

Exemption Order

ICE NGX Canada Inc.

Sections 33(1) and 48(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 an exchange,
- (b) section 33 of the Act from the provisions of
 - (i) National Instrument 21-101 *Marketplace Operation* (NI 21-101),
 - (ii) National Instrument 23-101 *Trading Rules* (NI 23-101),
 - (iii) National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (NI 23-103), and
- (c) section 48 of the Act
 - (i) from the requirement under section 34 of the Act to be registered to trade in a security or derivative, and
 - (ii) exempting trades by BC Contracting Parties from the requirement to be registered to trade in a security or derivative (collectively, the “Requested Relief”).

The Filer has concurrently filed an application with 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 a clearing agency. The Commission is granting an exemption from the requirement to be recognized as a clearing agency in a separate order.

2. Interpretation

Terms defined in the Act, National Instrument 14-101 *Definitions*, NI 21-101, and 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; and

“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 trading on the exchange operated by the Filer (Exchange) and establishes a minimum qualification requirement for participants (the Exchange 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.

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 Exchange offers trades in exchange contracts based on natural gas, electricity, crude oil, environmental and related commodity contracts identified in the Filer’s Contracting Party’s Agreement as Futures and Options (the Contracts) and Forwards.
5. Trading on the Exchange is based on a principal to principal model and is restricted to business entities, each of which:
 - (a) has entered into a Contracting Party’s Agreement with the Filer; and
 - (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. All trades in Contracts on the Exchange are cleared and settled through the Filer's clearing agency.
7. 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.
8. The Filer has been advised that the Commission and the ASC are each party to the Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems (MOU), 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.
9. 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.
10. The Filer does not have physical operations in the Province of British Columbia.
11. The Filer offers, and intends to continue offering, BC Contracting Parties access to the Exchange for trading of Contracts and is therefore considered to be carrying on business as an exchange in British Columbia.
12. When accessing the Exchange, 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.
13. The Filer maintains a compliance program reasonably designed to ensure it is not in material non-compliance with securities legislation in Canada applicable to the Filer's operation of the Exchange, including the applicable rules and requirements of the ASC.
14. The Filer will ensure the Board of Directors (the Board) and officers have the necessary qualifications, skills and experience to effectively perform their roles.
15. The Board, guided by the Filer's Board of Directors Governance Principles, is responsible for establishing policy to oversee the overall management of the Exchange and ensure the corporate accountability, including compliance with regulatory obligations;
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 Exchange are fair, transparent and applied reasonably. In applying these access requirements, the Filer, in operating the Exchange, 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 Exchange will be fair and appropriate, and transparent to all Contracting Parties and Contracting Party applicants.
19. The Filer has an effective real-time program to monitor conduct and trading activities of Contracting Parties, and a surveillance program to identify, investigate and intervene as necessary to ensure orderly market.
20. The Filer makes available to the public directly or indirectly through information vendors, daily information on settlement prices, volume, open interest, and opening and closing prices of actively traded contracts.
21. The Exchange Rules:
- (a) are designed to govern the terms and conditions of the Contracts and Forwards, operations of the Exchange, access to the Exchange, and conduct of the Contracting Parties;
 - (b) permit the denial or limitation of a Contracting Party's access to the Exchange or Contracts, 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 of trade;
 - (iv) ensure that a Contracting Party's order or trade information are only disclosed in accordance with the terms of the Contracting Party's Agreement and the Exchange Rules;
 - (v) provide a framework for disciplinary and enforcement actions, including referral of matters to the appropriate securities regulatory authority when appropriate; and
 - (vi) ensure a fair and orderly market.
22. For any decision made by the Filer in connection with the operation of the Exchange 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.
23. The Filer applies its internal controls, policies and procedures relating to the Exchange 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.
24. Where the Filer has outsourced any of the key services or systems of the Exchange to a service provider, it has appropriate and formal arrangements and processes in place that are designed to ensure that the Filer and the Exchange meet their obligations with respect to the operation of the Exchange, 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 under section 33(1) and 48(1) of the Act that the Requested Relief is granted 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 Exchange 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, including, but not limited to:
 - (i) changes to the regulatory oversight of the Filer or the Exchange 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 Exchange 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 within 60 days of the end of the fiscal quarter 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 applicable;
 - (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;
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 Contracts available to BC Contracting Parties on the Exchange:

- (i) the total volume and value conducted by BC Contracting Parties: and
 - (ii) the proportion of worldwide volume and value conducted by 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 Exchange Rules publicly available on its website and will promptly provide the Commission copies of material changes to the Exchange Rules.
- 6. The Filer will provide to its BC Contracting Parties disclosure that states that the Exchange is regulated in Alberta.

December 13, 2023

“Brenda Leong”

Brenda M. Leong
Chair and CEO
British Columbia Securities Commission