

Alberta Securities Commission (the Commission)

In the Matter of the *Securities Act*,
R.S.A. 2000, c. S-4 (the Act)

and

In the Matter of ICE Futures (the Filer)

ORDER
(Section 213)

Background

1. The Filer has applied to the Commission for an order under section 213 of the Act that:
 - 1.1 section 106 of the Act, which prohibits a person or company from trading in an exchange contract on an exchange in Alberta unless the exchange is recognized by the Commission under section 62 and the form of the exchange contract has been accepted by the Commission under section 107 of the Act, does not apply to trades to or by certain market participants in certain exchange contracts on the electronic trading platform (the ICE Platform) owned and operated by IntercontinentalExchange, Inc. (ICE) (the Exempted Trades);
 - 1.2 section 62 of the Act, which prohibits a person or company from carrying on business as an exchange in Alberta unless recognized by the Commission as an exchange, does not apply, in respect of the Exempted Trades, to the operation of the ICE Platform or to the provision by the Filer of direct electronic access to the ICE Platform (the Exempted Exchange Activity); and
 - 1.3 section 75(1)(a) of the Act, which prohibits a person or company from trading in an exchange contract unless the person or company is registered with the Executive Director, does not apply to the Exempted Trades.

Representations

2. This Order is based on the following facts represented by the Filer:
 - 2.1 The Filer is a private company organized under the laws of the United Kingdom (UK) and is an indirect wholly-owned subsidiary of ICE, a public company organized under the laws of Delaware and listed on the New York Stock Exchange.

- 2.2 The Filer is a recognized investment exchange (RIE) subject to supervision by the UK Financial Services Authority (the FSA) under the UK *Financial Services and Market Act 2000* (FSMA).
- 2.3 The Filer offers a variety of energy commodity derivatives contracts including commodity futures contracts and futures contract options (collectively, ICE Futures Contracts), which are traded electronically on the ICE Platform.
- 2.4 All ICE Futures Contracts are cleared and settled by LCH.Clearnet Limited (LCH.Clearnet), which is a recognized clearing house (RCH) under the FSMA and which acts as counterparty and guarantor to each transaction executed on the ICE Platform.
- 2.5 The FSA discharges its regulatory oversight over RCHs such as LCH.Clearnet by conducting an ongoing assessment of the RCH's regulations, procedures and practices to confirm that they provide for the proper protection of investors and include satisfactory arrangements for the settlement of transactions.
- 2.6 As part of its regulatory oversight of the Filer, the FSA reviews, assesses and enforces on-going compliance with the recognition requirements under the FSMA relating to financial resources, fitness and properness, systems and controls, maintenance of an orderly market, investor protection, rule-making and other matters including ICE Futures' regulations, procedures and practices.
- 2.7 The Filer is required under its regulations (the ICE Futures Regulations) to provide to the FSA on request access to all records and to cooperate with any other regulatory authority, including making arrangements for information-sharing.
- 2.8 The Filer has filed a copy of the ICE Futures Regulations with the Commission.
- 2.9 The Exempted Trades will be limited to trades in ICE Futures Contracts through the ICE Platform.
- 2.9 The Filer proposes to offer to certain market participants in Alberta (the Alberta Qualified Parties), either by way of granting membership in the Filer or through order-routing arrangements, direct electronic access to the ICE Platform to effect Exempted Trades, which may involve activities that are subject to section 62, 75 or 106 of the Act.
- 2.10 The Filer will ensure that each of the Alberta Qualified Parties is registered under Alberta securities laws to trade in exchange contracts or is a "Qualified Party" as defined in Commission Blanket Order 91-502 (AB) *Over-the-Counter Derivatives Transactions and Commodity Contracts*.

Decision

3. The Commission is satisfied that granting this Order would not be prejudicial to the public interest.
4. It is ordered under section 213 of the Act that:
 - 4.1 section 62 of the Act does not apply to the Exempted Exchange Activities;
 - 4.2 section 106 of the Act does not apply to the Exempted Trades or the Exempted Exchange Activities; and
 - 4.3 section 75(1)(a) of the Act does not apply to Exempted Trades by the Filer or by an Alberta Qualified Party;

for so long as the Filer:

- (a) maintains its recognition by the FSA as an RIE;
- (b) is not declared by the FSA to be in breach of the terms of its recognition under the FSMA; and
- (c) will on request provide to the Commission information relating to Alberta market participants and the operations of the Filer.

“original signed by”

Glenda A. Campbell, Q.C., Vice-Chair
Alberta Securities Commission

“original signed by”

Stephen R. Murison, Vice-Chair
Alberta Securities Commission