complete and accurate books and records of all activities relating to the business of the MarketAxess SEF, including records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access. MarketAxess SEF retains copies of the User License Agreement with Firm Participants and maintains a list of all authorized traders acting on behalf of each Participant. The MarketAxess SEF promptly notifies a Participant Firm in writing whether the nomination of a designated authorized trader by the Firm Participant was approved or declined by MarketAxess SEF.

**5. REGULATION OF PARTICIPANTS ON THE EXCHANGE**

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

5.1.1 MarketAxess SEF is a self-regulatory organization under the CEA and, accordingly, has the authority to govern the conduct of its participants in several ways, including by:

(1) restricting access to the MarketAxess SEF only to qualifying Participants who

- (i) demonstrate to the satisfaction of the MarketAxess SEF that they are eligible for admission in accordance with the criteria described in section 1.3 of Part I of this Application; and
    - (ii) enter into a MarketAxess SEF User License Agreement which sets out the terms on which the Participant may access the MarketAxess SEF.
  - (2) establishing and requiring compliance by all participants with the rules and obligations set out in the MarketAxess SEF Rulebook, as further described below.
  - (3) establishing trading practices and business conduct standards that apply to all transactions on MarketAxess SEF, as further described below.
  - (4) establishing disciplinary rules, investigative procedures as well as sanctions in connection with violations, alleged violations or attempted violations of any rule of the MarketAxess SEF or any provision of applicable law, as further described below.
- 5.1.2 MarketAxess SEF provides eligible contract participants impartial access to its market and market services. MarketAxess SEF's access criteria are transparent and available in the Rulebook. MarketAxess SEF applies access criteria in a fair and non-discriminatory manner. Each participant firm must demonstrate to MarketAxess SEF that it is an Eligible Contract Participant. MarketAxess SEF provides comparable fee structures for participants receiving comparable access to, or services from, MarketAxess SEF. MarketAxess SEF requires all participants to consent to MarketAxess SEF's jurisdiction.
- 5.1.3 The MarketAxess SEF Rulebook requires all participants to comply with MarketAxess SEF rules and obligations and establishes procedures to enforce its rules. The MarketAxess SEF website sets out the terms and conditions of swaps to be traded or processed on or through the MarketAxess SEF. The Rulebook requires participants to abide by the terms and conditions of any swap traded or processed on or through MarketAxess SEF. The Rulebook establishes, and MarketAxess SEF impartially applies, qualifications a participant must meet to access the SEF. The Rulebook sets forth procedures for impartially deciding whether to revoke, suspend, limit, condition, restrict, or qualify access to the SEF, including when the decision is made as part of a disciplinary or emergency action taken by MarketAxess SEF.
- 5.1.4 MarketAxess SEF has established trading practices and business conduct standards that apply to all transactions on MarketAxess SEF and are designed to deter abuses. MarketAxess SEF has the capacity to detect and investigate rule violations and has the authority and capacity to enforce its rules.
- 5.1.5 The Rulebook governs the operation of the facility, including specifying the trading procedures to be used in entering and executing orders traded or posted on MarketAxess SEF, including block trades.
- 5.1.6 The Rulebook provides that when a swap dealer or major swap participant enters into or facilitates a swap that is subject to the mandatory clearing requirement under CEA section 2(h), the swap dealer or major swap participant shall be responsible for complying with the mandatory trading requirement under CEA section 2(h)(8).

- 5.1.7 The Applicant has retained the National Futures Association (“**NFA**”) to be a regulatory services provider. The NFA provides regulatory services to MarketAxess SEF Corporation pursuant to a Regulatory Services Agreement effective June 27, 2013. These services include trade practice surveillance, market surveillance, real time monitoring, inquiries, investigations and disciplinary proceedings, reporting and recordkeeping, arbitration services, enforcement of audit trail and recordkeeping requirements, and financial surveillance. The Applicant remains responsible for the performance of regulatory services received, compliance with its obligations, and for the NFA’s performance on its behalf.
- 5.1.8 While MarketAxess SEF Corporation will generally rely upon the NFA to perform compliance services relating to trade practice, market and financial surveillance in accordance with the NFA’s compliance manual and the Regulatory Services Agreement with NFA, MarketAxess SEF Corporation will perform the following compliance functions in-house:
- (1) real-time monitoring of trading activity (and implementation of corrective measures, if necessary) for:
    - (i) disorderly trading;
    - (ii) market or system anomalies;
  - (2) trade reconstructions;
  - (3) capture and retention of audit trail data;
  - (4) notifying the CFTC of certain circumstances as required by CFTC Rules; and
  - (5) any other functions as required by the MarketAxess SEF Corporation’s Rules.
- 5.1.9 MarketAxess SEF retains ultimate decision-making authority with respect to any functions that are contracted to the NFA and documents where the MarketAxess SEF’s actions differ from the NFA’s recommendations, including the reasons for the course of action recommended by the NFA and the reasons why the MarketAxess SEF chose a different course of action. Such functions include cancellation of trades, the issuance of disciplinary charges against members or market participants and denials of access to the trading platform for disciplinary reasons.
- 5.1.10 MarketAxess SEF supervises the NFA by, among other things:
- (1) ensuring that the NFA has the necessary capacity and resources to provide timely and effective regulatory services;
  - (2) retaining sufficient compliance staff to supervise the NFA’s quality and effectiveness;
  - (3) holding regular meetings to discuss ongoing investigations, trading patterns, market participants, and other similar matters; and

- (4) conducting and documenting periodic reviews of the adequacy and effectiveness of services provided.
- 5.1.11 MarketAxess SEF Corporation conducts real-time market monitoring of all trading activity on its system to identify disorderly trading and any market or system anomalies. MarketAxess SEF Corporation allows for the monitoring of all activity on the SEF in an activity console which shows a line for every inquiry/order and allows for the individual conducting the monitoring to click and see the details of all the activity that happened on that inquiry/order (e.g., the instrument, participants, size, and price). There is also: (i) a blotter that contains all trade tickets and all the activity details that occurred during the inquiry/order that resulted in the trade and (ii) a function allowing for the individual conducting the monitoring to see the SEF's Order Book in real time and see all standing orders. The real-time monitoring processes include: viewing all trading activity; tracking specific Participants/traders (as warranted); monitoring overall pricing and volume; reviewing automated market message alerts that are triggered by abnormal price movements and volume; and monitoring the real-time activity log.
- 5.1.12 MarketAxess SEF Corporation monitors trading to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process.
- (1) MarketAxess SEF Corporation conducts real-time monitoring of trading as described in Section 5.1.9 and has the capability to create comprehensive and accurate trade reconstructions.
  - (2) Upon the discovery or receipt of information that indicates a possible basis for finding that a violation has occurred or may occur, this information is sent to the Market Regulation Department of MarketAxess SEF Corporation. The Market Regulation Department will conduct inquiries and investigations in accordance with the MarketAxess SEF Rulebook which sets forth the review process of an investigative report through which the Chief Compliance Officer and/or the Disciplinary Panel will determine whether an investigation should be closed or escalated.
  - (3) MarketAxess SEF Corporation has the authority to pause trading in any MarketAxess SEF Swap.
- 5.1.13 The MarketAxess Control Center has the authority to adjust trade prices or cancel trades when necessary to mitigate market disrupting events caused by the improper or erroneous use of the MarketAxess SEF trading system or by malfunctions in its systems or platforms. MarketAxess SEF Corporation exercises this authority in the manner set forth in the MarketAxess SEF Rulebook. Any trade price adjustments or trade cancellations are transparent to the market and subject to standards that are clear, fair, and publicly available. The MarketAxess SEF Rulebook contains the criteria to be used to determine whether trade price adjustments or cancellations will take place.
- 5.1.14 After notice and opportunity for hearing in accordance with the MarketAxess SEF Rules, the MarketAxess SEF will impose meaningful sanctions for violations or attempted violations of a Rule of the MarketAxess SEF or provision of applicable law for which the SEF possesses disciplinary jurisdiction. All sanctions, including sanctions imposed pursuant to an accepted settlement offer, take into account the respondent's disciplinary history. In the event of demonstrated customer harm, any sanction must also include full

customer restitution, except where the amount of restitution or to whom the restitution should be provided cannot be reasonably determined. The MarketAxess SEF may impose one or more of the following sanctions or remedies:

- (1) censure;
- (2) limitation on trading privileges, ability to otherwise access the MarketAxess SEF trading system, and/or other activities, functions or operations;
- (3) suspension of trading privileges and/or ability to otherwise access the MarketAxess SEF trading system;
- (4) fine (up to \$500,000 for each violation of a Rule of the MarketAxess SEF of a provision of applicable law);
- (5) restitution or disgorgement;
- (6) termination of trading privileges and/or ability to otherwise access the MarketAxess SEF trading system;
- (7) a warning letter, provided that no more than one warning letter is issued to the same Participant of the same violation in a rolling twelve-month period; or
- (8) any other sanction or remedy deemed to be appropriate.

5.1.15 MarketAxess SEF also imposes meaningful sanctions for violations of recordkeeping and audit trail violations which are sufficient to deter recidivist behavior. No more than one warning letter is issued to the same person or entity found to have committed the same violation of audit trail or recordkeeping requirements within a rolling twelve month period.

## **6. RULEMAKING**

### **6.1 Purpose of Rules**

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

6.1.1 Pursuant to its obligations under the CEA and the CFTC Regulations, the MarketAxess SEF has implemented rules, policies and other similar instruments that govern the operations and activities of its participants. The Rules are set out in the MarketAxess SEF Rulebook and describe Participant obligations and requirements regarding trading practices and business conduct, as well as disciplinary rules and procedures.

6.1.2 The Rules are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate. For example, the Rules stipulate that MarketAxess SEF must not restrict access or impose

burdens on access in a discriminatory manner among similarly situated Participants (Rulebook Chapter 3).

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

- (i) ensure compliance with applicable legislation.** MarketAxess SEF proactively ensures compliance with all applicable laws and regulations, including the CEA, CFTF Regulations and SEF Core Principles. The MarketAxess SEF Rulebook sets out a comprehensive set of rules that govern SEF Participants, describe their obligations, and mandate various trading practices and business conduct, all designed to ensure compliance with applicable legislation. For example, in compliance with SEF Core Principles and CEA requirements, the MarketAxess SEF Rulebook prohibits abusive trading practices (Rulebook Chapter 5), grants MarketAxess SEF ultimate decision-making authority with respect to any functions that are contracted to regulatory services providers (Rulebook Chapter 2), and establishes trading, trade processing, and participation rules (Rulebook Chapter 5).
- (ii) prevent fraudulent and manipulative acts and practices.** MarketAxess SEF has established rules and practices designed to prevent fraudulent and manipulative acts and practices. For example, the SEF ensures that it permits trading in swaps that are not readily susceptible to manipulation, by using indices to determine the exchange of cash flows for the products it lists. These indices are highly liquid indices that are not readily susceptible to manipulation. Each index used by MarketAxess SEF for its contracts is a reliable indicator of market values and conditions and is highly regarded by the industry. MarketAxess SEF has also established rules and instituted controls to monitor trading in swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions. Furthermore, the MarketAxess SEF Rulebook prohibits any Participant from engaging in any fraudulent act or in any scheme to defraud, deceive, trick or mislead in connection with any MarketAxess SEF activity (Rulebook Chapter 5). The Rules also prohibit any Participant from creating fictitious transactions, wash transactions or non-competitive transactions (except, in the case of non-competitive transactions, as otherwise authorized by the MarketAxess SEF Rules), or executing any Order with knowledge of its nature as a fictitious transaction, wash transaction or non-competitive transaction (Rulebook Chapter 5).
- (iii) promote just and equitable principles of trade.** The MarketAxess SEF Rulebook promotes just and equitable principles of trade by establishing transparent and objective standards to prevent unreasonable restraints on trade and foster competitive and open market participation (Rulebook Chapters 3, 4 and 5). MarketAxess SEF's Rulebook also prohibits the restriction of access or imposition of burdens on access in a discriminatory manner among similarly situated Participants (Rulebook Chapter 3).
- (iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and**



**facilitating transactions in the products traded on the exchange.** The Rulebook allows MarketAxess SEF to enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance and investigative activities with other market regulatory authorities or organizations on which financial instruments related to the MarketAxess SEF swaps trade (Rulebook Chapter 2). As part of any such information-sharing agreements or other arrangements or procedures, the MarketAxess SEF may (1) provide market surveillance reports to other self-regulatory organizations solely for regulatory purposes; (2) share information and documents concerning current and former participants with other markets; and/or (3) share information and documents concerning ongoing and completed investigations with other markets.

- (v) **provide a framework for disciplinary and enforcement actions.** Chapter 7 (Disciplinary Rules) of the MarketAxess SEF Rulebook establishes in substantial detail uniformly applicable disciplinary procedures for rule violations. See also section 7 of this Application on due process.
- (vi) **ensure a fair and orderly market.** The MarketAxess SEF Rulebook sets out a comprehensive set of rules that govern SEF Participants, describe their obligations, and mandate various trading practices and business conduct, all designed to deter abuses and ensure a fair and orderly market. For example, the MarketAxess SEF Rulebook prohibits abusive trading practices and establishes trading, trade processing, and participation rules that comply with SEF Core Principles and CEA requirements (Rulebook Chapter 7).

## 7. **DUE PROCESS**

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

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

7.1.2 The MarketAxess SEF provides written notice of disciplinary proceedings to the parties and the NFA consistent with applicable CFTC Regulations. Whenever the MarketAxess SEF suspends, expels, fines or otherwise disciplines, or denies any person access to the MarketAxess SEF, the MarketAxess SEF will make the required notices and disclosures required by all applicable CFTC Regulations.

7.1.3 In connection with MarketAxess SEF disciplinary proceedings, the respondent has the right to a hearing and to be represented by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process. Prior to the commencement of a disciplinary hearing, a respondent is given the opportunity to review all books, records, documents, papers, transcripts of testimony and other tangible evidence in the possession or under the control of the MarketAxess SEF that will be used to support the allegations and proposed sanctions or which are deemed relevant to the disciplinary proceeding.

- 7.1.4 The MarketAxess SEF arranges for any hearing conducted in connection with disciplinary proceedings to be recorded verbatim, or substantially verbatim, in a manner capable of accurate transcription. If the respondent requests a copy of all or portions of the recording of a hearing, the chair of the disciplinary panel may within his or her sole discretion require the respondent to pay the costs for transcribing the recording of the hearing. No interlocutory appeals of rulings of any Disciplinary Panel or chair of the Disciplinary Panel are permitted.
- 7.1.5 The MarketAxess SEF disciplinary panel issues written orders rendering its decisions. The MarketAxess SEF serves a copy of the order of the disciplinary proceedings on the respondent.
- 7.1.6 MarketAxess SEF keeps a record of, gives reasons for, and provides for appeals from summary suspensions and other summary actions. A respondent whose trading privileges and/or ability to otherwise access the MarketAxess SEF are summarily suspended, revoked, limited, conditioned, restricted or qualified may apply for reinstatement. Within a reasonable period after the filing of a request for reinstatement, the MarketAxess SEF appeals panel will conduct a hearing to consider the request. At the hearing for reinstatement, the respondent will present its, his or her case supporting the reinstatement. As promptly as reasonably possible after a reinstatement hearing, the appeals panel will issue an order reinstating, denying the reinstatement, or placing conditions on the reinstatement of the trading privileges and/or ability to otherwise access the MarketAxess SEF of the respondent. The order will include a brief summary of the evidence introduced at the reinstatement hearing and, if applicable, findings of fact and conclusions not contained in a notice of summary action previously issued to the respondent.
- 7.1.7 If the MarketAxess SEF decides to decline or condition an application for admission as a Participant Firm, or terminate a person's status as a Participant Firm, the MarketAxess SEF promptly notifies such Person ("**Affected Person**") thereof in writing sent to the address provided by the applicant in the MarketAxess SEF application form or maintained in the MarketAxess SEF registry of Participant Firms. Such Affected Person may, within seven (7) calendar days following receipt of such writing, request in writing that the MarketAxess SEF provide the reasons for the denial, conditioning or termination of Participant Firm status. Within fourteen (14) calendar days after receiving such written request, the MarketAxess SEF shall send a written response to the Affected Person setting forth the reasons for the denial, conditioning or termination. MarketAxess SEF keeps a record of such written responses and the reasons provided therein.

## **8. CLEARING AND SETTLEMENT**

### **8.1 Clearing Arrangements - The exchange has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.<sup>4</sup>**

- 8.1.1 The Applicant requires that swaps that are intended to clear will be cleared at the Chicago Mercantile Exchange Inc. ("**CME**") or Ice Clear Credit LLC ("**ICC**").

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<sup>4</sup> For the purposes of these criteria, "clearing house" also means a "clearing agency".

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

8.2.1 The MarketAxess SEF has assured itself that the CME and ICC have established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

8.2.2 CME and ICC clearing firms are subject to stringent capital, operational, and risk management standards as a condition of clearing membership. These clearing firm standards are augmented by risk management and financial surveillance techniques.

8.2.3 CME and ICC are subject to stringent CFTC regulations which mandate various risk management policies and procedures, including:

- (1) the appointment of a chief regulatory officer whose duties include implementing a board-approved written risk management framework.
- (2) the appointment of a chief compliance officer whose duties include the review of CME's and ICC's written policies and procedures and compliance with applicable CFTC risk management frameworks. This review is included in an annual compliance report submitted to the CFTC.
- (3) the establishment and maintenance of a program of risk analysis and oversight with respect to the operations and automated systems of CME and ICC.
- (4) The testing of automated systems and business continuity and disaster recovery capabilities by objective, independent and qualified professionals on a periodic basis.

**9. SYSTEMS AND TECHNOLOGY**

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

- (a) order entry,**
- (b) order routing,**
- (c) execution,**
- (d) trade reporting,**
- (e) trade comparison,**
- (f) data feeds,**
- (g) market surveillance,**
- (h) trade clearing, and**
- (i) financial reporting.**

9.1.1 Each of MarketAxess SEF's critical systems, including each of the systems specifically listed immediately above, has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the MarketAxess SEF to properly carry on its business.

9.1.2 In compliance with SEF Core Principle 14, MarketAxess SEF:

- (1) established and maintains a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures and the development of automated systems that are reliable, secure, and have adequate scalable capacity;
- (2) established and maintains emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the MarketAxess SEF; and
- (3) periodically conducts tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

9.1.3 MarketAxess SEF's program of risk analysis and oversight with respect to its operations and automated systems addresses each of the following categories:

- (1) Information security;

- (2) Capacity and performance planning;
- (3) System operations (including configuration management, event management, and incident response);
- (4) Systems development methodology (including security controls requirements, software change management, and quality assurance) and outsourcing;
- (5) Business continuity and disaster recovery, including pandemic planning;
- (6) Enterprise risk management and internal audit; and
- (7) Physical security and environmental controls.

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

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

9.2.1 MarketAxess SEF adequately addresses all the system capability and scalability considerations listed immediately above in compliance with applicable regulatory requirements. For example, MarketAxess SEF tracks capacity levels and associated performance (i.e., response time) for each of the following system activities, including target, average daily, historical high, and system stress-tested sustained and peak levels:

- (1) Simultaneous workstation sessions;

- (2) Market participant transactions;
- (3) Trade matches;
- (4) Quote vendor transactions; and
- (5) Data mirroring transactions.

9.2.2 MarketAxess SEF employs a performance testing process which involves running a suite of predefined tests on every major release of the system. MarketAxess SEF's performance test suite includes tests of transactional functionality as well as market data (vendor quote) functionality. The tests are based on statistical system usage data gathered in production and measure the response time for commonly used system features under a high load. For example, during the quarterly load tests it performs, MarketAxess SEF aims to achieve 2.5 times peak volumes. After the suite of tests is run, the results are compiled and performance numbers are compared with previous releases. If test results do not compare favorably with the past, MarketAxess SEF investigates the causes of performance degradation and rectifies the issues. MarketAxess SEF makes reasonable current and future capacity estimates by performing, on a quarterly basis, load tests based on previous historical peaks of the system.

9.2.3 MarketAxess SEF aims to have sub-second response on user activity for a high predetermined percentage of all user requests. In terms of throughput, MarketAxess SEF tests to a predetermined multiple of the SEF's busiest production day. When production activity reaches a level where the SEF no longer meets the criteria it targets, MarketAxess SEF procures additional hardware.

9.2.4 On a semi-annual basis, MarketAxess SEF performs a risk assessment of the MarketAxess environment conducted against the ISO 27001 control set. MarketAxess SEF has a robust monitoring infrastructure in place that is able to detect and in some instances instantly respond to the risk of unauthorized access, internal failures, human errors, attacks and natural catastrophes. MarketAxess SEF has an intrusion prevention system (IPS) and security incident and event management (SIEM) which are used to detect security based anomalies and a dedicated production support team who manages the overall system health of the environment and is able to respond accordingly.

9.2.5 MarketAxess SEF has spare hardware which can be activated in an emergency. Typically, MarketAxess SEF is able to activate such additional hardware within a short period of time. MarketAxess SEF has some level of redundancy to every component of the system. Any anomalies such as potential points of failure, lack of back-up and redundant capabilities are highlighted to an internal MarketAxess IT risk committee for review.

9.2.6 MarketAxess SEF follows a formal systems development life cycle (SDLC) process which is reviewed annually by internal and external auditors.

9.2.7 The MarketAxess maintains a disaster recovery site. All mission critical systems have disaster recovery capability. The MarketAxess SEF tests its disaster recovery plan annually during the SIFMA DR test. A full suite of application tests is done as part of the

exercise. Results of the annual tests are shared with relevant Board risk committees. See also section 9.1 of this Application on systems and technology.

**9.3 Information Technology Risk Management Procedures - The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and respond to market disruptions and disorderly trading.**

9.3.1 The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and respond to market disruptions and disorderly trading. See also section 9.1 of this Application on systems and technology.

9.3.2 During an emergency, the Board is authorized to implement temporary emergency procedures and rules (collectively, "**Emergency Rules**"), subject to the applicable provisions of the CEA and CFTC Regulations and, where appropriate, in consultation with one or more clearing firms and/or clearing houses. Emergency Rules authorize the MarketAxess SEF, the Board, any committee of the Board, the Chief Executive Officer or any other Officer to take actions necessary or appropriate to respond to the emergency, including, but not limited to directly taking, or indirectly taking through agreements with a clearing house or regulatory services provider, the following actions:

- (1) suspending or curtailing trading or limiting trading to liquidation only (in whole or in part);
- (2) providing alternative settlement mechanisms;
- (3) ordering the liquidation, transfer or the reduction of positions in any MarketAxess SEF swaps;
- (4) extending, limiting or changing the trading hours;
- (5) temporarily modifying or suspending any provision of the MarketAxess SEF rules or obligations;
- (6) requiring Participants to meet special margin requirements;
- (7) imposing or modifying price limits, intraday market restrictions, or bands;
- (8) imposing or modifying position limits;
- (9) ordering the fixing of a settlement price;
- (10) transferring a Participant's or customer's position and margin;
- (11) altering any MarketAxess SEF swap's settlement terms or conditions; or
- (12) take market actions as may be directed by the CFTC.

9.3.3 Before any Emergency Rule may be adopted and enforced, a required vote of the Board must approve the enforcement of such Emergency Rule at a duly convened meeting. Directors may remotely attend such a meeting by teleconference or other similar means. If the Chief Executive Officer or the Chief Compliance Officer determines that

Emergency Rules must be implemented with respect to an emergency before a meeting of the Board can reasonably be convened, then the Chief Executive Officer or the Chief Compliance Officer shall have the authority, without Board action, to implement any Emergency Rules with respect to such emergency that he or she deems necessary or appropriate to respond to such emergency. In such circumstances, the Chief Executive Officer or the Chief Compliance Officer must promptly notify the Board, and the Board must convene a meeting as soon as practicable.

- 9.3.4 The MarketAxess SEF has the authority to pause trading in any MarketAxess SEF swap or restrict the trading of any Participant in any or all MarketAxess SEF swap(s) if doing so: (i) serves the purpose of preventing market disruptions or price distortions or (ii) if requested to do so by the CFTC or any clearing house.
- 9.3.5 Event and problem management and tracking are managed internally by MarketAxess SEF. MarketAxess has several monitoring systems in place for infrastructure monitoring of servers, business logic conditions (i.e. high trade volume inquiry in system), network monitoring and database monitoring.

## 10. **FINANCIAL VIABILITY**

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

- 10.1.1 The MarketAxess SEF has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices.
- 10.1.2 Pursuant to CFTC requirements related to SEF Core Principle 13 – *Financial resources*, the financial resources of a SEF shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the SEF to cover the operating costs of the SEF for a 1-year period, as calculated on a rolling basis, and the SEF's financial resources include unencumbered, liquid financial assets (i.e., cash and/or highly liquid securities) equal to at least six months' operating costs.
- 10.1.3 The MarketAxess SEF maintains the current minimum capital amounts needed, and will maintain any future minimum capital amounts needed, to meet CFTC requirements.
- 10.1.4 MarketAxess SEF is adequately capitalized and has adequate financial, operational, and managerial resources to discharge each of its responsibilities. MarketAxess SEF's resources exceed, and will continue to exceed, its operating costs for a one-year period (calculated on a rolling basis).

## 11. **TRADING PRACTICES**

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

- 11.1.1 The MarketAxess SEF Rulebook governs the conduct of Participants to ensure that trading practices on the SEF are fair and not contrary to the public interest. For example, the Rulebook prohibits any Participant from engaging in any fraudulent act or in any scheme to defraud, deceive, trick or mislead in connection with any MarketAxess SEF activity (Rulebook Chapter 5). The Rules also prohibit any Participant from creating



fictitious transactions, wash transactions or non-competitive transactions (except, in the case of non-competitive transactions, as otherwise authorized by the MarketAxess SEF Rules), or executing any Order with knowledge of its nature as a fictitious transaction, wash transaction or non-competitive transaction (Rulebook Chapter 5). The Rulebook also establishes transparent and objective standards to prevent unreasonable restraints on trade and foster competitive and open market participation (Rulebook Chapters 3, 4 and 5).

11.1.2 The Applicant also ensures that trading is properly supervised by conducting real-time monitoring of trading to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process.

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

11.2.1 MarketAxess SEF rules and protocols pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.2.2 The MarketAxess SEF Rulebook stipulates that the MarketAxess SEF must adopt and make available on its website at [www.marketaxess.com](http://www.marketaxess.com) for each of the MarketAxess SEF swaps, as is necessary and appropriate, speculative position limits or position accountability levels. To date, MarketAxess SEF has not found it necessary or appropriate to adopt speculative position limits or position accountability levels. For any MarketAxess SEF swap that is subject to a position limit established by the CFTC pursuant to the CEA, the MarketAxess SEF has set its position limit at a level no higher than the CFTC limit and monitors positions established on or through the MarketAxess SEF for compliance with the limit set by the CFTC and the limit, if any, set by the MarketAxess SEF.

11.2.3 MarketAxess SEF offers the following trading protocols for Required Transactions<sup>5</sup>:

- (1) **Order Book:** As mandated by the Dodd-Frank Act, MarketAxess SEF offers an order book on which all market participants have the ability to execute or trade swaps by accepting bids or offers from multiple participants;
- (2) **Request-for-Quote (RFQ):** MarketAxess offers a fully disclosed auction-style protocol which market participants can request either a bid or an offer from a minimum of 2 other market participants.

**11.3 Transparency - The exchange has adequate arrangements to record and publish accurate and timely information as required by applicable law or the Foreign Regulator. This information is also provided to all participants on an equitable basis.**

11.3.1 The CFTC requires real-time reporting of all transactions on a SEF to swap data repositories (“SDRs”). MarketAxess SEF provides for real-time reporting to the

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<sup>5</sup> Required Transactions are transactions subject to the trade execution mandate under the Dodd-Frank Act— i.e. they have been ‘made available to trade’ (MAT) - and must be executed on a SEF or DCM using one of the minimum execution methods.

Depository Trust & Clearing Corporation on behalf of Participants, which reporting includes the actual notional or principal amount of a block trade. All reported SDR data is also available via the MarketAxess BondTicker™ data service at [www.bondticker.com](http://www.bondticker.com).

## **12. COMPLIANCE, SURVEILLANCE AND ENFORCEMENT**

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

12.1.1 As discussed above in section 1.2 of Part III of this Application, the CFTC carries out the regulation of swap execution facilities in accordance with the provisions of the CEA. The CFTC has been charged with administering and enforcing the CEA and is the U.S. government agency that has direct regulatory and oversight responsibility over SEFs.

12.1.2 To implement the CEA, the CFTC has promulgated CFTC Regulations that further interpret the SEF Core Principles and govern the conduct of U.S. SEFs, such as the MarketAxess SEF. The CFTC is currently conducting a final SEF approval process which is expected to last for the next two years. Both during this approval process, SEFs, such as MarketAxess SEF, are required to make certain daily, quarterly, annual, and ad hoc filings with the CFTC. In this connection, the CFTC is able to review material and housekeeping changes in the SEF's business and can monitor trading on the MarketAxess SEF. In aid of its day to day surveillance, the CFTC receives daily transaction and other reports from the Applicant and has access to real time reports made to the SEF's swap data repository (MarketAxess SEF currently reports to the DTCC).

12.1.3 MarketAxess SEF is authorized by the CEA, in accordance with SEF Core Principles, to set rules, conduct compliance reviews and perform surveillance and enforcement, including by:

- (1) establishing and enforcing compliance with any of its rules;
- (2) establishing and enforcing trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules; and
- (3) establishing rules governing the operation of the SEF, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility.

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

12.2.1 MarketAxess SEF maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants, either directly or indirectly through NFA, the regulatory services provider. The NFA provides regulatory services to MarketAxess SEF Corporation, including trade practice surveillance, market surveillance, real time monitoring, inquiries, investigations

and disciplinary proceedings, reporting and recordkeeping, arbitration services, enforcement of audit trail and recordkeeping requirements, and financial surveillance. The Applicant remains responsible for the performance of regulatory services received, compliance with its obligations, and for the NFA's performance on its behalf. See also section 5 of the Application on regulation of Participants on the MarketAxess SEF.

12.2.2 In addition, MarketAxess SEF Corporation performs the following compliance functions in-house:

- (1) real-time monitoring of trading activity (and implementation of corrective measures, if necessary) for:
  - (i) disorderly trading;
  - (ii) market or system anomalies;
- (2) trade reconstructions;
- (3) capture and retention of audit trail data;
- (4) notifying the CFTC of certain circumstances as required by CFTC Rules; and
- (5) any other functions as required by the MarketAxess SEF Corporation's Rules.

12.2.3 The Applicant has also established disciplinary rules, investigative procedures as well as sanctions in connection with violations, alleged violations or attempted violations of any rule of the MarketAxess SEF or any provision of applicable law.

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

12.3.1 The MarketAxess SEF provides upon request, or reports in a form and manner acceptable to the CFTC, such information as required to be provided or reported pursuant to the CEA or CFTC Regulations. The MarketAxess SEF also reports in a form and manner acceptable to the Commission, such information as required to be provided pursuant to the Act.

## **13. RECORD KEEPING**

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

13.1.1 The MarketAxess SEF keeps, or causes to be kept, complete and accurate books and records of all activities relating to the business of the MarketAxess SEF, including, without limitation, complete audit trails for all MarketAxess SEF Swaps executed on, or otherwise subject to the Rules of, the MarketAxess SEF, investigatory files, disciplinary

files, and all books and records required to be maintained pursuant to the CEA and the CFTC Regulations.

- 13.1.2 The MarketAxess SEF retains, or causes NFA to retain, all such books and records for at least five (5) years, and makes such books and records readily accessible for inspection by the CFTC and the United States Department of Justice during the first two (2) years of such five-year period.
- 13.1.3 The MarketAxess SEF keeps, or causes to be kept, any such records relating to security-based swap agreements open to inspection and examination by the SEC.
- 13.1.4 Each Participant is required to keep complete and accurate books and records, including records of its activity in the index or instrument used as a reference price for a MarketAxess SEF Swap and related derivatives markets. To the extent required by applicable law or the MarketAxess SEF Rules, each Participant must make its books and records available, upon request, to the MarketAxess SEF, NFA, and the CFTC.

## 14. **OUTSOURCING**

### 14.1 **Outsourcing - Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.**

- 14.1.1 The Applicant has retained the National Futures Association to be a regulatory services provider. The NFA provides regulatory services to MarketAxess SEF Corporation pursuant to a Regulatory Services Agreement effective June 27, 2013. These services include trade practice surveillance, market surveillance, real time monitoring, inquiries, investigations and disciplinary proceedings, reporting and recordkeeping, arbitration services, enforcement of audit trail and recordkeeping requirements, and financial surveillance. The Applicant remains responsible for the performance of regulatory services received, compliance with its obligations, and for NFA's performance on its behalf. For further details, please refer to sections 5.1.7 through 5.1.10 above. The arrangement with the NFA is MarketAxess SEF's only arrangement outsourcing any of its key services or systems to a service provider.

## 15. **FEES**

### 15.1 **Fees**

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

- 15.1.1 The MarketAxess SEF sets the amounts and times of payment for any dues, assessments or fees (including MarketAxess SEF trading system fees, brokerage and/or any transaction surcharges) to be paid by Participants. The fees are based on, and proportional to, a Participant's use of the MarketAxess platform, and do not impose any minimums or other conditions or limits on access. The MarketAxess SEF provides comparable fee structures to eligible contract participants and independent software vendors receiving comparable access to, or services from, the MarketAxess SEF.

15.1.2 Because products trading on the MarketAxess SEF platform are fungible across platforms and are actively traded on various platforms, MarketAxess SEF is not in a position to impose any unreasonable or monopolistic fees. Currently, because MarketAxess SEF fees are usage-based and impose no minimums on Participants, less than 10% of all Participants pay any fees and no Ontario Participant pays any fees. Accordingly, all fees are reasonable and equitably allocated and do not create an unreasonable condition or limit on access to the services offered by the exchange.

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

15.1.3 MarketAxess SEF employs a usage-based fee schedule that is uniformly applied to all Participants and is publicly available on the MarketAxess website.<sup>6</sup> The fee schedule is determined from time to time by MarketAxess SEF staff and is subject to internal MarketAxess SEF regulatory review.

15.1.4 Dues, assessments and fees are published by the MarketAxess SEF in a Fee Circular or as otherwise agreed between the MarketAxess SEF and a Participant. The MarketAxess SEF may change the fees charged to Participant upon 30 days prior notice.

## **16. INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS**

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

16.1.1 MarketAxess SEF may enter into information-sharing agreements or other arrangements or procedures to coordinate surveillance and investigative activities with other market regulatory authorities or organizations on which financial instruments related to the MarketAxess SEF swaps trade. As part of any such information-sharing agreements or other arrangements or procedures, the MarketAxess SEF may (1) provide market surveillance reports to other self-regulatory organizations solely for regulatory purposes; (2) share information and documents concerning current and former participants with other markets; and/or (3) share information and documents concerning ongoing and completed investigations with other markets.

16.1.2 The MarketAxess SEF may enter into any arrangement with any person or body (including, without limitation, the CFTC, the NFA, any SEF, designated contract market, any self-regulatory organization, market, clearing organization or foreign regulatory authority, including the Commission) if the MarketAxess SEF considers such arrangement to be necessary and appropriate to fulfill the MarketAxess SEF regulatory responsibilities.

**16.2 Oversight Arrangements - Satisfactory information sharing and oversight agreements exist between the Commission and the Foreign Regulator.**

16.2.1 The CFTC has entered into memorandum of understanding (“MOU”) arrangements for co-operative enforcements with foreign regulatory authorities in numerous jurisdictions.

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<sup>6</sup> [http://www.marketaxess.com/pdfs/cds/MarketAxessSEF\\_FeeSchedule.pdf](http://www.marketaxess.com/pdfs/cds/MarketAxessSEF_FeeSchedule.pdf)

The MOUs typically provide for access to non-public documents and information already in the possession of the regulatory authorities, and often include undertakings to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting regulatory authority. The CFTC and the Commission are parties to an MOU that was entered into by the parties on July 7, 1992 and an MOU dated March 25, 2014.

**17. IOSCO PRINCIPLES**

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

17.1.1 MarketAxess SEF adheres to the standards of IOSCO by virtue of the fact that it must comply with the CEA and CFTC Regulations, which reflect the IOSCO standards. The MarketAxess SEF is subject to regular examination by the CFTC and during such examinations the IOSCO standards are taken into account.

## **PART IV - SUBMISSIONS**

### **1.0 Submissions Concerning the Exchange Relief**

1.1 There is a long history of U.S. commodity futures legislation being recognized by the Commission as substantially equivalent to Canadian commodity futures legislation. This pattern is evidenced not only by the Interim Order, but also by various other Commission recognition orders granting U.S.-regulated exchanges Exchange Relief similar to that requested in this Application, including, for example, the October 22, 2013 Commission order granting such relief to the Chicago Mercantile Exchange Inc.<sup>7</sup>

1.2 As mentioned previously, the filing of this Application is a condition of the Interim Order and the criteria listed in Part III of this Application were set out by Commission Staff as the relevant criteria to be addressed in an application by a SEF for the Exchange Relief. The Applicant satisfies all the criteria for exemption from registration of foreign-based swap exchange facilities listed in Part III of this Application.

1.3 Furthermore, Ontario market participants that trade in credit default swaps would benefit from the ability to trade on the MarketAxess SEF. MarketAxess SEF offers a transparent and efficient market for Ontario market participants to trade in credit default swaps. Stringent CFTC oversight of the MarketAxess SEF as well as the sophisticated information systems, regulations and compliance functions that have been adopted by the MarketAxess SEF will ensure that Ontario Participants are adequately protected in accordance with international standards set by IOSCO.

1.4 For all the above reasons, we therefore respectfully submit that it would be in the public interest to grant the Exchange Relief.

1.5 The Applicant understands that this Application will be published, along with a draft order, for a 30-day comment period.

## **PART V - OTHER MATTERS**

### **1.0 Enclosures**

1.1 In support of this Application, we are enclosing at Schedule "A" an authorization letter of the Applicant authorizing the filing of this Application by us and confirming the truth of the facts contained herein.

### **2.0 Consent to Publication**

2.1 The Applicant consents to the publication of this Application for public comment.

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<sup>7</sup> (2013), 36 OSCB 10472

If you have any questions or require any additional information in relation to any aspect of this Application, please do not hesitate to contact me at 416 601-7947 or at [rsorell@mccarthy.ca](mailto:rsorell@mccarthy.ca).

Yours very truly,

*"Rene Sorell"*

Rene Sorell

cc: Ron Steinfeld, *MarketAxess SEF Corporation*  
Scott Pintoff, *MarketAxess SEF Corporation*  
Cristian O. Blidariu, *McCarthy Tétrault LLP*



**SCHEDULE A**

**CERTIFICATE OF VERIFICATION**

The undersigned hereby authorizes the making and filing of the attached Application by McCarthy Tétrault LLP and confirms the truth of the facts contained therein regarding the undersigned.

DATED March 18, 2016

**MARKETAXESS SEF CORPORATION**

*"Ron Steinfeld"*

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Name: Ron Steinfeld

Title: Chief Compliance Officer