

## B.11.2 Marketplaces

### B.11.2.1 ICE NGX Canada Inc. – Application for Amendment of Order Exempting It from Recognition as a Commodity Futures Exchange and as an Exchange – Notice and Request for Comment

#### NOTICE AND REQUEST FOR COMMENT

#### APPLICATION BY ICE NGX CANADA INC. FOR AMENDMENT OF ORDER EXEMPTING IT FROM RECOGNITION AS A COMMODITY FUTURES EXCHANGE AND AS AN EXCHANGE

#### A. Introduction

This notice requests comment on:

- (i) the application (**Application**) filed by ICE NGX Canada Inc. (**ICE NGX**) under section 78 of the Commodity Futures Act (Ontario) (**CFA**) and section 147 of the *Securities Act* (Ontario) (**OSA**) to amend the order dated July 27, 2012 exempting it from the requirements to be registered as a commodity futures exchange under section 15 of the CFA and as an exchange under section 21 of the OSA (**2012 Exemption Order**) to allow it to offer trading and settlement of products based on environmental quality, including emissions or emission credits (**Environmental Products**); and
- (ii) the draft variation order (**Draft Order**).

The Application and Draft Order are attached to this notice and can also be found on our website [www.osc.ca](http://www.osc.ca).

#### B. Application and Draft Order

The 2012 Exemption order contains a list of contracts that ICE NGX is permitted to allow participants located in Ontario access to trade on its trading system. Environmental Products are not included in this list.

ICE NGX would like to offer trading in Environmental Products utilizing its existing marketplace infrastructure. The Environmental Products may be based on carbon regimes available in any jurisdictions. It is expected that the initial offering of Environmental Products will be Alberta Offsets and EPCs available on the Alberta Emissions Offset Registry and the Alberta Emission Performance Credit Registry, respectively. Both registries are operated by the CSA Group in coordination with the Government of Alberta. The Environmental Products will be available to all Participants.

In Ontario, “a product based on environmental quality, including emissions or emission credits” is designated as a “commodity” pursuant to OSC Rule 14-502 *Commodity Futures Act* (Ontario) *Designation of Additional Commodities*, and fall within the purview of the CFA.

The Application also describes how Environmental Products will be traded and delivered.

#### C. Comment Process

The Commission is publishing for public comment the Application and Draft Order for 30 days. We are seeking comment on all aspects of the Application and Draft Order.

Please provide your comments in writing, via e-mail, on or before **October 2, 2023** to the attention of:

Ontario Securities Commission  
20 Queen Street West,  
22nd Floor  
Toronto, Ontario  
M5H 3S8  
[Email: comments@osc.gov.on.ca](mailto:comments@osc.gov.on.ca)

The confidentiality of submissions cannot be maintained as the comment letters and a summary of written comments received during the comment period will be published.

Questions may be referred to:

Timothy Baikie  
Senior Legal Counsel, Market Regulation  
Email: [tbaikie@osc.gov.on.ca](mailto:tbaikie@osc.gov.on.ca)

Tim Reibetanz  
Senior Legal Counsel, Derivatives  
Email: [treibetanz@osc.gov.on.ca](mailto:treibetanz@osc.gov.on.ca)

August 17, 2023

Terence Doherty  
Direct Dial: 212.991.2545  
[tdoherty@osler.com](mailto:tdoherty@osler.com)  
Our Matter Number: 1239500

## VIA OSC PORTAL

Timothy Baikie  
Senior Legal Counsel Market Regulation  
Ontario Securities Commission 20 Queen Street West  
P.O. Box 55  
Toronto, ON M5H 3S8

Dear Tim,

**Application pursuant to section 78 of the *Commodity Futures Act* (Ontario) (the “CFA”) and section 144 of the *Securities Act* (Ontario) (the “OSA”) for an amendment to the order dated July 27, 2012 (“2012 Order”) exempting ICE NGX Canada Inc. (the “Applicant” or “NGX”) from the requirement to be registered as a commodity futures exchange under section 15 of the CFA, exempting trades by NGX participants (“Participants”) in Ontario (“Ontario Participants”) in contracts on the NGX (“Contracts”) from the registration requirement under section 22 of the CFA, exempting trades by Ontario Participants in Contracts from the requirements under section 33 of the CFA, and exempting NGX from the requirement to be recognized as a stock exchange under section 21 of the OSA (the “Exemption Sought”).**

Capitalized terms not defined in this Application have the meanings given to them in the draft decision document attached as Appendix “B” (the “**Draft Decision Document**”).

## PURPOSE

We are counsel to the Applicant. As previously disclosed by email to the Ontario Securities Commission (the “OSC”) on March 21, 2023 and further discussed over calls with staff at the OSC, the Applicant proposes to introduce a new category of contracts on the trading systems of NGX (“**Trading System**”) that allows trading and settlement of products based on environmental quality, including emissions or emission credits (“**Environmental Products**”). The Environmental Products will be available to all Participants (including Ontario Participants). It is expected that the initial offering of Environmental Products will be for Emissions Offsets (“**Offsets**”) and Emission Performance Credits (“**EPCs**”) under the Alberta TIER program and available on the Alberta Emissions Offset Registry and the Alberta Emission Performance Credit Registry, respectively. Both registries are operated by the CSA Group in coordination with the Government of Alberta.

The Environmental Products are not an enumerated category of contracts permitted to be traded on the Applicant’s Trading System under the 2012 Order.

In Ontario, “a product based on environmental quality, including emissions or emission credits” is designated as a “commodity” pursuant to OSC Rule 14-502 *Commodity Futures Act* (Ontario) *Designation of Additional Commodities*, and fall within the purview of the CFA. Environmental Products are therefore subject to the approval requirement under section 33 of the CFA prior to trading on the Applicant’s Trading System. In addition, Section 9 *Products* of Schedule “E” *Terms and Conditions* of the 2012 Order does not list Environmental Products as an exempt category of Contracts traded on the Trading System.

## DETAILS OF THE ENVIRONMENTAL PRODUCT

The Applicant would like to offer trading in Environmental Products utilizing its existing marketplace infrastructure (the Trading System). The Environmental Products may be based on carbon regimes available in any jurisdictions. It is expected that the initial offering of Environmental Products will be Alberta Offsets and EPCs available on the Alberta Emissions Offset Registry and the Alberta Emission Performance Credit Registry, respectively. Both registries are operated by the CSA Group in coordination with the Government of Alberta. The Environmental Products (each a “Contract”) will be available to all Participants.

The proposed mechanism for trading Alberta Environmental Products is as follows:

### **Net Delivery**

- a) At expiry of trading, the Applicant will net buys and sells for each counterparty under each traded contract;
- b) Each counterparty will have a report that sets out net delivery obligations per contract;
- c) Contract sellers may deliver carbon credits generated under any protocol that meets the product specifications, with the same or longer usable life as the vintage they contracted for;

- d) Contract buyers will receive carbon credits generated under any protocol that meets the product specifications, with the same or longer usable life as the vintage they contracted for;
- e) Contract buyers may not request or demand carbon credits generated under specific protocols or vintages.

**Physical Delivery**

- a) The Applicant will have an account at the registry for making and taking delivery of carbon credits;
- b) Each contract seller with a net delivery position will transfer carbon credits to the Applicant's registry account to effect physical delivery;
- c) The Applicant will confirm the transferred carbon credits meet the product specifications (i.e., are of the type and vintage contracted for and, if applicable, were generated under protocols determined by the Applicant to be acceptable for delivery);
- d) The Applicant will transfer carbon credits to the registry account of each Contract buyer that has a net receiving position to effect physical delivery.

**Post-delivery**

- a) Offsets and EPCs may be retired for compliance in June of each year, for value at the applicable Tier value in the previous year;
- b) Carbon offsets and EPCs are retired via the registry;
- c) Whether or not to retire an Offset or EPC is a determination of the carbon credit owner, outside the scope of the Applicant's Trading System;
- d) Once retired, a carbon credit is "off the market" and no longer available for transfer or compliance;
- e) The Alberta government has the right to audit a project that generates Offsets or EPCs - (audits are typically conducted on credits that have been retired) and to revoke credits;
- f) A company whose retired credits have been revoked is required to pay the applicable TIER price;
- g) The Applicant will not collect or charge margin post delivery for revocation risk;
- h) The Applicant's rules will provide that the seller warrants each Offset and EPC it delivers under a contract traded and cleared via the Applicant against revocation for a period of three years beginning on the first day of the month in which it delivered the Offset or EPC;
- i) The buyer of a revoked Offset or EPC will have recourse to the seller via the Applicant; the Applicant is not liable for the revocation value;
- j) Failure on the part of a seller to pay the revocation value will be a default under the Applicant's rules and the Applicant will have authority to liquidate the seller's entire portfolio, across all asset classes.

**SUBMISSION**

The Exemption Sought pursuant to this application would not be prejudicial to the public interest and should be granted based upon the following considerations:

1. The Applicant is a private company and is a wholly-owned subsidiary of Intercontinental Exchange Holdings.
2. The Applicant operates the Trading System, and a clearing and settlement system ("**Clearing System**"), based in Calgary, Alberta, for the trading, and/or clearing and settlement, respectively, of Contracts in natural gas, electricity, heat rate, crude oil products and products based on environmental quality, including emissions and emission credits.
3. The Trading System provides an electronic platform for trading of energy and environmental quality related commodities by sophisticated parties in a principal-to-principal market, and as such, the timing of settlement aligns with either standard over-the-counter market settlement conventions or with futures-style settlement conventions.
4. The Applicant is recognized by the Alberta Securities Commission ("**ASC**") under the *Securities Act* (Alberta) as an exchange and as a clearing agency for natural gas, electricity, crude oil and related commodity contracts by orders that became effective on December 6, 2018 (the "**ASC Decisions**"), and is subject to regulatory oversight by the ASC.

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5. The Applicant is subject to the 2012 Order in Ontario.
6. The Applicant has been advised that the OSC and the ASC are each party to the *Memorandum of Understanding Respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems*, as amended from time to time, respecting oversight of exchanges and quotation and trade reporting systems, which applies to the oversight of the Applicant, and under which the ASC is identified as the Lead Regulator that is responsible for the oversight of the Applicant.
7. The ASC discharges its regulatory oversight over the Applicant as an exchange and clearing agency through ongoing reporting requirements and by conducting periodic oversight assessments of the Applicant's operations to confirm that the Applicant is in compliance with the operating and clearing principles set out in the ASC Decisions.
8. The Applicant confirms that it is in compliance with all terms and conditions of the ASC Decisions and the 2012 Order.
9. The Applicant is registered as a Derivatives Clearing Organization and a Foreign Board of Trade by the Commodity Futures Trading Commission ("CFTC") under the *Commodity Exchange Act* (United States) ("CEA") and is subject to oversight by the CFTC pursuant to the CEA.
10. Access to the Trading System and the Clearing System is restricted to Participants, each of which:
  - a. has entered into a Contracting Party's Agreement; and
  - b. is a corporation, partnership, organization, trust or other business entity which has, or is controlled directly or indirectly by a corporation, partnership, organization, trust or other business entity which has, a net worth exceeding \$5,000,000 or total assets exceeding \$25,000,000 (the "NGX Sophistication Thresholds"); and
  - c. uses the Trading System and Clearing System only as principal.
11. The Applicant applies its qualification criteria by subjecting each Participant applicant to a due diligence process, which includes: review of constituent documentation and financial statements, conducting searches of relevant financial services information databases and conducting other know-your-client procedures.
12. The Applicant is required under its regulations to provide to the ASC, on request, access to all records and to cooperate with any other regulatory authority, including making arrangements for information-sharing.
13. Contracts traded on the Trading System are cleared and settled either through the Applicant's central counterparty clearing house, or, for all Contracts other than the Environmental Products, settled by the Participants themselves, independent of the Applicant.
14. Contracts fall under the definitions of "commodity futures contract" or "commodity futures option" set out in section 1 of the CFA.
15. The Applicant has been, and seeks to continue, providing Participants with access to trading in Contracts, and now seeks to provide market participants with access to contracts based on environmental quality, including emissions or emission credits.
16. Participants may be: (i) utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity and, to the extent applicable, (ii) investment banking arms of banks and (iii) hedge funds and other proprietary trading firms.

**VERIFICATION AND DRAFT DECISION DOCUMENT**

In support of the Exemption Sought pursuant to this Application, we attach or forward the following:

- (a) an authorization and verification statement from the Applicant authorizing us to file this application and confirming the truth of the facts contained herein is attached at Appendix A;
- (b) the Draft Decision Document attached at Appendix B; and
- (c) payment of the required application fee.

If you have any questions or require any further information regarding this application, please do not hesitate to contact Terence Doherty (212.991.2545 or [tdoherty@osler.com](mailto:tdoherty@osler.com)).

Yours very truly,

“Terence Doherty”  
Osler, Hoskin & Harcourt LLP

Cc:

Greg Abbott, ICE NGX Canada Inc.  
Martin McGregor, INC NGX Canada Inc.  
Sheri Wang, Osler, Hoskin & Harcourt LLP

**APPENDIX A**

**VERIFICATION AND AUTHORIZATION STATEMENT**

To: Ontario Securities Commission

The undersigned, ICE NGX Canada Inc., hereby authorizes the making and filing of the attached application by Osler, Hoskin & Harcourt LLP on its behalf and confirms the truth and accuracy of the facts contained therein.

**DATED** this

14 day of August, 2023.

**ICE NGX CANADA INC.**

By: "Greg Abbott"

Name: Greg Abbott

Title: President & COO

IN THE MATTER OF  
THE COMMODITY FUTURES ACT,  
R.S.O. 1990, CHAPTER C.20, AS AMENDED  
(CFA)

AND

IN THE MATTER OF  
THE SECURITIES ACT,  
R.S.O. 1990, CHAPTER S.5, AS AMENDED  
(OSA)

AND

IN THE MATTER OF  
ICE NGX CANADA INC.  
(NGX)

VARIATION TO EXEMPTION ORDER  
(Section 78 of the CFA and Section 144 of the OSA)

**WHEREAS** the Commission granted an order dated July 27, 2012 (**2012 Order**):

- (a) pursuant to section 80 of the CFA, exempting NGX from the requirement to be registered as a commodity futures exchange under section 15 of the CFA;
- (b) pursuant to section 38 of the CFA, exempting trades by NGX participants (**Participants**) in Ontario (**Ontario Participants**) in contracts on NGX (**Contracts**) from the registration requirement under section 22 of the CFA;
- (c) pursuant to section 38 of the CFA, exempting trades by Ontario Participants in Contracts from the requirements under section 33 of the CFA; and
- (d) pursuant to section 147 of the OSA, exempting NGX from the requirement to be recognized as an exchange under section 21 of the OSA;

**AND WHEREAS** NGX filed an application (the **Environmental Products Application**) requesting the 2012 Order be varied to authorize NGX to offer Contracts for products based on environmental quality, including emissions or emission credits (**Environmental Products**);

**AND WHEREAS** NGX has represented to the Commission as follows.

1. The Environmental Products will be traded and cleared through the Trading System and Clearing System, respectively, each as defined in the 2012 Order.
2. Access to the Trading System and the Clearing System is restricted to Participants, each of which:
  - (a) has entered into a Contracting Party's Agreement; 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 (**NGX Sophistication Thresholds**); and
  - (c) uses the Trading System and Clearing System only as principal.
3. The Environmental Products are Contracts that fall under the definitions of "commodity futures contract" or "commodity futures option" set out in section 1 of the CFA.
4. NGX seeks to provide Ontario Participants with access to trading in Environmental Products in Ontario.

**AND WHEREAS** based on the 2012 Order and the representations made to the Commission, the Commission is satisfied that it is not prejudicial to the public interest to vary the 2012 Order;

**IT IS ORDERED** by the Commission that:

- (a) the 2012 Order is varied by inserting "and products based on environmental quality, including emissions and emission credits" immediately following "... and crude oil products" in representation number 2; and



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- (b) the 2012 Order is varied by inserting “and environmental quality” immediately preceding “related commodities” in representation number 3;
- (c) section 9 *Products* of Schedule “E” Terms and Conditions to the 2012 Order is amended by replacing “and renewable energy certificates” with “renewable energy certificates, and products based on environmental quality, including emissions or emission credits”.

provided that NGX continues to comply with the applicable terms and conditions set out in Schedule "E" to the 2012 Order.

**DATED** this ● day of ●, 2023.

“”

Director, Market Regulation Branch  
Ontario Securities Commission