

**In the Matter of
The Securities Act, 1988**

and

**In the Matter of
ICE Futures U.S., Inc.**

ORDER

(Section 160(1) of the Act)

WHEREAS ICE Futures U.S., Inc. (**Applicant or ICE Futures U.S.**) has filed an application dated June 6, 2018, amended August 23, 2018, with the Financial and Consumer Affairs Authority of Saskatchewan (the **FCAA**) requesting:

- i) An order pursuant to section 160(1) of *The Securities Act, 1988* (**Act**) exempting the Applicant from the requirement to be recognized as an exchange and a derivative trading facility pursuant to section 21.1 of the Act; and
- ii) An order pursuant to section 160(1) of the Act exempting current and future Saskatchewan market participants trading in ICE Futures U.S. Contracts from the disclosure obligations contained in section 40(1) of the Act;

(Exemptions Sought)

AND WHEREAS section 21.1 of the Act establishes that a person or company shall not carry on business as an exchange, quotation and trade reporting system, or derivative trading facility in Saskatchewan unless the person or company is recognized by the Authority pursuant to section 21.3;

AND WHEREAS the Authority has assigned to the Executive Director, Securities Division, FCAA (**Executive Director**) the power to make exemption orders and rulings under the provisions of the Act;

AND WHEREAS the Applicant falls within the scope of a derivative trading facility as defined by subparagraph 2(1)(o.2)(i) of the Act and would otherwise be required to be recognized as such by section 21.1 of the Act;

AND WHEREAS the form and content of the disclosure document required to be filed with the Executive Director by every person or company who trades a derivative pursuant to section 40(1) of the Act has not yet been prescribed by the regulations to the Act;

AND WHEREAS the terms defined in the Act and National Instrument 14-101 *Definitions* have the same meaning if used in this Order, unless otherwise

herein defined;

AND WHEREAS the Applicant has represented to the FCAA that:

1. The Applicant is a Delaware corporation that is registered as a Designated Contract Market (**DCM**) pursuant to Sections 5 and 6(a) of the U.S. Commodity Exchange Act, as amended (**CEA**). It operates a market for the purpose of trading agricultural, financial, index, and energy futures and options. The Applicant is therefore subject to the supervision of the U.S. Commodity Futures Trading Commission (**CFTC**), which is the U.S. government agency that has direct regulatory responsibility over DCMs and is charged with administering and enforcing the CEA.
2. In order to maintain its designation as a contract market, the Applicant must comply with twenty-three (23) "Core Principles" applicable to all DCMs and set forth in Section 5(d) of the CEA and further defined in Part 38 of the CFTC Regulations promulgated under the CEA. These include, among other things, requirements that the Applicant has the capacity to prevent market manipulation through market surveillance, compliance and enforcement practices, and procedures; has established trading rules to ensure fair and equitable trading through its facilities; has the capacity to detect, investigate, and discipline any person who violates the Applicant's rules; can ensure the financial integrity of transactions entered into through its facilities; can provide public access to its rules; regulations, and contract specifications; has the authority to obtain any necessary information to perform its regulatory functions, including the capacity to carry out international information-sharing agreements; adopts position limitations or position accountability levels for speculators, where necessary and appropriate; establishes and enforces appropriate fitness standards for directors; has adequate financial resources; and has adequate system safeguards.
3. The Applicant is a wholly-owned subsidiary of Intercontinental Exchange, Inc. (**ICE**), which operates a global network of exchanges, clearing houses, and data providers. The Applicant is supported by its designated clearing houses, ICE Clear U.S., Inc. (**ICE Clear U.S.**), a wholly-owned subsidiary of the Applicant, which clears and provides financial security to its clearing members with respect to contracts other than Energy Contracts (as defined below), and ICE Clear Europe, a U.K. affiliate which clears all of the Applicant's Energy Contracts.
4. The electronic trading system used for the trading of the Applicant's contracts, generally known as the ICE Platform, is owned and operated by ICE and is provided to the Applicant under the terms of a Software License Agreement and a Services Agreement. The ICE Platform is also used by affiliates of the Applicant.

5. ICE developed the ICE Platform technology in compliance with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions (**IOSCO**). In utilizing ICE's technology and developing this technology in conjunction with ICE for the trading of the Applicant's electronically-traded contracts, the Applicant adheres to the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of IOSCO.
6. The Applicant's securities listed for trading are futures contracts and options on futures contracts related to:
 - (i) agricultural commodities such as canola, cocoa, coffee, cotton, frozen concentrated orange juice, and sugar;
 - (ii) the U.S. dollar index;
 - (iii) currency pairs;
 - (iv) equity index products;
 - (v) credit indices;
 - (vi) energy contracts related to electricity, natural gas, emissions, and crude and refined oil products (**Energy Contracts**); and
 - (vii) precious metals;

(collectively, ICE Futures U.S. Contracts)

7. All trades involving products other than the Energy Contracts are cleared and settled by ICE Clear US: a registered derivatives clearing organization (**DCO**) under section 5b of the CEA that is subject to supervision by the CFTC.
8. All trades on the Energy Contracts are cleared and settled by ICE Clear Europe Limited: a company situated in the United Kingdom registered as a DCO, the activities of which are supervised by the CFTC in so far as they relate to the Applicant's contracts, and the Bank of England.
9. Persons wishing to clear the Applicant's futures contracts, options, or other transactions on ICE Clear U.S. or ICE Clear Europe must either become members of the appropriate clearing organization (each a **Clearing Member**) or have an agreement in place with a Clearing Member that has agreed to clear such person's transactions through the

Clearing Member's customer account with the proper clearing organization. In other words, all transactions executed on the Applicant's exchange must be cleared through ICE Clear U.S. or ICE Clear Europe, as applicable, which in turn transact only with Clearing Members.

10. In order to become a Clearing Member of ICE Clear U.S. an entity must, among other things, meet certain eligibility requirements, have capital of at least \$5,000,000, be approved by the ICE Clear U.S.'s board of directors, execute a Clearing Member Agreement with Ice Clear U.S., and make a deposit in a security fund maintained by Ice Clear U.S. called the "Guaranty Fund". The amount required to be so deposited is calculated by reference to a formula geared to the clearing activity and margin requirement of the entity, with a minimum of \$2,000,000. The entire amount currently on deposit in the Guaranty Fund at present is approximately \$800,000,000.
11. In order to become a Clearing Member of ICE Clear Europe an entity must, among other things, meet certain eligibility requirements, have capital of at least \$20,000,000, be approved by the ICE Clear Europe's board of directors, execute a Clearing Member Agreement with Ice Clear Europe, and make a deposit in a security fund maintained by ICE Clear Europe called the "Guaranty Fund". The contribution of each Member to The Futures & Options (**F&O**) Guaranty Fund is recalculated periodically (currently, every other month) and determined by each Member's average share of initial margin over the preceding period, with a minimum Member contribution of \$1,000,000 to The F&O Guaranty Fund. The F&O Guaranty Fund consists of two segments: the energy segment and the financials & softs segment. Each segment is calibrated to be sufficient to cover the potential cost of the simultaneous default of the two Member groups to which the Clearing House has the largest exposure. ICE contributes \$183,000,000 to The F&O Guaranty Fund, all of which sits in front of Members' obligations.
12. Clearing Members have direct access to the ICE Platform and may authorize direct access to individuals and entities who are non-clearing members and/or non-member customers. Pursuant to ICE Futures U.S. Rule 4.10 each Clearing Member is responsible for the financial obligations of each person it authorizes to use the ICE Platform with respect to all orders entered and transactions executed under its Clearing Member account, and agrees to be a party to all disputes arising from such transactions. The Clearing Member is responsible for conducting its own due diligence of Customers it authorizes for direct access and for order-routing clients, to ensure that they satisfy relevant regulatory, risk, and anti-money laundering standards.
13. Each Clearing Member and participant with direct access must execute the ICE Futures U.S. Participant Agreement. The Agreement contains

various representations and warranties by the participant, and requires certain disclosures to be made which could form the basis for denying access to the Exchange if the Exchange determines that approving an applicant for direct access is contrary to the best interests of the Exchange. A market participant without direct access may only access the ICE Platform indirectly, such as by sending or routing its orders through an intermediary or its Clearing Member. Regardless of how the market participant's order is submitted to the ICE Platform, it is the Clearing Member who is financially responsible for all orders and trades of the users that it authorizes to trade.

14. The Applicant proposes to offer access to trading in ICE Futures U.S. Contracts through the ICE Platform to prospective market participants in the Province of Saskatchewan (**Saskatchewan Participants**), either by way of (i) direct access sponsored by a Clearing Member, or (ii) through order-routing arrangements where orders are routed through a Clearing Member onto the ICE Platform.
15. Pursuant to Core Principle 15 (Governance Fitness Standards) set forth in section 5(d) of the CEA and further defined in Part 38 of the CFTC Regulations promulgated under the CEA, access to the Applicant must be restricted to persons who satisfy certain eligibility criteria. Participants may apply for trading access after receiving authorization from an ICE Futures U.S. Clearing Member by submitting the requisite agreements, provided that such access must comply, in all respects, with all applicable laws, rules, regulations, or orders, including any registration requirements of the jurisdiction(s) where the participant is located and/or engaged in business. Each applicant for membership or direct access to trade is subject to sanctions screening by the Applicant to ensure that they are not subject to U.S. restrictions or located in a restricted country.
16. ICE Futures U.S. Membership Rules set forth the qualifications, requirements, and duties of Members. Rule 2.02 provides that IFUS Members and IFUS Member Firms must (i) if a natural person, be at least twenty-one (21) years of age, of good character, reputation and business integrity with adequate financial resources to assume the responsibilities and privileges of being a Member, and (ii) if a Firm, be of good reputation and business integrity with adequate financial resources to assume the responsibilities and privileges of being a Member
17. The Applicant expects that potential Saskatchewan Participants that may seek to become members, direct access users, and/or order-routing clients of a Clearing Member will be (i) engaged in activities that require registration, or operating pursuant to exemption from registration with the Authority pursuant to the Act, or (ii) who trade Exchange contracts in connection with the conduct of the participant's business or to

manage the risk associated with a present or future asset or liability relating to the participant's business.

18. The Applicant is recognized by the Alberta Securities Commission as an exchange by order dated February 15, 2012, and has been exempted from registration by the Ontario Securities Commission by order dated September 1, 2009, and Quebec's Autorité des marchés financiers by order dated November 20, 2014.

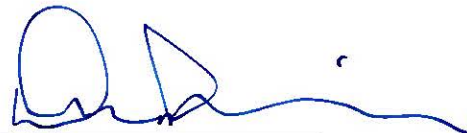
AND WHEREAS based on the Application and the representations the Applicant has made to the Authority, the Executive Director has determined that granting of the Exemptions Sought would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Executive Director pursuant to section 160(1) of the Act that the Applicant is exempt from recognition as an exchange and a derivative trading facility as otherwise required by section 21.1 of the Act;

IT IS FURTHER ORDERED by the Executive Director pursuant to section 160(1) of the Act that current and future Saskatchewan Participants trading in ICE Futures U.S. Contracts are exempt from the disclosure obligations contained in section 40(1) of the Act provided that;

- (i) the Applicant complies with the terms and conditions attached hereto as Schedule "A";
- (ii) This Order expires upon the earlier date of when regulations addressing derivative trading facilities and/or the regulations prescribing the form of the disclosure document referenced in section 40(1) of the Act are implemented in Saskatchewan; or April 15, 2027.

DATED at the city of Regina, in the province of Saskatchewan, this 12 day of April, 2023.



Dean Murrison
Executive Director, Securities Division
Financial and Consumer Affairs
Authority

SCHEDULE "A"

Terms and Conditions

PART 1 REGULATION AND OVERSIGHT OF THE EXCHANGE

1.1 Regulation of ICE Futures U.S.

ICE Futures U.S. is regulated in an appropriate manner in the United States by the CFTC. The regulatory scheme of the CFTC is transparent and generally comparable to that in Saskatchewan.

1.2 Authority of the Foreign Regulator

The CFTC has the appropriate authority and procedures for oversight of ICE Futures U.S. This oversight includes regular, periodic regulatory examinations of ICE Futures U.S. by the CFTC.

1.3 Compliance with Core Principles

ICE Futures U.S. will continue to comply with its ongoing compliance requirements set out in the Core Principles, or any successor compliance requirements, which are set forth in section 5(d) of the CEA and further defined in Part 38 of the CFTC Regulations promulgated under the CEA.

PART 2 CORPORATE GOVERNANCE

2.1 Fair Representation

The governance structure of ICE Futures U.S. provides for:

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

2.2 Appropriate Provisions for Directors and Officers

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

2.3 Fitness

ICE Futures U.S. takes reasonable steps to ensure that each officer and director is a fit and proper person, and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

2.4 Conflicts of Interest

ICE Futures U.S. has appropriate conflict of interest provisions for all directors, officers, and employees.

PART 3 FEES

3.1 Fees

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

PART 4 REGULATION OF PRODUCTS

4.1 Approval of Products

The products traded on the ICE Platform are approved by the appropriate authority.

4.2 Product Specifications

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

4.3 Risks Associated with Trading Products

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

PART 5 ACCESS

5.1 Fair Access

The requirements of ICE Futures U.S. relating to access to the ICE Platform, the imposition of limitations or conditions on access, and denial of access are approved by the CFTC and are fair and reasonable including in respect of notice, an opportunity to be heard or make representations, the keeping of records, the giving of reasons, and the provisions for appeals.

5.2 Details of Access Criteria

In particular, ICE Futures U.S.:

- (i) has written standards for granting access to trading on its facilities to ensure users have appropriate integrity and fitness;

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

5.3 Access for Saskatchewan Persons

ICE Futures U.S. provides direct access, either through the internet, data feeds or third party provided interfaces, to only those Saskatchewan Participants that are either:

- (i) registered under section 27 of the Act, or are exempt from registration under section 83 of the Act; or who
- (ii) trade ICE Futures U.S. Contracts in connection with the conduct of the participant's business, or to manage the risk associated with a present or future asset or liability relating to the participant's business.

ICE Futures U.S. will require Saskatchewan Participants who intend to rely on category 5.3(i) above to notify it if their registration or exemption from registration has been revoked, suspended, or amended by the Authority and, following notice from the Saskatchewan Participant or the Authority and subject to applicable laws, ICE Futures U.S. will promptly restrict the Saskatchewan Participant's access to the ICE Platform if the Saskatchewan Participant is no longer appropriately registered with or exempted by the Authority.

As part of the application documentation, each Saskatchewan Participant that intends to rely on category 5.3(ii) above must represent that it trades in contracts in connection with the conduct of their business, or to manage the risk associated with a present or future asset or liability relating to the conduct of the Saskatchewan Participant's business, and agree to notify the Applicant if it ceases to meet the criteria required for category 5.3(ii) above

PART 6 RULEMAKING

6.1 Purpose of Rules

ICE Futures U.S. maintains rules, policies, and other similar instruments as are necessary or appropriate to govern and regulate all aspects of its business and affairs and such rules are designed to, in particular:

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

6.2 No Discrimination or Burden on Competition

The rules of ICE Futures U.S. do not:

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

PART 7 SYSTEMS AND TECHNOLOGY

ICE Futures U.S. must be in compliance with all applicable requirements in National Instrument 21-101 *Marketplace Operation* as they relate to the ICE Platform's systems, technology, and business continuity planning.

PART 8 FINANCIAL VIABILITY

8.1 Financial Viability

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

PART 9 CLEARING AND SETTLEMENT

9.1 Relationship with Clearing Houses

ICE Futures U.S. has a clearing relationship with established clearing houses, namely ICE Clear US and ICE Clear Europe Limited (**Clearing Houses**), and all transactions executed on the ICE Platform are cleared through the Clearing Houses.

9.2 Regulation of the Clearing Houses

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

9.3 Authority of the Foreign Regulator

The CFTC or the Bank of England have the appropriate authority and procedures for oversight of the Clearing Houses. This oversight includes regular, periodic regulatory examinations of the Clearing Houses by the CFTC or the Bank of England.

9.4 Restrictions on Access to a Foreign Member

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

9.5 Sophistication of Technology of Clearing Houses

ICE Futures U.S. has assured itself that the information technology used by the Clearing Houses has been adequately reviewed and tested and provides at least the same level of safeguards as required of ICE Futures U.S.

9.6 Risk Management of Clearing Houses

ICE Futures U.S. has assured itself that the Clearing Houses have established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 10 TRADING PRACTICES

10.1 Trading Practices

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

10.2 Market Making Provisions

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

10.3 Orders

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

10.4 Transparency

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

10.5 Market Limits

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

PART 11 COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

11.1 Jurisdiction

ICE Futures U.S. or the CFTC has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

11.2 Member and Market Regulation

ICE Futures U.S. or the CFTC maintain appropriate systems, resources and procedures for evaluating compliance with Exchange and legislative requirements and disciplining participants.

11.3 Record Keeping

ICE Futures U.S. maintains adequate provisions for keeping books and records, including operations of ICE Futures U.S., audit trail information on all trades and compliance, and/or violations of ICE Futures U.S.'s requirements, the CEA and CFTC Regulations.

11.4 Availability of Information to Regulator

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

PART 12 SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE

12.1 Submission to Jurisdiction

ICE Futures U.S. submits to the non-exclusive jurisdiction of:

- (i) the courts and administrative tribunals of Saskatchewan; and
- (ii) an administrative proceeding in Saskatchewan, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of ICE Futures U.S. in Saskatchewan.

12.2 Agent for Service

ICE Futures U.S. files with the Authority a valid and binding appointment of an agent for service in Saskatchewan upon whom may be served a notice, pleading, subpoena, summons, or other document relating to any action, investigation, or administrative, criminal, quasi-criminal, penal, or other proceeding arising out of or relating to or concerning ICE Futures U.S.'s activities in Saskatchewan.

PART 13 DISCLOSURE

13.1 Information Provided to Saskatchewan Participants

ICE Futures U.S. provides to all Saskatchewan Participants, prior to the first trade by each Saskatchewan Participant that is executed through the facilities of ICE Futures U.S., disclosure that states that:

- (i) rights and remedies against the Applicant may only be governed by the laws of the United States, rather than the laws of Saskatchewan and may be required to be pursued in the United States rather than in Saskatchewan;
- (ii) the rules applicable to trading in ICE Futures U.S. Contracts may be governed by the laws of the United States, rather than the laws of Saskatchewan; and
- (iii) ICE Futures U.S. activities are primarily regulated by the CFTC, rather than the Authority.

PART 14 NOTICE OF CHANGE

14.1 Notification to the Authority

ICE Futures U.S. promptly notifies the Authority of any of the following:

- (i) any material change to the information provided in the Application, including, but not limited to:
 - (a) changes to the regulatory oversight by the CFTC;
 - (b) the corporate governance structure of ICE Futures U.S.;

- (c) the access model, including eligibility criteria, for Saskatchewan Participants;
 - (d) systems and technology; and
 - (e) the clearing and settlement arrangements for ICE Futures U.S.;
- (ii) any change regarding its right to carry on its activities in the United States and including, without limitation, any investigation or disciplinary measure or civil, penal, or criminal action related to the activities of the Applicant; and
 - (iii) any circumstance that may materially affect its financial viability or its ability to carry on its activities, including bankruptcy, insolvency, or financial hardship of a market participant.

PART 15 INFORMATION TO BE PROVIDED TO THE AUTHORITY EACH YEAR

15.1 Information to be Provided

ICE Futures U.S. provides to the Authority the following information no later than 60 days following the end of its fiscal year, and at any time promptly upon the request of staff of the Authority:

- (i) a list of each category of futures and options on futures that ICE Futures U.S. has listed for trading;
- (ii) its annual report;
- (iii) a current list of all Saskatchewan Participants that have direct access to ICE Futures U.S. (**Direct Access Users**);
- (iv) a list of all Saskatchewan Participants that are Direct Access Users against whom disciplinary action has been taken in the last year by the Applicant or the CFTC with respect to activities on ICE Futures U.S.;
- (v) a list of all investigations by the Applicant relating to Saskatchewan Participants that are Direct Access Users;
- (vi) a list of all Saskatchewan applicants who have been denied access to ICE Futures U.S.;
- (vii) for each ICE Futures U.S. Contract, the total trading volume originating from Saskatchewan Participants that are Direct Access Users and the proportion of worldwide trading volume on ICE Futures U.S. conducted by such Saskatchewan Participants; and

- (viii) a confirmation issued by the CFTC to the effect that ICE Futures U.S. fulfills the obligations and the conditions that the CFTC imposed on it.

PART 16 CHANGE TO THE ACTIVITIES IN SASKATCHEWAN

16.1 Prior Authorization

ICE Futures U.S. obtains the prior authorization of the Authority before making any change to its activities in Saskatchewan.

PART 17 INFORMATION SHARING

17.1 Information and Co-operation

ICE Futures U.S., subject to applicable laws, shares any and all information within the care and control of ICE Futures U.S. and otherwise co-operate wherever reasonable with the Authority or its staff.

PART 18 IOSCO PRINCIPLES

18.1 IOSCO Principles

ICE Futures U.S. adheres to the IOSCO principles to the extent consistent with the law of the United States.