

## Exemption Order

### ICE NGX Canada Inc.

#### Section 33(1) of the *Securities Act*, R.S.B.C. 1996

#### 1. Background

ICE NGX Canada Inc. (the Filer) has filed an application (the Application) with the British Columbia Securities Commission (the Commission) for an exemption under

- (a) section 33 of the *Securities Act* (British Columbia) (the Act) from the requirement under section 25 of the Act to be recognized as a clearing agency, and
- (b) section 48 of the Act from the requirement under section 34 of the Act to be registered to trade in a security or derivative in respect of the Clearing System (as defined below).

The Filer has concurrently filed an application to the Commission for, among other things, an exemption under section 33 of the Act from the requirement under section 25 of the Act to be recognized as an exchange. The Commission is granting an exemption from the requirement to be recognized as an exchange in a separate order.

#### 2. Interpretation

Terms defined in the Act, National Instrument 14-101 *Definitions* and NI 24-102 have the same meaning if used in this decision, unless otherwise defined.

In this decision,

“BC Contracting Party” means a Contracting Party that is a “BC Person”;

“BC Person” means a person that has its head office or principal place of business in British Columbia;

“Contracting Party” means a person that enters into a standard-form participation agreement (Contracting Party’s Agreement) with the Filer which sets out the rules applicable to the Filer’s clearing services and establishes a minimum qualification requirement for participants (the Clearing Rules);

“material non-compliance” means any incident of non-compliance with securities legislation if any of the following apply:

- (a) the non-compliance creates or created, in the opinion of a reasonable person, a risk of material harm to a BC Person;

- (b) the non-compliance creates or created, in the opinion of a reasonable person, a risk of material harm to capital markets in British Columbia;
- (c) the non-compliance is part of a pattern of non-compliance.

“PFMI Disclosure Framework Document” has the meaning given to it in National Instrument 24-102 *Clearing Agency Requirements*; and

### 3. Representations

This decision is based on the following representations of the Filer:

1. The Filer is incorporated under the *Canada Business Corporations Act* and is headquartered in Calgary, Alberta, Canada.
2. The Filer is an indirect, wholly-owned subsidiary of Intercontinental Exchange, Inc. (ICE), a public listed company subject to the rules and requirements of the U.S. Securities & Exchange Commission and the New York Stock Exchange.
3. Except in relation to the matters relating to the Application, the Filer is not in default under securities legislation in the Province of British Columbia.
4. The Filer operates a clearing system (the Clearing System) that provides clearing and settlement services for exchange contracts based on natural gas, electricity, crude oil and environmental and related commodity contracts identified in the Filer’s Contracting Party’s Agreement as Futures and Options (the Contracts) and Forwards.
5. Access to the Clearing System is restricted to business entities acting as principals, each of which:
  - (a) has entered into a Contracting Party’s Agreement with the Filer;
  - (b) has, or is controlled, directly or indirectly, by an entity which has, a net worth exceeding \$5,000,000 or total assets exceeding \$25,000,000.
6. The Filer is recognized by the Alberta Securities Commission (ASC) as an exchange and clearing agency and is subject to regulatory oversight by the ASC.
7. The Filer has been advised that the Commission and the ASC are each party to the Memorandum of Understanding respecting the Oversight of Clearing Agencies, Trade Repositories and Matching Service Utilities (MOU), as amended from time to time, which applies to the oversight of the Filer and under which the ASC is identified as the Lead Regulator that is responsible for the oversight of the Filer.

8. The Filer is registered with the US Commodity Futures Trading Commission (CFTC) as a foreign board of trade and a derivatives clearing organization, and is subject to oversight by the CFTC under the U.S. Commodity Exchange Act.
9. The Filer does not have physical operations in the Province of British Columbia.
10. The Filer offers, and intends to continue offering, BC Contracting Parties access to its clearing and settlement services and is therefore considered to be carrying on business as a clearing agency in British Columbia.
11. When accessing the Clearing System, BC Contracting Parties will be subject to the same requirements and will have access to the same services, on equivalent terms, as Contracting Parties resident in other jurisdictions.
12. The Filer maintains a compliance program designed to ensure its compliance with securities legislation in Canada applicable to the Filer's operation of the Clearing System, including the applicable rules and requirements of the ASC
13. The Filer will ensure the Board of Directors (the Board) and officers have the necessary qualifications, skills and experience to effectively perform their roles.
14. The Board, guided by the Filer's Board of Directors Governance Principles, is responsible for establishing policy to oversee the overall management of the Clearing System and ensure the corporate accountability, including compliance with regulatory obligations;
15. The Filer has a risk committee reporting to the Board responsible for policies and procedures, and ensuring sufficient resources related to risk management, risk mitigation, collateral requirements, risk models, default management and internal risk controls.
16. The Filer has a process for identifying and managing conflicts of interest as set out in ICE's Global Code of Business Conduct applicable to the Filer.
17. The access requirements and the process for obtaining, limiting and denying access to the Clearing System are fair, transparent and applied reasonably. In applying these access requirements, the Filer, in operating the Clearing System, will not:
  - (a) unreasonably prohibit, condition or limit access by a person to services offered by it;
  - (b) permit unreasonable discrimination among Contracting Parties; or
  - (c) impose any burden on competition that is not reasonably necessary and appropriate.

18. The fees on the Clearing System will be fair and appropriate, and transparent to all Contracting Parties and Contracting Party applicants.
19. The Filer has rules, policies and procedures to govern the services the Filer offers on the Clearing System, including financial resources (guaranty fund and liquidity resources), margin and collateral requirements, margin methodology and model performance, and model validations.
20. The Clearing Rules:
  - (a) are designed to govern the operations of the Clearing System, access to the Clearing System, and conduct of the Contracting Parties;
  - (b) permit the denial or limitation of a Contracting Party's access to the Clearing System or services offered are not contrary to the public interest and are designed to:
    - (i) ensure compliance with applicable legislation;
    - (ii) prevent fraudulent and manipulative acts and practices;
    - (iii) promote just and equitable principles;
    - (iv) provide a framework for disciplinary and enforcement actions; and
  - (c) require each Contracting Party to have
    - (i) the capacity to fulfill collateral, payment and delivery obligations to the Clearing System; and
    - (ii) the ability to fulfill default management requirements under the Clearing Rules.
21. For any decision made by the Filer in connection with the operation of the Clearing System relating to a Contracting Party or an person applying to be a Contracting Party, that materially affects the Contracting Party or person applying to be a Contracting Party, including in respect of access or discipline , the Filer ensures that:
  - (a) the affected person is 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.

22. The Filer applies its internal controls, policies and procedures relating to the Clearing System and its critical systems and testing thereof in respect of all Contracting Parties, including BC Contracting Parties, including in relation to:
  - (a) the proper functioning of the systems, change and incident management and system capacity;
  - (b) information security;
  - (c) business continuity;
  - (d) disaster recovery; and
  - (e) recordkeeping.
23. Where the Filer has outsourced any of the key services or systems of the Clearing System to a service provider, it has appropriate and formal arrangements and processes in place that are designed to ensure that the Filer and the Clearing System meet their obligations with respect to the operation of the Clearing System, including applicable regulatory requirements.

#### **4. Order**

Based on the Filer's representations and considering that to do so would not be prejudicial to the public interest, the Commission orders that the Filer is exempt under section 33(1) of the Act from the requirement to be registered as a clearing agency and under section 48 of the Act from the requirement to be registered to trade in a security or derivative on the following terms and conditions:

1. The Filer will promptly provide the Commission when requested either directly or through the ASC, as the case may be, any books records or other information in the custody or control of the Filer, relating to BC Contracting Parties, the operations of the Clearing System and compliance with applicable securities legislation in British Columbia, including this decision.
2. The Filer will promptly notify the Commission of any of the following:
  - (a) any material change to its business or operations or the information provided in the Application or the Filer's PFMI Disclosure Framework Document, including, but not limited to:
    - (i) changes to the regulatory oversight of the Filer or the Clearing System by ASC;
    - (ii) the corporate governance structure of the Filer;

- (iii) the access model, including eligibility criteria, for BC Contracting Parties; and
    - (iv) critical systems and technology;
  - (b) any change that may materially affect the accuracy of the representations;
  - (c) any condition or change in circumstances that result in the Filer being in material non-compliance with securities legislation in the province of Alberta;
  - (d) any revocation or suspension of the Filer's ability to operate the Clearing System in Canada or in any other jurisdiction;
  - (e) any known investigations of, or disciplinary action against, the Filer by the ASC or any other securities regulatory authority; and
  - (f) any matter known to the Filer that may affect its financial or operational viability, including, but not limited to, any significant system failure or interruption.
3. The Filer will provide, in a manner and form acceptable to the Commission, on a quarterly basis and at any time promptly upon the request of staff of the Commission:
- (a) a current list of BC Contracting Parties, including each BC Contracting Party's LEI, if available;
  - (b) a list of all BC Contracting Parties against whom disciplinary action has been taken by the Filer in the last quarter period;
  - (c) a list of all BC Persons who applied for status as a Contracting Party that were denied such status during the quarter last period;
  - (d) a classification of all Contracts available on the Clearing System during the last quarter period, identifying any additions, deletions or changes since the prior quarter period;
4. The Filer will provide, in a manner and form acceptable to the Commission, on an annual basis within 60 days of the end of the fiscal year and at any time promptly upon the request of staff of the Commission :
- (a) for each class of Contract available to BC Contracting Parties on the Clearing System:
    - (i) the total volume and value cleared for each BC Contracting Party; and

- (ii) the proportion of worldwide volume and value cleared on the Clearing System for BC Contracting Parties.
  - (b) a list outlining each incident of a significant system outage that occurred at any time during the semi-annual period for any system impacting BC Contracting Parties, including making requests, routing or data, specifically identifying the date, duration and reason for the outage, and noting any corrective action taken
- 5. The Filer will continue to make the Clearing Rules publicly available on its website and will promptly provide the Commission copies of material changes to the Clearing Rules.
- 6. The Filer will provide to its BC Contracting Parties disclosure that states that the Clearing System is regulated in Alberta.

December 13, 2023

“Brenda Leong”

Brenda M. Leong  
Chair and CEO  
British Columbia Securities Commission