

Headnote

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – relief from National Instrument 21-101 *Marketplace Operation*, National Instrument 23-101 *Trading Rules* and National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (the **Marketplace Rules**) – Applicant seeking exemption from the Marketplace Rules in their entirety – relief granted, subject to conditions

October 14, 2022

In the Matter of
The Securities Legislation of
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and
Nova Scotia (the **Jurisdictions**)

and

In the Matter of
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of
ICE Bonds Securities Corporation (the **Filer**)

Decision

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application (the **Application**) from the Filer in respect of its operation of ICE TMC alternative trading system (**ICE TMC ATS**) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption pursuant to subsection 15.1(1) of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) in the Jurisdictions other than Ontario and subsection 15.1(2) of NI 21-101 in Ontario from NI 21-101 in whole, pursuant to subsection 12.1(1) of National Instrument 23-101 *Trading Rules* (**NI 23-101**) in the Jurisdictions other than Ontario and subsection 12.1(2) of NI 23-101 in Ontario from NI 23-101 in whole and pursuant to subsection 10(1) of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) in the Jurisdictions other than Ontario and subsection 10(2) of NI 23-103 in Ontario from NI 23-103 in whole (the **Exemptive Relief Sought**). Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (for a coordinated review application):

- (a) the Alberta Securities Commission is the principal regulator for this application, and

- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

- ¶ 2 Terms defined in National Instrument 14-101 *Definitions* and Multilateral Instrument 11-102 *Passport System* have the same meaning if used in this decision, unless otherwise defined.

Representations

- ¶ 3 This decision is based on the following facts represented by the Filer:
1. The Filer is a private corporation incorporated under the laws of Delaware whose registered office is at 3411 Silverside Road, Tatnall Building, Suite 104, Wilmington, Delaware, United States of America (US), and whose head office is located at 55 East 52nd Street, 40th Floor, New York, New York, US.
 2. The Filer is an indirect wholly owned subsidiary of Intercontinental Exchange, Inc. (ICE, NYSE ticker: ICE). ICE is a Fortune 500 company that operates a global network of futures, equity and equity options exchanges, as well as global clearing and data services across financial and commodity markets. ICE currently operates 13 exchanges and 6 clearing houses, and offers trade execution, central clearing, and data services. As part of its global network, ICE owns and operates entities registered with and regulated by the US Securities and Exchange Commission (SEC), including ICE Clear Credit, LLC, a registered clearing agency, and the New York Stock Exchange. ICE is also the owner of multiple broker-dealers, which are members of the Financial Industry Regulatory Authority (FINRA), including the Filer.
 3. The Filer offers fixed income products and operates three alternative trading systems (each, an ATS) that are registered with the SEC, and is a broker-dealer registered with the SEC pursuant to section 15 of the *Securities Exchange Act of 1934*, as amended, (**Exchange Act**). The Filer is also a member of FINRA and the Municipal Securities Rulemaking Board (**MSRB**).
 4. The Filer is subject to a comprehensive regulatory regime in the US. The Filer is regulated by the SEC and FINRA as a broker-dealer and an ATS. The SEC and FINRA fulfil their regulatory responsibilities within the framework established by the Exchange Act and FINRA member rules.
 5. ATS #1 operates under the name of ICE Credit Trade (**ICT ATS**), which is also a doing business name of the Filer. The ICT ATS is primarily a fixed income session-based auction market located and operated primarily in the US. The ICT ATS offers fixed income trading on a riskless principal basis in fixed income securities denominated in either US dollars or other foreign currencies, and settles on a fully-disclosed basis through its clearing broker.
 6. ATS #2 operates under the name of ICE BondPoint (**ICE BondPoint ATS**), which is also a doing business name of the Filer. In connection with the Filer's fixed income securities related business that occurs on the ICE BondPoint ATS, the Filer may act in either (i) a

riskless principal capacity, whereby the Filer is the counterparty to both the buyer and seller of a respective transaction, or (ii) in an agency capacity, whereby the Filer introduces the transaction counterparties to one another after the execution of a transaction on the ICE BondPoint ATS. When acting in an agency capacity, the counterparties to the transaction will clear and settle such transaction directly with one another, as opposed to the Filer acting as the counterparty intermediary (i.e., riskless principal). When acting in a riskless principal capacity, transactions effected on the ICE BondPoint ATS are submitted for clearance and settlement on a fully-disclosed basis to the Filer's affiliated clearing broker registered as a broker dealer with the SEC, ICE Securities Execution & Clearing, LLC (ISEC), and subsequently cleared and settled through a registered clearing agency.

7. The ICT ATS and ICE BondPoint ATS have previously obtained exemptive relief pursuant to a decision dated June 19, 2020 granted under the Legislation of the Jurisdictions.
8. ATS #3 operates under the name ICE TMC, which is also a doing business name of the Filer. Prior to June 1, 2020, ICE TMC ATS was operated by an affiliate of the Filer, TMC Bonds, L.L.C., a separate broker-dealer and ATS registered with the SEC. On June 1, 2020, ICE TMC ATS was consolidated into the Filer and at that point the Filer became the operator of the ICE TMC ATS.
9. ICE TMC ATS is an electronic marketplace where qualified institutional firms trade with each other on a predominately anonymous basis in municipal securities, corporate securities, government-sponsored enterprise and agency securities, mortgage-backed securities and U.S. Treasury securities as well as structured products and certificates of deposit. The Filer generally acts in a riskless principal capacity, which means that the Filer is the counter-party to each side of the trade executed over the ICE TMC ATS. When acting in a riskless principal capacity, transactions effected on the ICE TMC ATS settle on a fully-disclosed basis through ISEC. The ICE TMC ATS model is analogous to a central limit order book where subscribers can see full depth of market participation on both the bid and offer side. In some limited circumstances, such as for new issue securities, the Filer may act on an agency basis with its subscribers. When acting in an agency capacity, the counterparties to the transactions effected on the ICE TMC ATS clear and settle directly with one another and the Filer has no involvement in the post-execution processes. Some subscribers may also take an ICE TMC ATS market data feed and integrate it into its existing architecture, whereby it executes trades through the subscriber-operated front-end. ICE TMC ATS supports various messaging protocols, including FIX protocol. ICE TMC ATS has developed an application programming interface (**API**) for subscribers to use in order to link their internal systems to ICE TMC ATS. Other subscribers may purchase aggregated market data from ICE TMC ATS with no intention to transact on the ICE TMC ATS.
10. ICE TMC ATS's secondary markets are predominantly anonymous. Yet scenarios may arise where a subscriber directs ICE TMC ATS to disclose its name. These scenarios include, but are not necessarily limited to, the following situations: 1) full disclosure of its name, 2) selective disclosure of its name to certain other subscribers, or 3) disclosure of its name in the event of an unresolved trading matter.

11. The Filer does not have any offices or maintain other physical installations in Alberta, British Columbia, Manitoba, Saskatchewan, Ontario, Québec, New Brunswick, Nova Scotia or any other Canadian province or territory.
12. The Filer is a FINRA Trade Reporting and Compliance Engine (**TRACE**) and MSRB Real-Time Transaction Reporting (**RTRS**) reporting firm and as such, with the exception of transactions in municipal securities arranged on an agency basis on the ICT ATS, ICE BondPoint or ICE TMC ATS (each, an **ATS Platform**, and collectively the **ATS Platforms**) (which are not required to be reported by the Filer), the Filer will report all other eligible securities transactions executed on the ATS Platforms by subscribers located in the Jurisdictions (**Canadian Subscribers**) to TRACE and RTRS either within the required 15 minute time frame or at month end as required under FINRA Rule 6732. These transactions are reported to TRACE and MSRB on an anonymized basis, identifying only that it was a “customer” that traded with the Filer. The Filer’s market participant identifiers are TMCC, CSCA, CTSC and VABD.
13. The Filer proposes to offer Canadian Subscribers direct access to the ATS Platforms to facilitate trades in any debt security that is a foreign security or a debt security that is denominated in a currency other than the Canadian dollar as such terms are defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), including:
 - (a) debt securities issued by the US government and state, city, county, municipal and other US governmental entities (including agencies or instrumentalities thereof);
 - (b) debt securities issued by a foreign government;
 - (c) debt securities issued by corporate or other non-governmental issuers (US and foreign) or
 - (d) asset-backed securities (including mortgage backed securities), denominated in either US or foreign currencies.(collectively, **Non-Canadian Fixed Income Securities**).
14. Non-Canadian Fixed Income Securities includes certain securities that may not be registered pursuant to subsection 12(b) of the Exchange Act and may not be listed on one or more national securities exchanges which are registered pursuant to section 6 of the Exchange Act.
15. The ATS Platforms will only trade the Non-Canadian Fixed Income Securities that are permitted to be traded in the United States under applicable securities laws and regulations.
16. The Filer is currently relying on the “international dealer exemption” under section 8.18 of NI 31-103 in each of the Jurisdictions.

17. The Filer ensures that all applicants to become Canadian Subscribers must satisfy the Filer's eligibility criteria, including, among other things, that each Canadian Subscriber is a "permitted client" as that term is defined in NI 31-103.
18. The ATS Platforms will receive an order from a Canadian Subscriber for execution. All orders and executions will be governed by the respective ATS Platform's operating procedures.
19. The Filer is not in default of securities legislation in any Jurisdiction.

Decision

- ¶ 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted provided that the Filer complies with the terms and conditions attached hereto as Schedule A.

DATED October 14 2022

"Signed by"

Lynn Tsutsumi
Director, Market Regulation
Alberta Securities Commission

SCHEDULE A

TERMS AND CONDITIONS

Regulation and Oversight of the Marketplace

1. The Filer will continue to be subject to the regulatory oversight of the regulator in its home jurisdiction;
2. The Filer will either be registered in an appropriate category or rely on an exemption from registration under Canadian securities laws;
3. The Filer will promptly notify the Decision Makers if its status in its home jurisdiction has been revoked, suspended, or amended, or the basis on which its status has significantly changed;

Access

4. The Filer will not provide direct access to a Canadian Subscriber unless the Canadian Subscriber is a “permitted client” as that term is defined in NI 31-103;
5. The Filer will require Canadian Subscribers to provide prompt notification to the Filer if they no longer qualify as “permitted clients”;
6. The Filer must make available to Canadian Subscribers appropriate training for each person who has access to trade on the ATS Platforms;

Trading by Canadian Subscribers

7. The Filer will only permit Canadian Subscribers to trade the fixed income securities listed in representation number 13 of the Decision;
8. Except as described in the representations in the attached order, trades on the ATS Platforms by Canadian Subscribers will be cleared and settled through a clearing agency that is regulated as a clearing agency in the clearing agency’s home jurisdiction;
9. The Filer will only permit Canadian Subscribers to trade those securities which are permitted to be traded in the United States under applicable securities laws and regulations;
10. With the exception of transactions in municipal securities arranged on an agency basis on the ATS Platforms (which are not required to be reported by the Filer), the Filer will report all other securities transactions executed on the ATS Platforms by Canadian Subscribers to TRACE and RTRS in a timely manner. These transactions are reported to TRACE and MSRB on an anonymized basis, identifying only that it was a “customer” that traded with the Filer. The Filer’s market participant identifiers are TMCC, CSCA, CTSC and VABD;

Reporting

11. The Filer will promptly notify staff of the Decision Makers 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 its regulatory oversight;
 - (ii) the access model, including eligibility criteria, for Canadian Subscribers;
 - (iii) systems and technology; and
 - (iv) its clearing and settlement arrangements;
- (b) any change in its regulations or the laws, rules, and regulations in the home jurisdiction that materially affect the operation of the ATS Platforms;
- (c) any known investigations (other than routine regulatory examinations, audits or inquiries) of, or disciplinary action against, the Filer by the regulator in the home jurisdiction or any other regulatory authority to which it is subject;
- (d) 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; and
- (e) any default, insolvency, or bankruptcy of any subscriber known to the Filer or its representatives that may have a material, adverse impact upon the ATS Platforms, the Filer or any Canadian Subscriber;

12. The Filer will maintain the following updated information and submit such information in a manner and form acceptable to staff of the Decision Makers on a semi-annual basis (within 30 days of the end of each six-month period), and at any time promptly upon the request of staff of the Decision Makers:

- (a) a current list of all Canadian Subscribers on a per provincial basis, specifically identifying for each Canadian Subscriber the basis upon which it represented to the Filer that it could be provided with direct access;
- (b) a list of all Canadian applicants for status as a Canadian Subscriber on a per provincial basis who were denied such status or access or who had such status or access revoked during the period;
 - (i) for those Canadian Subscribers who had their status revoked, an explanation as to why their status was revoked;
- (c) for each product:

- (i) the total trading volume and value originating from Canadian Subscribers, presented on a per provincial Canadian Subscriber basis and
- (ii) the proportion of worldwide trading volume and value on the ATS Platforms conducted by Canadian Subscribers, presented in the aggregate per province for such Canadian Subscribers; and
- (d) a list of any system outages that occurred for any system impacting Canadian Subscribers' trading activity on the ATS Platforms which were reported to the regulator in the home jurisdiction, if any;

Disclosure

13. The Filer will provide to its Canadian Subscribers disclosure that states that:

- (a) rights and remedies against it may only be governed by the laws of the home jurisdiction, rather than the laws of Canada, and may be required to be pursued in the home jurisdiction rather than in Canada;
- (b) the rules applicable to trading on the ATS Platforms may be governed by the laws of the home jurisdiction, rather than the laws of Canada; and
- (c) the Filer is regulated by the regulator in the home jurisdiction, rather than the Decision Makers;

Submission to Jurisdiction and Agent for Service

14. With respect to a proceeding brought by the Decision Makers, staff of the Decision Makers or another applicable securities regulatory authority in Canada arising out of, related to, concerning or in any other manner connected with such regulatory authority's regulation and oversight of the activities of the Filer in Canada, the Filer will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Canada, and (ii) an administrative proceeding in Canada;
15. The Filer will file with the Decision Makers a valid and binding appointment of Osler, Hoskin and Harcourt LLP, or any subsequent agent, as the agent for service in Canada upon which the Decision Makers or other applicable regulatory authority in Canada may serve a notice, pleading, subpoena, summons, or other process in any action, investigation, or administrative, criminal, quasi-criminal, penal, or other proceeding arising out of or relating to or concerning the regulation and oversight of the ATS Platforms or the Filer's activities in Canada; and

Information Sharing

16. The Filer shall, subject to applicable laws, provide information within the care and control of the Filer as may be requested from time to time, and otherwise cooperate wherever reasonable with the Decision Makers, staff of the Decision Makers, recognized self-regulatory organizations, investor protection funds and other appropriate Canadian legal and regulatory bodies.