



ICAP GLOBAL DERIVATIVES LIMITED
2 Broadgate
London
EC2M 7UR
United Kingdom

April 4, 2016

Ontario Securities Commission
20 Queen Street West, 19th Floor
Toronto, Ontario M5H 3S8

Attention: Secretary

Re: ICAP Global Derivatives Limited – Application for Exemption from Recognition as an Exchange

Dear Sirs and Mesdames

Pursuant to section 147 of the *Securities Act* (Ontario) (the “**Act**”), ICAP Global Derivatives Limited (the “**Applicant**”) is requesting a decision exempting the Applicant from the requirement to be recognized as an exchange under subsection 21.(1) of the Act (the “**Exchange Relief**”) in relation to its operations in the province. The Applicant is currently operating under an interim exemption order dated May 13, 2014 (the “**Interim Order**”).

This application is divided into the following Parts I to V, Part III of which describes how the Applicant satisfies criteria for exemption of a foreign exchange trading OTC derivatives from recognition as an exchange set by staff of the Ontario Securities Commission (the “**Commission**”).

Part I Introduction

1. Services to Ontario Residents

Part II Background to the Applicant

1. Ownership of the Applicant
2. Products Traded on the Applicant’s Swap Execution Facility
3. Participants

Part III Application of Exemption Criteria to the Applicant

1. Regulation of the Exchange
2. Governance
3. Regulation of Products
4. Access

5. Regulation of Participants on the Exchange
6. Rulemaking
7. Due Process
8. Clearing and Settlement
9. Systems and Technology
10. Financial Viability
11. Trading Practices
12. Compliance, Surveillance and Enforcement
13. Record Keeping
14. Outsourcing
15. Fees
16. Information Sharing and Oversight Arrangements
17. IOSCO Principles

Part IV Submissions

Part V Consent to Publication

PART I INTRODUCTION

1. Description of the Applicant's Services

- 1.1 The Applicant operates a marketplace (the "**Facility**") for trading swaps that is regulated by the Financial Conduct Authority of the United Kingdom (the "**FCA**") and the Commodity Futures Trading Commission ("**CFTC**"). The Applicant's Facility offers trading of G3 interest rate swaps (USD, EUR and GBP – interest rate swaps, overnight index swaps, forward rate agreements, interest rate options, swaptions, inflation and exotic swaps and options), a significant portion of which are products that are the subject of the Made Available to Trade determinations made in accordance with the CFTC's rules. The Applicant's Facility enables participants to engage in transactions using the trading methodologies described in Chapter 3 of the Applicant's rulebook (the "**Rulebook**"), available online at <http://www.icap.com/what-we-do/global-broking/sef.aspx> under the "Regulation" tab. Transactions can occur using the Applicant's order book, which functions as an electronic central limit order book and provides the highest priority to bids/offers or can occur using request for quote ("**RFQ**") procedures. The Applicant's Facility also facilitates block trades and has crossing functionality.
- 1.2 Under the terms of the Interim Order, the Applicant offers direct access to trading on its Facility to participants that are located in Ontario ("**Ontario Participants**") and that satisfy criteria for an "eligible contract participants" ("**ECP**") as defined in section 1a(18) of the *U.S. Commodity Exchange Act* (the "**CEA**") and as further described in Part III below.

Ontario Participants may include Canadian financial institutions, registered dealers and advisers, government entities, pension funds and other well capitalized non-regulated entities.

- 1.3 The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described herein.

PART II BACKGROUND TO THE APPLICANT

1. Ownership of the Applicant

- 1.1 The Applicant is a limited company organized under the laws of England and Wales and is a wholly owned subsidiary of ICAP Holdings (UK) Limited (“**ICAP Holdings**”). The ultimate parent company of the Applicant is ICAP plc, a company listed on the London Stock Exchange.

- 1.2 ICAP is a leading broking services firm, markets operator and provider of post trade risk mitigation and information services. ICAP is headquartered in London, United Kingdom and operates from London, New Jersey (Jersey City) and Tokyo, with approximately 30 offices in smaller financial centres. Its global business can be grouped into the following three business lines:

- *Global Broking.* Market participants can use ICAP’s broking services to assess trading availability and successfully execute trades. ICAP’s brokers locate and identify potential trading interest and in so doing create transparency and liquidity, and facilitate the price discovery process. The Applicant’s Facility fits within ICAP’s Global Broking business.
- *Electronic Markets.* ICAP operates a number of electronic platforms in a range of asset classes and instruments. The largest of these are the EBS Market for spot FX currencies, currency forwards and precious metals and the BrokerTec platform for G7 public debt securities, including US and European government debt and US and EU repo and CDS.
- *Post Trade Risk and Information.* ICAP’s post trade risk and information services help users of financial products to reduce operational and system-wide risks. This increases the efficiency of trading, clearing and settlement and lowers costs. ICAP’s information business empowers customers to make trading decisions with market information across key asset classes.

- 1.3 Certain ICAP affiliates have obtained Canadian securities law approvals and exemptions to operate in Canada. ICAP SEF (US) LLC relies on an exemption from the exchange recognition requirement to offer a swap execution facility (a “**SEF**”) that trades certain interest rate swaps, credit default swaps, commodities swaps, equity derivatives and non-deliverable forwards. Both ICAP Securities USA LLC and ICAP Electronic Broking LLC are approved by the Investment Industry Regulatory Organization of Canada (“**IROC**”) as inter-dealer bond brokers and rely upon the international dealer exemption in Ontario. Also, ICAP Corporates LLC relies upon the international dealer exemption in Ontario.

2. Products Traded on the Applicant's Facility

- 2.1 The Applicant provides its customers with trading and execution services for interest rate swaps. A full list of the products traded on the Applicant's Facility can be found on the Applicant's website, at <http://www.icap.com/what-we-do/global-broking/sef.aspx>.

3. Participants

- 3.1 The Applicant's Facility enables clients to access the Facility directly or via an introducing broker, which can place and execute orders on the Facility on the client's behalf. Clients seeking direct access to the Facility as a participant and clients who want to trade on behalf of their Customers must apply to become a "**Trading Privilege Holder**" on the Facility and enter into a Trading Privilege Holder Agreement with the Applicant. For the purposes of this application, Trading Privilege Holders will be referred to as "**participants**".
- 3.2 Participants include a wide range of sophisticated customers, including commercial and investment banks, corporations, proprietary trading firms, hedge funds and other institutional customers. Each customer of the Applicant that wishes to trade directly on the Applicant's Facility must qualify as an ECP and qualify as an "**eligible counterparty**" as defined in COBS 3.6 of the FCA Handbook.
- 3.3 Facility participant criteria is described more fully in Part III, Section 4.1 below.

PART III APPLICATION OF EXEMPTION CRITERIA TO THE APPLICANT

The following is a discussion of how the Applicant meets the criteria of the Commission for exemption of a foreign exchange trading OTC derivatives from recognition as an exchange.

1. Regulation of the Exchange

1.1 Regulation of the Exchange – The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (Foreign Regulator).

- 1.1.1 The Applicant is regulated by the FCA and is authorised, among other things, to (i) arrange (bring about) deals in investments (ii) deal in investments as agent (iii) make arrangements with a view to transactions in investments; and (iv) operate a multilateral trading facility ("**MTF**"). The Applicant also has passporting rights under the European Markets in Financial Instruments Directive 2004/39/EC ("**MiFID**") which allows the applicant to provide services throughout the European Economic Area ("**EEA**").
- 1.1.2 On May 12, 2014, the Applicant received a temporary registration from the CFTC to operate a SEF in the U.S. pursuant to the CEA and on January 22, 2016 the Applicant received a permanent registration from the CFTC to operate a SEF in the U.S. The Applicant is subject to regulatory supervision by the CFTC. The Applicant is obligated to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces the Applicant's adherence to the CEA and the regulations thereunder on an ongoing basis, including the core principle requirements for SEFs ("**SEF Core Principles**") required by Section 5h of the CEA. The SEF Core Principles relate to the operation and oversight of the Facility,

including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection.

- 1.2 **Authority of the Foreign Regulator – The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.**
- 1.2.1 The Applicant is subject to regulatory supervision by the FCA in conducting its activities for which it is permitted as set out in paragraph 1.1.1 above. In undertaking those activities, the Applicant is required to comply with the FCA’s Handbook which include, amongst other things, rules on (i) the Conduct of Business (including rules regarding client categorisation, communication with clients, firm remuneration and client agreements) (ii) Market Conduct (including rules applicable to firms operating an MTF) and (iii) Systems and Controls (including rules on outsourcing, record-keeping and conflicts of interest, appointing a Head of Compliance and Oversight).
- 1.2.2 The CFTC carries out the regulation of U.S. SEFs in accordance with certain provisions of the CEA. To implement SEF regulation, the CFTC has promulgated regulations and guidelines (“**CFTC Regulations**”) that further interpret the SEF Core Principles and govern the conduct of SEFs. The CFTC also undertakes periodic in-depth audits or rule reviews of the Applicant’s compliance with certain of the SEF Core Principles.
- 1.2.3 The Applicant is required to demonstrate its compliance with the SEF Core Principles applicable to all U.S. SEFs. Among other things, the SEF Core Principles and CFTC Regulations require SEFs to have a rulebook and a compliance program, including a Chief Compliance Officer and a compliance manual. A SEF's participant access criteria must be impartial and transparent and must be applied in a fair and non-discriminatory manner. The CFTC requires each SEF to have certain required trading protocols. A SEF must publish on its website certain daily trading data for each swap contract listed on the SEF and must report all transactions executed on the SEF to a swap data repository. The CFTC reviews, assesses and enforces a SEF's adherence to CFTC regulations on an ongoing basis.
- 1.2.4 A SEF is a self-regulatory organization under CFTC rules. A SEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace. The Applicant has contracted with the U.S. National Futures Association (the “**NFA**”) as its regulatory service provider (“**Regulatory Services Provider**”) to conduct market surveillance of trades on its Facility for potential violations of the Facility’s rules. The Applicant retains ultimate decision-making authority with respect to any regulatory services to be provided by NFA.

2. Governance

2.1 Governance – The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the Exchange,

2.1.1 ICAP Holdings, the sole shareholder of the Applicant, has the power to manage, operate and set policies for the Applicant exclusively in the board of directors of the Applicant (the “**Board**”). The Board has the power to appoint such officers of the Applicant as it may deem necessary or appropriate from time to time.

2.1.2 The Board has the power by itself or through agents, and is authorized and empowered on behalf and in the name of the Applicant, to perform all acts and enter into other undertakings that it may in its discretion deem necessary or advisable in order to promote the sound and efficient operation of the Facility (except such as otherwise required by applicable law), including, but not limited to, the following:

(a) ensuring that the Facility complies with all statutory, regulatory and self-regulatory responsibilities under the CEA;

(b) reviewing, approving and monitoring major strategic, financial and business activities, the Applicant’s budget and financial performance;

(c) evaluating risks and opportunities facing the Applicant and proposing options for addressing such issues;

(d) overseeing and reviewing recommendations from the Applicant’s committees and the Chief Compliance Officer; and

(e) having the sole power to set the payment dates and amounts of any dues, assessments or fees to be levied on Trading Privilege Holders.

2.1.3 Each director is expected to comply with all applicable law and Applicant policies, and promote compliance by the Applicant and all of its employees. The Board discharges its responsibilities and exercise its authority in a manner, consistent with applicable legal and regulatory requirements that promotes the sound and efficient operation of the Applicant and its swap execution activities.

2.1.4 The Board provides effective oversight of the Facility as described in greater detail below.

Fitness Standards

2.1.5 The Applicant has established fitness standards for the Board as part of its Corporate Governance Principles (the “**Governance Principles**”). The Governance Principles have been adopted by the Board to assist the Board in the exercise of its responsibilities. The Governance Principles are not intended to supersede or interpret any applicable law, and operate in conjunction with the Applicant’s articles of association. The high standards set for the Board reflect the Applicant’s commitment to its shareholders and to the institutions

and individuals who rely on it to provide swap execution services, and to comply with its role as a swap execution facility subject to oversight by the FCA and CFTC.

- 2.1.6 The Board is committed to upholding the highest legal and ethical conduct in fulfilling its responsibilities. Each director is expected to comply with all applicable laws, rules and regulations, and Applicant policies, and promote compliance by the Applicant and all of its employees. The Board discharges its responsibilities and exercise its authority in a manner, consistent with applicable legal and regulatory requirements, that promotes the sound and efficient operation of the Applicant and its swap execution activities. The Board must, to the extent consistent with such responsibilities and as long as the Applicant remains an indirect subsidiary of ICAP plc, operate within the restraints and delegated authorities set by the ICAP plc Group.

Composition

- 2.1.7 The Board consists of no less than three, and up to twelve, directors from time to time designated by the Applicant's shareholders for such purpose. The identities of all directors are published on the Applicant's website and are available to the public.
- 2.1.8 Currently, the Board consists of three directors, one of which is a Public Director, as such term is defined from time to time in the rules, regulations, orders, directives or any interpretation thereof promulgated by the FCA or CFTC. Public Directors must be capable of exercising independent judgment to guard against conflicts of interest and assisting the entire Board to carry out their responsibilities more effectively.
- 2.1.9 Each director serves a one year term, and may be reappointed to one or more successive one-year terms. Directors must be approved by the Applicant's shareholders in order to assume office. Any vacancies caused by death, resignation or any other reason may be immediately filled by the Applicant's shareholders without a proposal from the Nomination Committee with any qualified person, who shall hold office for the unexpired term and until his or her successor shall be duly chosen. Any director may be removed either for or without cause at any time by the affirmative vote of a majority of the directors or by the affirmative vote of a majority interest of the shareholders entitled to vote, at the annual meeting or at a special meeting called for that purpose.

Qualifications

- 2.1.10 In order to fulfill their responsibilities, directors (including Public Directors) are selected based on their experience, qualifications, attributes and skills and the understanding that their leadership will play an integral role in fulfilling the Applicant's business objectives and legal obligations. In particular, directors should:
- (a) Demonstrate sufficient experience in the Applicant's scope or intended scope of financial services (including ancillary services valuable for the Applicant to fulfill its business purposes); and
 - (b) All directors shall be of sufficiently good repute, including the absence of (i) disciplinary offenses that would be disqualifying under Section 1.63(c) of the CFTC's regulations, and (ii) any felony conviction in the last 10 years, and (iii) any

grounds for refusal to register under Section 8a(2) of the CEA. At least twenty percent of the directors must be person who meet the criteria of Section 1.64(b)(1) of the CFTC's regulations, which generally requires that the person have knowledge of financial regulation or the capability of contributing to governing board deliberations, not be a member of or employed by the Applicant and represent a diversity of membership interests.

Verification of Qualifications

2.1.11 In order to verify that each director is qualified to serve, the Applicant requires:

- (a) a written statement from each prospective director containing biographical information and related background information; and
- (b) Each director must inform the Applicant's Chief Compliance Officer in writing if any of the information in the statement materially changes thereafter.

Upon receipt of the written statement, the Applicant's Chief Compliance Officer will conduct a search on NFA BASIC to determine whether there is anything contradictory to the prospective director's statement, and will attempt to resolve any inconsistencies. The Chief Compliance Officer will report the results of this review to the shareholders and the Board prior to the election of the prospective director. See also paragraph 2.2.1 below for a discussion of fitness requirements.

Conflicts of interest

2.1.12 Each director is required to act in the best interests of the Applicant and to refrain from any conduct that would be, or gives the appearance of being, a conflict of interest. Generally, a "conflict of interest" exists when a director's private interest, including those of his or her immediate family, is inconsistent with or opposed to, or appears to be inconsistent with or opposed to, the Applicant's interests. This includes a personal interest in an Applicant member (as defined in Section 1a(34) of the CEA), vendor or other person that could be significantly and disproportionately impacted by a decision of the Board.

2.1.13 No director, member of any committee or oversight panel, or officer or other person authorized to exercise authority on behalf of the Applicant will knowingly participate in such body's deliberations or voting, including in any inquiry, investigation or any disciplinary proceeding, suspension, emergency or other executive action (each, an "Executive Proceeding") if such person has a conflict of interest between such person's position acting on behalf of the Applicant and such person's personal interests (each, an "**Interested Person**"), unless deliberations are permitted as set forth below. Material conflicts of interest include, but are not limited to, instances where an Interested Person

- (a) is a named party in interest in an Executive Proceeding,
- (b) is an employer, employee or fellow employee of a named party in interest or potential named party in interest in an Executive Proceeding,

- (c) has any other significant, ongoing business relationship with a named party in interest or potential named party in interest in an Executive Proceeding, excluding relationships limited to executing transactions opposite each other or to clearing transactions through the same clearing members,
- (d) has a family relationship with a named party in interest or potential named party in interest in an Executive Proceeding (each of (a) through (d) being a “**Relationship Conflict of Interest**”) or
- (e) has a direct and substantial financial interest in the result of the deliberations or vote of any Executive Proceeding based upon either Applicant or non-Applicant positions (a “**Financial Conflict of Interest**”).

A “family relationship” exists between a named party in interest or potential named party in interest in an Executive Proceeding and a potential Interested Person if one person is the other’s spouse (including a domestic partner or partner in a civil union), co-habitator, former spouse, parent, stepparent, child or other legal dependent, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece or in-law.

- 2.1.14 Prior to the consideration of any matter or significant action that will be considered by the Board or a committee of the Board in an Executive Proceeding, each potential Interested Person must disclose the existence of any potential conflict of interest, including any potential Relationship Conflict of Interest and/or Financial Conflict of Interest, to the Chairman of the Board or the chairman of the relevant committee and may choose to abstain and recuse himself or herself from the deliberations and voting. The potential Interested Person is encouraged to consult with the Applicant’s Secretary and any necessary internal or external advisors in advance of the topic being discussed or voted upon.
- 2.1.15 If disclosure of a potential conflict of interest is required, a potential Interested Person must disclose all information required under applicable law in relation to any conflict of interest, including:
 - (a) In the case of any potential Relationship Conflict of Interest, such disclosure must include the specific type of Relationship Conflict of Interest based on the categories (a) through (d) above; and/or
 - (b) In the case of any potential Financial Conflict of Interest, such disclosure must include the financial interest and related position information (including information regarding positions held by such person, positions held by individuals of such person’s family and positions held by a firm with which such person is affiliated) that is known to such person with respect to any particular month or months that are under consideration, and any other positions which the deliberating body reasonably expects could be affected by the significant action, including but not limited to:
 - (A) gross positions held in such person’s personal accounts or “controlled accounts,” as defined in CFTC Regulation § 1.3(j);

- (B) gross positions held in proprietary accounts, as defined in CFTC Regulation § 1.17(b)(3), at such person's affiliated firm;
 - (C) gross positions held in accounts in which such person is a principal, as defined in CFTC Regulation § 3.1(a);
 - (D) net positions held in customer accounts, as defined in CFTC § 1.17(b)(2), at such person's affiliated firm; and
 - (E) any other types of positions, held in such person's personal accounts or the proprietary accounts of such person's affiliated firm, that the Applicant reasonably expects could be affected by the significant action.
- (c) Notwithstanding (b) above, in the case of a potential Financial Conflict of Interest, no such disclosure is required by a potential Interested Person if such person chooses to abstain from deliberations and voting on the relevant Executive Proceeding.
- 2.1.16 If a potential Interested Person who discloses a potential material conflict of interest does not choose to abstain and recuse himself or herself from deliberations and voting in any Executive Proceeding, the directors, or committee or oversight panel, as applicable, will determine whether such person is an Interested Person prohibited from participation in the Executive Proceeding. Such determination will be made by a majority vote and will be based upon a review of:
- (a) the information provided by such potential Interested Person;
 - (b) any other source of information that is held by or reasonably available to the Applicant;
 - (c) in the case of a Financial Conflict of Interest, the most recent large trader reports and clearing records available to the Applicant; and
 - (d) any applicable law.
- 2.1.17 With respect to Financial Conflicts of Interest only, and save for where applicable law prohibits it, any person determined to be an Interested Person who would otherwise be required to abstain from deliberations and voting pursuant to this policy, may participate in deliberations, but not in voting, if the Board, or committee or oversight panel, as applicable, determines by a majority vote (excluding all relevant Interested Persons) that such participation would be consistent with the public interest after considering the following factors :
- (a) whether such Interested Person's participation in the deliberations is necessary to achieve a quorum;
 - (b) whether the Interested Person has unique or special expertise, knowledge or experience in the matter being considered; and

- (c) the position information which is the basis for the Interested Person's Financial Conflict of Interest.

2.1.18 In addition to the general restrictions against conflicts of interest, all Public Directors are prohibited from having "material relationships" (as defined from time to time in the rules, regulations, orders, directives or any interpretation thereof promulgated by the CFTC) with the Applicant which reasonably could affect the independent judgment or decision-making of such director. "Material relationships" are currently defined to include the following:

- (a) The director, or an immediate family member of the director, may not be an officer or employee of the Applicant or its affiliate.
- (b) The director, or an immediate family member of the director, may not be a member of the Applicant, or a director, officer or employee of an Applicant member (as defined in Section 1a(34) of the CEA and any regulation promulgated thereunder).
- (c) The director, or an immediate family member of the director, may not be an officer of another entity, which entity has a compensation committee (or similar body) on which any officer of the Applicant serves.
- (d) The director, or an immediate family member of the director, or an entity with which the director or such immediate family member is a partner, an officer, an employee or a director, may not receive more than \$100,000 in combined annual payments for legal, accounting, or consulting services from the Applicant, any affiliate thereof, any member of the Applicant or any affiliate of such member.

2.1.19 Notwithstanding the foregoing, (a) compensation for services as a director of the Applicant or as a director of an affiliate of the Applicant shall not count toward the \$100,000 threshold specified in clause (d) of the above definition, nor shall compensation for services rendered by such individual prior to becoming a director of the Applicant, so long as such compensation is or was in no way contingent, conditioned or revocable; and (b) a Public Director may also serve as a director of an affiliate of the Applicant if he or she otherwise meets the requirements set forth in clauses (a) through (d) of the above definition.

2.1.20 Each of the preceding disqualifying circumstances is subject to a one-year look back. Public Directors have an affirmative duty to investigate from time to time, and promptly disclose, the existence and nature of any such material relationships to the Board. The Board must make such findings of any material relationship upon the nomination or appointment of the proposed Public Director and as often as necessary in light of all circumstances relevant to such director, but in no case less than annually.

Compensation

2.1.21 Compensation awarded to Public Directors and other nonexecutive directors is not linked to the Applicant's business performance.

Certification and Compliance

- 2.1.22 Each director must become familiar with, and abide by, the Governance Principles. Each prospective director and director must, before taking office, acknowledge his or her receipt and understanding of the Governance Principles, as well as upon any publication of a revised set of Governance Principles or amendment thereto. In addition, (i) upon request from the Applicant, the director shall certify that the qualification information he/she provided to the Applicant before being elected as a director has not changed materially, and (ii) from time to time the director shall provide an updated statement of qualification information that reflects any material changes.
- 2.1.23 Directors are required to report suspected violations of the Governance Principles or of any applicable law, rule or regulation by any director to the Board, the Regulatory Oversight Committee or the Chief Compliance Officer (who will subsequently relay any such suspected violations to the Board or the Regulatory Oversight Committee, unless such reported violation is proven incorrect after a prompt initial review of its merits). The Board or the Regulatory Oversight Committee, as applicable, shall determine whether to conduct an investigation and what appropriate action should be taken. Directors may consult with the Applicant's General Counsel if there is any doubt as to whether a particular transaction or course of conduct complies with or is subject to the Governance Principles.

Self-Review

- 2.1.24 The Board reviews its performance and that of its individual directors on an annual basis, before the expiration of each one year term of office for the directors. The Board, or a committee delegated such responsibility, shall establish criteria for the Board's evaluation, shall conduct the evaluation in accordance with such criteria, and shall make recommendations to improve deficiencies.

Removal for Cause

- 2.1.25 Any director failing to comply with, or certify compliance with, the Governance Principles, or whose conduct otherwise is likely to be prejudicial to the sound and prudent management of the Applicant, may be removed for cause at any time by the affirmative vote of a majority of the directors, other than the director whose conduct is at issue, or by the affirmative vote of a majority interest of the shareholders, at the annual meeting or at a special meeting called for that purpose.

Board Committees

- 2.1.26 The Applicant's Governance Policy contemplates three standing committees of the Board: a Nomination Committee, a Participation Committee and a Regulatory Oversight Committee. The Board may from time to time constitute and appoint additional standing committees as it may deem necessary or advisable. The Applicant may also from time to time establish one or more special committees as it may deem necessary or advisable.
- 2.1.27 Currently, the Board has a Regulatory Oversight Committee. The Regulatory Oversight Committee is a Standing Committee of the Board and shall consist of those directors designated by the Board from time to time; provided, however, that at such time as is

determined in the discretion of the Board (or at and for such other time as may otherwise be required by the CFTC Regulations), the Regulatory Oversight Committee shall consist only of Public Directors. Each member of the Regulatory Oversight Committee shall serve until the due appointment of his or her successor, or until his or her earlier resignation or removal, with or without cause, as a member of the Regulatory Oversight Committee or as a Public Director. A member of the Regulatory Oversight Committee may serve for multiple terms. The Regulatory Oversight Committee has responsibility to:

- (i) Monitor the Facility's self-regulatory program for sufficiency, effectiveness, and independence;
- (ii) Oversee all facets of the Facility's self-regulatory program, including trade practice, market surveillance, audits, examinations and other regulatory responsibilities with respect to participants, and the conduct of investigations;
- (iii) Review the size and allocation of the Facility's regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel;
- (iv) Review the performance of the Chief Compliance Officer, and make recommendations with respect to such performance to the Board;
- (v) Review all regulatory proposals prior to implementation and advise the Board as to whether and how such changes may impact regulation;
- (vi) Recommend changes to the Facility's self-regulatory program that would ensure fair, vigorous, and effective regulation;
- (vii) Prepare an annual report to the Board and the CFTC assessing the self-regulatory program of the Facility and including a description of the program, the expenses of the program, the staffing and structure of the program, a catalog of investigations and disciplinary actions taken during the year, and a review of the performance of the Review Panel, Hearing Panel, and Chief Compliance Officer; and
- (viii) Perform such other duties as the Board may delegate to it from time to time.

In addition, the Regulatory Oversight Committee may impose controls on the Facility to reduce the potential risk of market disruption, including but not limited to market restrictions that pause or halt trading in specified market conditions.

(b) that business and regulatory decisions are in keeping with its public interest mandate,

2.1.28 The Applicant is committed to ensuring the integrity of its Facility and the stability of the financial system, in which market infrastructure plays an important role. The Applicant must ensure the integrity of swaps traded on the Facility and the protection of customer funds under Core Principle 7 – *Financial Integrity of Transactions* (“**Core Principle 7**”). The Applicant fulfills this requirement in part through compliance with other SEF Core Principles, such as Core Principle 3 – *Swaps Not Readily Subject to Manipulation* (“**Core Principle 3**”). Stability of the market infrastructure is enhanced through compliance with

Core Principle 13 – *Financial Resources* (“**Core Principle 13**”). Core Principle 13 requires the Facility to maintain adequate financial resources to discharge its responsibilities and ensure orderly operation of the market. The rules, policies and activities of the Applicant are designed and focused on ensuring that they maintain best practices and fulfil this public interest mandate. The Applicant operates on a basis consistent with applicable laws and regulations, and best practices of other SEFs and derivatives trading facilities.

(c) **fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:**

(i) **appropriate representation of independent directors, and**

(ii) **a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,**

2.1.29 At such time as determined in the discretion of the Board (or at and for such other time as may otherwise be required by the CFTC Regulations), the Board shall be composed of at least 35%, but no less than two, Public Directors, or such other percentage of Public Directors as may be required to comply with the CEA and CFTC Regulations. Currently, the Board has one (1) Public Director. Also, at such time as is determined in the discretion of the Board (or at and for such other time as may otherwise be required by the CFTC Regulations), the Regulatory Oversight Committee shall consist only of Public Directors. Paragraph 2.1.18 above contains a discussion of the criteria for Public Director independence. Paragraph 2.1.10 above contains a discussion of director qualification, including compliance with Section 1.64(b)(1) of the CFTC’s regulations, which requires that a minimum number of board members represent a diversity of membership interests.

(d) **the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and**

2.1.30 The Applicant, through its conflicts of interest rules, policies and procedures, as well as its compliance with Core Principle 12 – *Conflicts of Interest* (“**Core Principle 12**”), has established a robust set of safeguards designed to ensure that the Facility operates free from conflicts of interest or inappropriate influence as described above. The FCA and CFTC also conduct their own surveillance of the markets and market participants and actively enforce compliance with applicable regulations. In addition to this regulatory oversight, the Applicant separately establish and enforce rules governing the activity of all market participants in its market. The Applicant’s conflict of interest policies are described in greater detail in paragraphs 2.1.12 through 2.1.20 above.

(e) **there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.**

2.1.31 See paragraph 2.1.10 above for information on the director qualifications. Members of the Applicant’s Management Team are recruited for their particular position based upon their skills and expertise. Their individual goals and performance are regularly assessed by their direct manager as part of the Applicant’s performance management process.

2.1.32 Pursuant to the Applicant's Rulebook, the liability of each employee of the Applicant to third parties for obligations of the Applicant is limited to the fullest extent provided in the CEA and other applicable law. The Applicant's articles of association provide for the indemnification by the Applicant against losses or damages sustained by a person with respect to third-party actions or proceedings due to the fact that such person is a Director or other officer of the Applicant.

2.2 **Fitness – The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.**

2.2.1 See paragraphs 2.1.5 and 2.1.6 above for a description of the Applicant's fitness standards for the Board as a whole. See paragraph 2.1.11 above for a description of the Applicant's policies and procedures for ensuring that each director is a fit and proper person.

3. Regulation of Products

3.1 **Review and Approval of Products – The products traded on the exchange and any changes thereto are submitted to the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.**

3.1.1 The CFTC core principles relevant to products traded on the Facility include: Core Principle 2 – *Compliance with Rules* (“**Core Principle 2**”), Core Principle 3, Core Principle 4 – *Monitoring of Trading and Trade Processing* (“**Core Principle 4**”), Core Principle 6 – *Positions Limits or Accountability*, Core Principle 7 and Core Principle 9 – *Timely Publication of Trading Information* (“**Core Principle 9**”). In addition to compliance with these SEF Core Principles, the CFTC requires SEFs to demonstrate that new products are not susceptible to manipulation (see Core Principle 3).

3.1.2 Specifications for swaps that trade on the Applicant's Facility are set forth in Chapter 8 of the Applicant's Rulebook. When the Applicant wishes to add or change a product, the Applicant files changes to its Rulebook with the CFTC. In order to submit a swap to the CFTC as self-certified, the Facility must (i) meet the submission criteria contained in CFTC Rule 40.2, (i) determine that the swap is not readily susceptible to manipulation in accordance with Core Principle 3 and CFTC Rules 37.300 and 37.301; and (iii) include in the self-certified submission the information required by Appendix C to Part 38 of the CFTC Regulations. The Applicant would request prior CFTC approval of a swap pursuant to CFTC Rule 40.3 where the swap was a new or novel product or where it was unclear whether the CFTC or the U.S. Securities and Exchange Commission (the “SEC”) would have jurisdiction over the swap, including situations where the CFTC and SEC may have joint jurisdiction over the swap.

3.1.3 It is the Applicant's policy not to make a product “available to trade” under Section 5c(c) of the CEA and CFTC Regulation 37.10 (a “**MAT Determination**”). If this policy changed in the future, the Applicant would develop quantitative and qualitative criteria for

determining whether a MAT Determination should be made, and the chief executive officer of the Applicant would approve any MAT Determination.

3.2 Product Specifications – The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.2.1 Among other things, the requirement that new swaps comply with FCA requirements and the SEF Core Principles means that they contain an analysis of the underlying cash market and the deliverable supply of the underlying product. In response to the Applicant’s process for introducing a new product or changing an existing product, as described above, the FCA and CFTC have the right to follow up with questions requesting additional information on the underlying market including, but not limited to: supply and demand characteristics, participant composition, market concentration, deliverable supply estimates, the relation of the swap size to the underlying market, the quality of the product across various delivery facilities and the delivery facilities used for the product. If the Applicant is unable to provide satisfactory answers to the FCA’s CFTC’s questions, they may require the Facility to withdraw the proposed product addition or change. It is the Applicant’s experience that the terms and conditions of swaps that trade on the Facility are standardized, generally accepted and understood by participants.

3.3 Risks Associated with Trading Products – The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls.

3.3.1 Section 9.3 of this application covers the way that the Applicant measures, manages and mitigates the trading risk associated with products traded on the Facility.

3.3.2 The Applicant’s compliance function is responsible for ensuring that surveillance systems monitor trading by Participants to prevent manipulation, price distortion and other violations of Facility rules and applicable law. Pursuant to a Regulatory Services Agreement (“**RSA**”), the Applicant has contracted with the NFA as a Regulatory Services Provider for the purposes of monitoring the Facility’s markets. As part of the market surveillance provided, the NFA uses an automated system to detect, among other things, (a) disruptions of the deliverable supplies underlying a swap, (b) market manipulation of the references price and (c) also monitors the orderly liquidation of physically deliverable expiring swaps. Consistent with other SEFs, the Applicant has determined that it is not necessary and appropriate to set position limits or position accountability levels for swaps at this time.

4. Access

4.1 Fair Access

(a) **The exchange has established appropriate written standards for access to its services including requirements to ensure**

- (i) **participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,**
 - (ii) **the competence, integrity and authority of systems users, and (iii) systems users are adequately supervised.**
 - (b) **The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.**
 - (c) **The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.**
 - (d) **The exchange does not**
 - (i) **permit unreasonable discrimination among participants, or**
 - (ii) **impose any burden on competition that is not reasonably necessary and appropriate.**
 - (e) **The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.**
- 4.1.1 Consistent with applicable law, including FCA requirements and SEF Core Principles, the Facility provides access to participants on a fair, non-discriminatory and open basis. Participant status, and access to, and usage of, the Facility in such capacity is available to all market participants that meet the criteria set forth by the Applicant and engage in transactions on the Facility in accordance with the Facility's rules. Chapter 2 of the Rulebook set out the admission and eligibility criteria that participants must meet. Among other requirements, Rulebook standards require that participants must:
 - be of good financial standing and meet the financial and related reporting requirements set forth in Chapter 2 of the Rulebook.
 - upon initial application for trading privileges, represent to the Applicant that it is an ECP and EC. In addition, at least annually, the participant must represent that it has been and continues to be as of such date, an ECP and EC;
 - notify the Applicant's Chief Compliance Officer immediately upon becoming aware that it fails to meet its minimum financial requirements; and
 - demonstrate a capacity to adhere to all applicable rules of the Facility, rules of any clearing agency to which the participant submits swaps for clearing, FCA regulations, CFTC regulations and SRO regulations, including those concerning record-keeping, reporting, financial requirements and trading procedures.
- 4.1.2 Ontario participants must be registered under Ontario securities laws, exempt from the registration requirements or not subject to the registration requirements.
- 4.1.3 Core Principle 11 requires that, unless necessary or appropriate to achieve the purposes of applicable law, a SEF should avoid (a) adopting any rules or taking any actions that result

in any unreasonable restraints of trade; or (B) imposing any material anticompetitive burden on trading. As such, the Applicant does not implement rules that would impose any burden on competition that is not reasonably necessary and appropriate because such rules would not meet SEF Core Principle requirements.

- 4.1.4 The Applicant may deny the grant of trading privileges, prevent a person from becoming or remaining a participant if it would cause the Applicant to be in violation of any applicable law. The Applicant keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.
- 4.1.5 Pursuant to the procedures set forth in Rule 205(e) of the Rulebook, any applicant who is denied trading privileges or any participant who has privileges removed may request, in writing within 7 days of receiving written notice of the Applicant's decision, reasons for the Applicant's decision. The Applicant must provide such reasons in writing within 14 days of receiving the request. Within 14 days of receiving the Applicant's written response, the applicant or participant, as the case may be, may request, in writing, that the Board (or the Participation Committee, if established) reconsider the Applicant's initial decision and may provide any written representations or other information that the applicant or participant, as the case may be, believes is relevant to the reconsideration. The Board (or Participation Committee) must then, within 28 days of receiving the applicant or participant's appeal request, confirm, reverse or modify the initial decision and will promptly notify the applicant or participant as the case may be, accordingly. The Board (or Participation Committee) may in its discretion schedule a hearing or establish any other process that it believes is necessary and appropriate to consider the request for reconsideration. Any decision by the Board (or Participation Committee) then made constitutes the final action of the Facility with respect to the matter in question. In the event that the Board (or Participation Committee) upholds the decision to deny access, the applicant may then appeal to the CFTC in the manner provided in CFTC Rule 9.20.
- 4.1.6 No determination to discontinue a person's trading privileges take effect until the review procedures hereunder have been exhausted or the time for review has expired.

5. Regulation of Participants on the Exchange

5.1 Regulation – The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

- 5.1.1 A SEF is a self-regulatory organization under CFTC rules. A SEF is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace. Participants are required to comply with a significant number of rules governing trading on the Facility pursuant to the Rulebook. The applicable rules are primarily located in Chapter 3 (Trading Procedures) and Chapter 4 (Trading Standards) of the Rulebook.

- 5.1.2 The Applicant has contracted with the NFA for the NFA to conduct market surveillance of its Facility trades. The NFA staff are responsible for conducting trade practice surveillance and market surveillance for the Applicant. This includes reviewing messages and deals on an ongoing basis to determine if there are any potential violations of the Applicant's Rulebook and monitoring compliance with market manipulation rules and the orderly liquidation of physically delivered expiring swaps. NFA has developed an automated surveillance system known as Sophisticated Warning Analysis Profiling System, or "SWAPS". The NFA staff uses SWAPS to effectively and efficiently profile markets and Participants, query the Applicant's audit trail, generate automated trade exception reports and conduct daily monitoring of prices, volume and market news. In addition to the information collected automatically by SWAPS, information is gathered by NFA staff from a variety of other sources to perform surveillance. NFA investigators are grouped into Investigation Teams organized by the Applicant and by asset class to ensure that the NFA provides adequate staff with sufficient expertise to oversee the Applicant's market.
- 5.1.3 The Applicant expends considerable human, technological and financial resources that are focused on the maintenance of fair, efficient, competitive and transparent markets, and the protection of all Facility participants from fraud, manipulation and other abusive trading practices. The Applicant's market surveillance activities include a broad range of interconnected efforts that include trade practice reviews, data quality assurance audits and enforcement activities. To fulfill its mandate to effectively monitor and enforce the Facility's rules, the Applicant has established an automated trade surveillance system capable of detecting potential trade practice and violations of the Applicant's Rulebook. Participants are required to comply with a significant number of rules governing trading on the Facility pursuant to the Facility's rules. The applicable rules are primarily located in Chapter 4 (Trading Standards) of the Rulebook.
- 5.1.4 Investigating and enforcing rule violations are necessary components of regulatory safeguards. The Facility's disciplinary rules, including the establishment of panels, conducting of investigations, prosecution of violations and imposition of sanctions are described Chapter 5 (Rule Enforcement) of the Rulebook and are described in Part 7 below.
- 5.1.5 The Applicant is dedicated to safeguarding the integrity of its Facility, and ensuring that it is free from manipulation and other abusive practices. These efforts are a necessary component of efficiently working markets, and so it is committed to ensuring that participants are able to use the Facility with the knowledge that it remains open and transparent.
- 5.1.6 Specifically with reference to regulatory technology, the Applicant has made significant investments in this area, including staff dedicated solely to the support and continuous development of its regulatory technology infrastructure, ensuring that the Applicant's regulatory and market protection capabilities anticipate and evolve with the changing dynamics of the marketplace. The Applicant has developed an audit trail of market activity and powerful and flexible data query and analytical tools that allow its regulatory staff to examine real-time and historical order, transaction data, maintain profiles of markets and participants, and to detect trading patterns potentially indicative of market abuses.

6. Rulemaking

6.1 Purpose of Rules

- (a) **The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate.**

6.1.1 Pursuant to its obligations under the regulatory oversight of the FCA, under the CEA and under CFTC Regulations, the Applicant has implemented rules, policies and other similar instruments that govern the operations and activities of its participants. The Applicant's rules are covered in Chapters 1 through 8 of its Rulebook, which include: Chapter 1 (Market Governance), Chapter 2 (Trading Privileges), Chapter 3 (Trading Procedures), Chapter 4 (Trading Standards), Chapter 5 (Rule Enforcement), Chapter 6 (Contracts to be Traded) and Chapter 8 (Contract Specifications). The Applicant believes that its rules and policies that govern the activities of Participants are consistent with the rules and policies of other derivatives marketplaces and therefore do not impose any burden on competition that is not reasonably necessary or appropriate.

- (b) **The Rules 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) **foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,**
 - (v) **provide a framework for disciplinary and enforcement actions, and**
 - (vi) **ensure a fair and orderly market.**

6.1.2 The Applicant's Rulebook is subject to the standards and requirements outlined by FCA regulations and the SEF Core Principles. At a high level, the Applicant's Rulebook seeks to ensure fair and orderly markets accessible to all eligible participants. This aim is accomplished by establishing rules that reflect the FCA regulations and SEF Core Principle criteria, that are not contrary to the public interest, and are designed to:

- (i) **ensure compliance with applicable legislation.** The Applicant is obligated to comply with FCA regulations. Also, the Applicant is obligated to comply with the CEA, the SEF Core Principles and the CFTC Regulations (collectively, the "**U.S. SEF Regulations**"). As a result, the Applicant must implement rules that require compliance with FCA regulations and the U.S. SEF Regulations by its participants. SEF Core Principle 1 – *Compliance with Core Principles* requires a swaps trading facility to comply with all

applicable CFTC requirements and CEA core principles to be designated a SEF and maintain such designation. The Applicant proactively ensures compliance with all applicable laws and regulations, evidenced in part by its regular dialogue with the CFTC, including public commenting on proposed regulations. Core Principle 2 requires SEFs to ensure participants consent to SEF rules and jurisdiction prior to accessing its markets. Chapter 2 of the Applicant's Rulebook governs membership requirements and establishes compliance with the rules that brings market participants within the jurisdiction of the CFTC and the scope of the SEF Core Principles.

- (ii) **prevent fraudulent and manipulative acts and practices.** Core Principle 2 requires a SEF to collect information, examine members' records, direct supervision of the market, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system. The Applicant has instituted all these controls. Core Principle 3 requires a SEF to ensure the swaps it trades are not readily susceptible to manipulation. The Applicant complies with this Core Principle by including narrative descriptions of the product terms and conditions of every swap. Also, Chapters 3 and 4 of the Applicant's Rulebook prescribes trading practices and trading conduct requirements, including prohibited trading activities and prohibitions on fictitious trades, fraudulent activity and manipulation.
- (iii) **promote just and equitable principles of trade.** Core Principle 9 requires a SEF to promote transparency by making timely public disclosures of trading information. The Applicant conforms to this Core Principle by publishing daily information on settlement prices, volume, open interests, and opening and closing ranges for actively traded swaps. Core Principle 7 requires a SEF to ensure the financial integrity of transactions entered into on its markets. The Applicant's data and order entry feed systems offer simultaneous and equivalent access to all market participants. Core Principle 11 prohibits the imposition of unreasonable restraints or uncompetitive burdens on trade. Throughout its rulebook, the Applicant has established transparent and objective standards to prevent unreasonable restraints on trade and foster competitive and open market participation. The Applicant believes that compliance with these Core Principles, which require transparency, financial integrity, fair access and fair competition among participants, promotes just and equitable principles of trade.
- (iv) **foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange.** Rule 206 of the Rulebook authorizes the Applicant to enter into information-sharing arrangements as it determines necessary or advisable to obtain any necessary information, to perform any monitoring of trading or trade processing, to provide information to the CFTC upon request and to carry out such international information-sharing agreements as the CFTC

may require. Furthermore, the Applicant may enter into any arrangement with any other person (including any governmental authority (such as the Ontario Securities Commission), trading facility or clearing organization) where the Applicant determines such person exercises a legal or regulatory function under any applicable law or considers the arrangement to be in furtherance of the operation or duties of the Applicant under applicable law.

- (v) **promote a framework for disciplinary and enforcement actions.** Core Principle 2 requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 5 of the Applicant's Rulebook sets describes the Facility's rules for rule enforcement and Chapter 7 prescribes the Applicant's procedures for dispute resolution.
- (vi) **ensure a fair and orderly market.** Core Principle 3 requires a SEF to ensure that swaps traded on the facility are not readily subject to manipulation. Core Principle 4 requires a SEF to establish procedures for monitoring of trading and trade process. The Applicant complies with these Core Principles by prescribing trading rules, collecting and evaluating market activity data, by maintaining and auditing its real-time monitoring program, and by auditing historical data to detect trading abuses. Core Principle 9 requires timely public disclosure of trade information, all of which is published daily. SEF Core Principle 14 – *System Safeguards* requires a SEF to establish and maintain risk analysis, emergency procedure, and periodic systems testing programs. The Applicant periodically reviews its programs and procedures, including risk analysis, emergency planning, and systems testing. The Applicant regularly audits systems and technology tests both for technical and regulatory compliance. The Applicant believes that compliance with these Core Principles, which require effective trading rules, real-time and post-trade monitoring, public data dissemination and risk management procedures and testing, ensure a fair and orderly market.

7. Due Process

7.1 **Due Process – For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:**

- (a) **parties are 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.**

7.1.1 SEF Core Principle 2 require the Applicant to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 5 of the Applicant's Rulebook sets out the Applicant's rules for rule enforcement and Chapter 7 prescribes the Applicant's dispute resolution procedures.

- 7.1.2 The Applicant has the authority to initiate and conduct investigations, and prosecute violations of its Rulebook committed by participants, and to impose sanctions for such violations. It is the duty of the Applicant's Chief Compliance Officer to enforce the rules, but the Chief Compliance Officer may also delegate such authority to market regulation staff, which consists of employees of the Applicant and the NFA ("**Market Regulation Staff**").
- 7.1.3 The Market Regulation Staff have the authority to conduct investigations of possible violations of the Rulebook, prepare written reports respecting such investigations, furnish such reports to the Applicant's review panel (the "**Review Panel**")¹ and conduct the prosecution of such violations. An investigation must be commenced upon receipt of a request from CFTC staff or receipt of information by the Facility that, in the judgment of the Market Regulation Staff, indicates a reasonable basis for finding that a violation has occurred or will occur. The Applicant maintains records of all investigations conducted by the Applicant in accordance with its recordkeeping policy.
- 7.1.4 If it is concluded that a violation may have occurred, the participant may be issued a warning letter or an investigation report concerning the matter may be filed with the Review Panel. No more than one warning letter may be issued to the same person found to have committed the same violation more than once in a rolling 12-month period. The investigation report must include the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; Market Regulation Staff's analysis and conclusions; and a recommendation as to whether disciplinary action should be pursued. The report may also include the participant's disciplinary history at the Facility, including copies of any warning letters.
- 7.1.5 The Review Panel has the power to direct that an investigation of any suspected violation be conducted by the Market Regulation Staff, and shall hear any matter referred to it by the Market Regulation Staff regarding a suspected violation. Upon receipt of an investigation report, the Review Panel shall promptly review the report and, within thirty (30) days of receipt, take one of the following actions:
- (a) If the Review Panel determines that additional investigation or evidence is needed, it shall promptly direct the Market Regulation Staff to conduct further investigation;
 - (b) If the Review Panel determines that no reasonable basis exists for finding a violation or that prosecution is otherwise unwarranted, it may direct that no further action be taken. Such determination must be in writing and must include a written statement setting forth the facts and analysis supporting the decision; or
 - (c) If the Review Panel determines that a reasonable basis exists for finding a violation and adjudication is warranted, it must direct that the participant alleged to have committed the violation be served with a notice of charges (as set forth in Rule 504 of the Rulebook).

¹ The Review Panel is appointed by the Board, and must be comprised of five persons, including at least two participants and at least two non-participants. The Board must appoint as chairman (the "**Review Panel Chairman**") of the Review Panel a person who qualifies as a "Public Director" (i.e. an independent person).

- 7.1.6 If the Review Panel determines that there may have been a violation but that no adjudication is warranted, the Review Panel may issue a warning letter to the participant informing it that there may have been a violation and that such continued activity may result in disciplinary sanctions. Where a violation is determined to have occurred, no more than one warning letter for the same potential violation may be issued to the same person during a rolling 12 month period.
- 7.1.7 If the Review Panel determines that a reasonable basis exists for finding a violation and adjudication is warranted, the Chief Compliance Officer shall serve a notice of charges (a “**Notice**”) on the participant alleged to have been responsible for the violation (such participant, the “**Respondent**”).
- 7.1.8 The Respondent shall serve on the Chief Compliance Officer a written answer (an “**Answer**”) to the Notice and a written request for a hearing on the charges within thirty (30) days of the date of service of the Notice. The Answer must include a statement that the Respondent admits, denies, or does not have and is unable to obtain sufficient information to deny each allegation.
- 7.1.9 Formal hearings on any Notice shall be conducted by the “**Hearing Panel**” selected by the Board. The Hearing Panel may not include any members of the Market Regulation Staff, or any person involved in adjudicating any other stage of the same proceeding. The Hearing Panel must meet the composition detailed in CFTC Regulation 1.64(c), which requires that (a) at least one member of the Hearing Panel is not a member of the Facility; (b) more than 50% of the Hearing Panel includes persons representing membership interests other than that of the subject of the disciplinary proceeding being considered; and (c) the Hearing Panel include sufficient different membership interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of the Hearing Panel’s responsibilities.
- 7.1.10 Prior to the commencement of the hearing, the Hearing Panel may accept a written offer of settlement from the Respondent, whereby the Respondent, without either admitting or denying any violations, may agree to: (1) a cease and desist order; (2) a fine for each violation plus the monetary value of any benefit received as a result of the violation (provided that in no case shall any fine exceed \$100,000 per violation); (3) restitution of any counterparty harm; and/or (4) revocation or suspension of trading privileges.
- 7.1.11 Rule 510 sets out the Applicant’s procedures for holding a hearing. After the hearing is complete, the Hearing Panel must render a written decision based upon the weight of evidence and must provide a copy to the Respondent. There is no right of a Respondent to appeal a decision by the Hearing Panel to the Facility. However, a disciplinary action may be appealed to the CFTC pursuant to Part 9 of the CFTC Regulations.

8. Clearing and Settlement

- 8.1 **Clearing Arrangements – The exchange has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.**

- 8.1.1 A SEF must submit all trades that are required to be cleared to a clearing house for clearing. The Applicant provides direct connectivity for clearing to CME Clearing and LCH.Clearnet, which operate under a recognition exemption order and a recognition order, respectively, in Ontario and are registered as derivatives clearing organizations (“**DCO**”) with the CFTC. Service Organization Control 1 and 2 audits are conducted annually by each DCO. The Applicant expects that Ontario-based participants may either become clearing members of a clearing house and clear directly (provided such clearing house has obtained an exemption or interim exemption from recognition as a clearing agency in Ontario) or rely on another clearing member for clearing.
- 8.1.2 Any cleared swap that is rejected for clearing by a clearing house for any reason is treated as void *ab initio* and is canceled by the Facility. Participants may attempt to re-execute such transactions on the Facility after the cleared swap is canceled. Component legs of package transactions that are rejected for clearing are also treated as void *ab initio* and are canceled by the Facility. However, such rejected legs of a Package Transaction may be resubmitted for clearing without re-execution on the Facility pursuant to the “new trade/old terms” procedures set forth in Rule 204 of the Rulebook.
- 8.2 **Risk Management of Clearing House – The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.**
- 8.2.1 The Applicant has assured itself that CME Clearing, Ice Clear Credit and LCH.Clearnet have established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls. As noted above, each clearing house is registered as DCOs with the CFTC and regulated in Ontario. As a DCO, the clearing houses must comply with the DCO Core Principles, including CFTC Regulation 39.13 – *Risk management* (“**CFTC Regulation 39.13**”), CFTC Regulation 39.10 – *Compliance with rules* (“**CFTC Regulation 39.10**”), and CFTC Regulation 39.18 – *System safeguards* (“**CFTC Regulation 39.18**”).
- 8.2.2 CFTC Regulation 39.13 mandates the appointment by a DCO of a chief risk officer whose duties include implementing a Board-approved written risk management framework. CFTC Regulation 39.10 mandates the appointment by a DCO of a chief compliance officer (“**CCO**”) whose duties include review of the DCO’s written policies and procedures and compliance with each DCO Core Principle, including the risk management framework implemented by the CRO under CFTC Regulation 39.13. The CCO’s review of the DCO’s policies and procedures is included in an annual compliance report submitted to the CFTC.
- 8.2.3 CFTC Regulation 39.18(b) mandates the establishment and maintenance of a program of risk analysis and oversight with respect to the DCO’s operations and automated systems. CFTC Regulation 39.18(j) further requires that a DCO’s automated systems and business continuity and disaster recovery capabilities be tested by objective, independent and qualified professionals on a periodic basis. Service Organization Control 1 and 2 audits that meet the requirements of CFTC Regulation 39.18(j) are conducted annually.

9. **Systems and Technology**

- 9.1 **System and Technology – Each of the exchange’s critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:**
- (a) **order entry,**
 - (b) **order routing,**
 - (c) **execution,**
 - (d) **trade reporting,**
 - (e) **trade comparison,**
 - (f) **data feeds,**
 - (g) **market surveillance,**
 - (h) **trade clearing, and**
 - (i) **financial reporting.**
- 9.1.1 The Applicant’s Facility has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business.
- 9.1.2 The Applicant has put safeguards and security tools in place to protect the critical data and system components of its Facility. As discussed in paragraph 5.1.3 above, the Applicant has also established an automated trade surveillance system capable of detecting potential trade practice and violations of the Applicant’s Rulebook. The Applicant outsources its automated trade surveillance to the NFA, while maintaining full responsibility for compliance obligations.
- 9.1.3 The Applicant captures and retains all audit trail data necessary to detect, investigate, and prevent customer and market abuses. Such data shall be sufficient to reconstruct all trades and trade-related activity within a reasonable period of time and to provide evidence of any violations of the rules of the Applicant. The Applicant has also developed risk monitoring tools and risk controls to prevent and reduce the potential risk of market disruptions, including but not limited to market restrictions that could pause or halt trading under market conditions prescribed by the Applicant.
- 9.1.4 The Applicant has established a Business Continuity Plan and Disaster Recovery document with respect to the Facility. The plan describes the Applicant’s response to and address both small-scale and wide-scale service disruptions to the Applicant’s Facility. The main objectives of the Applicant’s Business Continuity Plan and Disaster Recovery document is to enable timely recovery and resumption of the Facility’s operation and the resumption of the Applicant’s fulfillment of its responsibilities and obligations following any disruptions to Facility operations, including: order processing and trade matching; transmission of

matched orders to DCOs for clearing; price reporting; market surveillance; and maintenance of a comprehensive audit trail.

9.1.5 The Applicant operates and provides to participants a robust and scalable platform. Standard system monitoring metrics include capacity and performance level alerts. In addition to system level monitoring of capacity and performance of resources, the Applicant also conducts standardized application or platform capacity tests on a regular basis. This ensures the platform is well positioned to provide adequate responsiveness to customers. The data generated from these tests are used to establish present and historical benchmarks to identify performance and/or capacity hot spots or deficiencies. Additional resources are deployed where appropriate to resolve performance or capacity issues outside of the benchmark to bring performance back in line with benchmark expectation.

9.1.6 The Applicant does not provide a clearing service itself, nor does it outsource such a function.

9.2 **Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data feeds, trade reporting and trade comparison, the exchange:**

- (a) **makes reasonable current and future capacity estimates;**
- (b) **conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;**
- (c) **reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;**
- (d) **ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;**
- (e) **ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;**
- (f) **maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and**
- (g) **maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.**

9.2.1 The Applicant's Facility uses technology that was formerly used for electronic trading platforms operated by affiliates of the Applicant prior to the Facility's rules taking effect (see discussion of outsourcing in paragraph 14.1.1 below).

- 9.2.2 The Applicant's Facility makes capacity estimates by regularly monitoring its systems usage as well as maintaining constant communications between internal parties whenever new business or possible changes in the market may increase capacity on the systems.
- 9.2.3 The Applicant conducts regular performance and capacity tests in a production test environment which matches production in its size, scope and infrastructure. Testing is described in paragraph 9.1.5 above.
- 9.2.4 The Applicant has internal policies and controls that govern system access, failures, and errors. Also, the Applicant and/or its service providers periodically conduct risk audits, internal physical security procedures compliance inspections and covert physical intrusion tests with independent security firms. Such tests are designed to periodically assess the operating effectiveness of physical security controls as well as to monitor internal compliance with security policies and procedures. External threats such as physical hazards and natural disasters are addressed in the Applicant's Business Continuity Plan and Disaster Recovery document.
- 9.2.5 The Applicant and/or its service providers review the configuration of its systems as part of its regular control procedures and conducts reviews as needed when issues are identified and resolved through its Information Technology Service Management protocols. Configuration management is the subject of internal audits and is also included in the Applicant's Disaster Recovery tests.
- 9.2.6 The Applicant reviews and keeps current the development and testing methodology of the Systems pursuant to procedures contained in the Applicant's Compliance Manual, and Business Continuity Plan and Disaster Recovery document. The Applicant's Business Continuity Plan and Disaster Recovery document is designed to allow for the recovery and resumption of operations and the fulfillment of the duties and obligations of the Applicant following a disruption. The Applicant performs periodic tests to verify that the resources outlined in the Business Continuity Plan and Disaster Recovery document are sufficient to ensure continued fulfillment of all duties of the Applicant under FCA regulations, the CEA and CFTC Regulations.
- 9.2.7 Complete backups are stored in an approved off-site storage facility pursuant to the Applicant's Business Continuity Plan and Disaster Recovery document. This data is retained off-site for an appropriate amount of time (daily, weekly, or monthly), depending on the specific need of the application.
- 9.3 **Information Technology Risk Management Procedures – The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and respond to market disruptions and disorderly trading.**
- 9.3.1 The Applicant provides extensive market integrity controls to ensure fair and efficient markets. The Applicant uses risk monitoring tools and risk controls to prevent and reduce the potential risk of market disruptions, including the following: (i) price outlier detection tool; (ii) pricing change monitoring tool; (iii) trading kill switch; (iv) notional outlier size limitations; (v) authorized trader lists and asset class limitations; (vi) trade rejection capability; and (vii) trade cancellation capability.

10. Financial Viability

10.1 Financial Viability – The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

10.1.1 The Applicant adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices. Under U.S. SEF Regulations, a SEF must submit financial statements to the CFTC and maintain adequate financial resources to cover its operating costs for a period of at least one year, calculated on a rolling basis. A SEF must also hold liquid financial assets equal to at least six months' operating costs. The Applicant maintains the current minimum capital amounts needed, and will maintain any future minimum capital amounts needed, to meet CFTC requirements.

11. Transparency

11.1 Trading Practices - Trading Practices are fair, properly supervised and not contrary to the public interest.

11.1.1 The Applicant is obligated to comply with U.S. SEF Regulations, which, as described in 6.1.2 above, require trading practices that are fair, properly supervised and not contrary to the public interest. The U.S. SEF Regulations also require that the Applicant implements rules that require compliance with the U.S. SEF Regulations by its participants. The Applicant's Rulebook, which address SEF trading practices, are subject to the standards and requirements outlined by the SEF Core Principles. At a high level, the SEF Core Principles and Applicant's Rulebook both seek to ensure fair and orderly markets accessible to all eligible participants that are properly supervised and operated in a manner consistent with the public interest.

11.2 Orders - Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.2.1 Rules pertaining to order size and limits are set forth in Chapter 4 of the Rulebook. As noted in 11.1.1 above, the Applicant's Rulebook is subject to the standards and requirements outlined by the SEF Core Principles, and are subject to periodic review by the Applicant to ensure that the limits are fair, equitable and appropriate for the market. The Applicant submits that its rules for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.3 Transparency – The exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.

11.3.1 Core Principle 9 requires a SEF to make public timely information concerning swaps transactions executed on the SEF. Also, FCA rules and Market Conduct rules ("MAR") for MTFs (MAR 5.8 and 5.9) require the Applicant to publicize trading information. The Applicant fulfills Core Principle 9, FCA rules and MAR by posting trade data to its website

daily, including previous day high, low, open and close price and total volume, and by reporting swaps data to DTCC, the swaps data repository for the Applicant's Facility.

12. Compliance, Surveillance and Enforcement

12.1 Jurisdiction - The exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

12.1.1 The Applicant operates a Facility that is regulated by the FCA (as an MTF) and by the CFTC as a SEF. A SEF is a self-regulatory organization under CFTC rules and has certain obligations to monitor participants' trading activity on the Facility under Sections 37.203(e), 37.401, 37.402 and 37.403 of the CEA.

12.2 Member and Market Regulation - The exchange or the Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.

12.2.1 Core Principle 2 requires a SEF to collect information, examine members' records, direct supervision of the market, maintain sufficient compliance staff, establish procedures for and conduct audit trail reviews, perform real-time market monitoring and market surveillance and establish an automated trade surveillance system. The Applicant has instituted all these controls and has adequate resources available to ensure that controls are properly applied. Principle 2 also requires a SEF to adopt a rule enforcement program, disciplinary procedures and sanctions. Section 7 of this application describes the resources available to the Facility to investigate and discipline participants for rule violations. Also, Chapter 5 of the Applicant's Rulebook sets out the Applicant's disciplinary rules and Chapter 7 prescribes the Applicant's dispute resolution procedures.

12.2.2 The CCO and the Head of Compliance and Oversight (the "CF10") are both appointed by the Board and assist the Applicant in meeting its regulatory obligations, as set out by the CFTC and the FCA, respectively. References by the Applicant to the "Compliance Function" is intended to mean, for CFTC related considerations, the CCO and, for FCA related considerations, the CF10. To the extent that any of the activities concern both the CFTC and FCA, the CCO and the CF10 co-operate to ensure compliance with the respective regulations.

12.2.3 It is the duty of the Compliance Function to enforce the Facility's rules and to assess the quality of its compliance oversight and disciplinary policies and procedures. As noted in this application, the Applicant's market regulation staff, under the direction and direct supervision of the Compliance Function, is responsible for conducting investigations of possible violations of any of the Applicant's rules ("**Violations**"), preparing written reports with respect to such investigations, furnishing such reports to the Facility's disciplinary panels and conducting the prosecution of any Violations in accordance with Chapter 5 of the Rulebook. The Compliance Function, on an ongoing basis, reviews the performance of staff and, where necessary, establishes procedures for the remediation of noncompliance issues. The CF10 reports to the CCO and the CCO reports directly to the Board. The CCO is supervised by the Board's Regulatory Oversight Committee. The Compliance Function is required to meet with the committee at least quarterly and review the Facility's self-

regulatory program, including compliance oversight and disciplinary processes. The Regulatory Oversight Committee reviews the performance of the Compliance Function and prepares an annual report to the Board and the CFTC assessing the self-regulatory programs of the Facility, including a description of the program, the expenses of the program, the staffing and structure of the program, a catalog of investigations and disciplinary actions taken during the year, and a review of the performance of the disciplinary panels and the CCO.

12.3 Availability of Information to Regulators - The exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the Commission, on a timely basis.

12.3.1 Please see paragraph 16.1.1 below.

13. Record Keeping

13.1 Record Keeping – The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

13.1.1 The Applicant collects data on a daily basis related to its regulated activity in compliance with Core Principle 10 – Recordkeeping and Reporting. The Applicant is required to maintain records of all activities relating to its business, including data related to order messaging, order execution and pricing. Data is collected from across the Facility, independent of whether the transaction was privately negotiated or matched in the central limit order book. The Applicant maintains a precise and complete data history, referred to as the audit trail, for every order entered and transaction executed across the Facility. Audit trail information for each transaction includes the order instructions, entry time, modification time, execution time, price, quantity, account identifier and parties to the transaction. On a daily basis, files of all electronic order and cleared trade information are archived to non-rewritable media, and copies are stored at multiple locations to ensure redundancy and critical safeguarding of the data. Furthermore, as a safeguard, the CFTC and the Applicant require participants to maintain all audit trail data for a minimum of 5 years.

14. Outsourcing

14.1 Outsourcing – Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

14.1.1 The Applicant has entered into several licensing and services agreements with affiliates and unaffiliated third parties for the use of (i) credit checking and trade reporting technology, (ii) the Facility's matching engine, (iii) front, middle and back office functionality (including trade input and execution, booking and confirmation, monitoring, invoicing and billing), (iv) software and (v) various support services, including operations

and compliance support, trade reporting, books and records, on-boarding of clients, telecommunications and information technology. These agreements permit the Applicant to meet its obligations and are in accordance with industry best practices. The outsourcing arrangements have terms that allow the Applicant to monitor the services provided to ensure that the Applicant meets its regulatory obligations with respect to the outsourced service and that the any services are provided in accordance with industry best practices. The Applicant at all times retains responsibility for any functions delegated to any service provider, including the NFA, and the ultimate decision making authority.

14.1.2 As described more fully in paragraph 5.1.2 above, the Applicant has contracted with the NFA to perform certain surveillance, investigative and regulatory functions under the Applicant's Rulebook.

15. Fees

15.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

15.1.1 The CFTC requires that the Applicant must charge comparable fees for participants receiving comparable access to, or services from, the Facility. The Applicant complies with this requirement and therefore fees charged by the Applicant do not create an unreasonable condition or limit on access by participants.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

15.1.2 The Applicant is required by CFTC Regulations and the FCA to charge all Participants fees that are impartial, transparent and applied in a fair and non-discriminatory manner. The Board of the Applicant has the sole authority to set the times and amounts of any assessments or fees to be paid by participants. All fee changes must be submitted to the CFTC for certification or approval under Part 40 of the CFTC Regulation prior to their implementation. The Applicant publishes its fee schedule on the Applicant's website. The Applicant publishes its fee schedule on the Applicant's website.

16. Information Sharing and Oversight Arrangements

16.1 Information Sharing and Regulatory Cooperation – The exchange has mechanisms in place to enable it to share information and otherwise cooperate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

16.1.1 It is the Applicant's policy to respond promptly and completely, through the legal and compliance departments, to any proper regulatory inquiry or request for documents. All inquiries and other communications from the Commission will be referred immediately to the Applicant's legal and compliance departments.

16.1.2 Rule 206 of the Rulebook authorizes the Applicant to enter into information-sharing agreements or other arrangements or procedures necessary to allow the Applicant to obtain any necessary information to perform any monitoring of trading and trade processing, provide information to other markets, the CFTC, the FCA, the Ontario Securities Commission or any other governmental body with jurisdiction over the Applicant upon request and which allow the Applicant to carry out such international information-sharing agreements as may be required. Also, the Applicant may enter into any information-sharing arrangement with any person or body (including the CFTC, the FCA, the Ontario Securities Commission, the NFA, any self-regulatory organization, any SEF, DCM, market, clearing organization or any Governmental Body). Currently, the Applicant shares information with DTCC (as a designated swap repository) and CME and LCH (as clearing houses).

16.2 Oversight Arrangements – Satisfactory information sharing and oversight agreements exist between the Ontario Securities Commission and the Foreign Regulator.

16.2.1 The FCA and CFTC have entered into memorandum of understanding (“MOU”) arrangements for co-operative enforcements with foreign regulatory authorities in numerous jurisdictions. The MOUs typically provide for access to non-public documents and information already in the possession of the regulatory authorities, and often include undertakings to obtain documents and to take testimony of, or statements from, witnesses on behalf of a requesting regulatory authority. The FCA, the Bank of England and the Commission are parties to an MOU that came into effect on August 21, 2013. The CFTC and the Commission are parties to an MOU that was entered into by the parties on March 25, 2014. The MOU is available at:
https://www.osc.gov.on.ca/en/About_mou_20140327_nmou-covered-entities.htm.

17. IOSCO Principles

17.1 IOSCO Principles – To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivatives Markets” (2011).

17.1.1 The Applicant adheres to the standards of IOSCO by virtue of the fact that it must comply with the CEA and CFTC Regulations, which reflect the IOSCO standards. The Applicant is regularly examined by the FCA and CFTC and during these examinations the IOSCO standards to which they are subject are taken into account.

PART IV SUBMISSIONS BY THE APPLICANT

1.1 The swaps that trade on the Applicant’s Facility fall under the definition of “derivative” set out in subsection 1(1) of the Act. The Facility operated by the Applicant falls under the definition of “marketplace” set out in subsection 1(1) of the Act because it brings together buyers and sellers of derivatives and uses established, non-discretionary methods under which orders interact with each other.

1.2 An “exchange” is not defined under the Act; however, subsection 3.1(1) of the companion policy to National Instrument 21-101 – *Marketplace Operation* provides that a

“marketplace” is considered to be an “exchange” if it, among other things, sets requirements governing the conduct of marketplace participants or disciplines marketplace participants. A SEF is a self-regulatory organization under CFTC rules and has certain obligations to monitor participants' trading activity. Because a SEF regulates the conduct of its participants, it is considered by the Commission to be an exchange for purposes of the Act.

- 1.3 Pursuant to OSC Staff Notice 21-702 – *Regulatory Approach for Foreign-Based Stock Exchanges*, the Commission considers an exchange located outside Ontario to be carrying on business as an exchange in Ontario if it provides Ontario Participants with direct access to the exchange. Since the Applicant provides Ontario Participants with direct access to trading derivatives on its Facility, it is considered by the Commission to be “carrying on business as an exchange” in Ontario and therefore must either be recognized or exempt from recognition by the Commission. The Applicant is currently permitted to operate its Facility in Ontario under the Interim Order.
- 1.4 The Applicant satisfies all the criteria for exemption from recognition as an exchange set out by Commission Staff, as described under Part III of this application. Ontario market participants that trade in swaps would benefit from the ability to trade on the Applicant’s Facility, as they would have access to a range of swaps and swap counterparties that otherwise may not be available in Ontario. Stringent FCA and CFTC oversight of the Applicant’s Facility as well as the sophisticated information systems, regulations and compliance functions that have been adopted by the Applicant will ensure that Ontario users of the Facility are adequately protected in accordance with international standards set by IOSCO.
- 1.5 Based on the foregoing, we submit that it would not be prejudicial to the public interest to grant the Requested Relief.

PART V CONSENT TO PUBLICATION

The Applicant consents to the publication of this application for public comment.

Yours very truly,



Gregory Compa
Chief Compliance Officer, ICAP Global Derivatives Limited