

# trueEX™

162 Fifth Avenue  
Suite 900  
New York, NY 10010  
Tel: 646-787-8707  
Fax: 212-675-5834

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## Sent By E-mail

Ontario Securities Commission  
20 Queen Street West, 19<sup>th</sup> Floor  
Toronto, Ontario M5H 3S8

Attention: Secretary, Ontario Securities Commission

**Re: trueEX LLC – Application for Exemption from Recognition as an Exchange**

Dear Sirs,

Pursuant to section 147 of the *Securities Act* (Ontario) (the “Act”), trueEX LLC (the “Applicant”) is filing this application with the Ontario Securities Commission (the “Commission”) to request 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 in Ontario under an interim exemption order dated May 14, 2015 (the “Interim Order”) and operating in Quebec under an interim exemption order dated December 21, 2015.

For convenience, this application is divided into the following Parts I to V, Part III of which describes how the Applicant satisfies Commission staff’s criteria for exemption of a foreign exchange trading OTC derivatives from recognition as an exchange.

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**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 Commodity Futures Trading Commission (“**CFTC**”) as both a designated contract market (“**DCM**”) and swap execution facility (“**SEF**”). The Applicant’s Facility offers trading of interest rate swaps (“**IRS**”), which are subject to the Made Available to Trade determinations made in accordance with the CFTC’s regulations. The two general categories of IRS available for trading on the Facility are (i) Fixed for Floating IRS Contracts and (ii) Market Agreed Coupon (“**MAC**”) IRS Contracts. Fixed for Floating IRS Contracts and MAC IRS Contracts are described in the Applicant’s rulebook (the “**Rulebook**”, as amended from time to time and posted on the Applicant’s website at <https://www.trueex.com/rules-and-notices>).
- 1.2 Under the Applicant’s DCM license, customers can access firm and actionable quotes through the anonymous and transparent Central Limit Order Book; and customers that need to execute and report trades of large notional, with a specific counterparty, can take advantage of the Block Trade functionality. Under the Applicant’s SEF license, customers are able to use a variety of services to manage their swap portfolios, including:

Request for Quote, which allows customers to request quotes on a swap from select counterparties through the RFQ functionality; and the Cleared Portfolio Terminations and Compactions tool allows customers to unwind and remove unwanted open positions from the trade register of the relevant clearing house without the need to undertake a novation and provides options for customers to enter into new transactions to be executed on terms other than rate.

- 1.3 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**”), CFTC Regulation 1.3(m) 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.
- 1.4 The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described herein.
- 1.5 Currently, the Applicant does not offer the trading of commodity futures contracts or commodity futures options (as defined in the *Commodity Futures Act (Ontario)*) on the Facility and is not seeking an order exempting the Applicant from the requirement to be recognized as an exchange to trade such contracts.

## **PART II BACKGROUND TO THE APPLICANT**

### **1. Ownership of the Applicant**

- 1.1 The Applicant is a limited liability company organized under the laws of the State of Delaware in the United States (“**U.S.**”) and is a wholly owned subsidiary of trueEX Group LLC (“**trueEX Group**”). trueEX Group is a privately held limited liability company organized under the laws of the State of Delaware in the U.S.

### **2. Products Traded on the Applicant’s Facility**

- 2.1 The Applicant provides its customers with trading and execution services for IRS. A full list of the products traded on the Applicant’s Facility can be found on the Applicant’s website, at <https://www.trueex.com/product-overview>.

### **3. Participants**

- 3.1 The Applicant enables customers to access the Facility directly or via sponsorship by a futures commission merchant’s trading technology. Customers may also trade through a futures commission merchant or introducing broker who can place and execute orders on the Facility on the customer’s behalf. Customers seeking direct access to the Facility must apply to become a “**participant**” on the Facility and enter into a Participant Agreement with the Applicant.
- 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. Under the terms of the Interim Order, any Ontario customer of the Applicant that wish to trade directly on the Applicant's Facility must qualify as an ECP, and satisfy other eligibility criteria prescribed by the Commission for Ontario customers.

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 Commission Staff's criteria 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 On January 31, 2012, the Applicant filed an application for registration on Form DCM pursuant to Section 5d of the CEA and Part 38 of the Regulations of the CFTC to operate a DCM in the U.S. The Applicant received approval from the CFTC on September 25, 2012 and the DCM began operations on September 13, 2013.

1.1.2 On July 15, 2013, the Applicant filed an application for registration on Form SEF pursuant to Section 5h of the U.S. Commodity Exchange Act (the "CEA") and Part 37 of the Regulations of the CFTC to operate a SEF in the U.S. The Applicant received approval for temporary registration as a SEF by the CFTC on September 20, 2013, and the SEF began operations on October 2, 2013. The Applicant was subsequently granted registration as a SEF by the CFTC on January 22, 2016.

1.1.3 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 DCMs ("**DCM Core Principles**") and SEFs ("**SEF Core Principles**"). 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. SEFs are required 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 ("**SDR**"). In addition, as a DCM the Applicant must also comply with the stricter regulatory regime governing DCMs under CFTC regulation Part 38, set forth in 23 DCM Core Principles.

- 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 CFTC carries out the regulation of DCMs and SEFs in accordance with certain provisions of the CEA. To implement regulation, the CFTC has promulgated regulations and guidelines (“**CFTC Regulations**”) that further interpret the SEF Core Principles and DCM Core Principles. The CFTC also undertakes periodic in-depth audits or rule reviews of the Applicant’s compliance with certain of the SEF Core Principles and DCM Core Principles. The rule enforcement review conducted by the CFTC can cover all of the SEF Core Principle requirements and the DCM Core Principle requirements. Reviews are typically focused on market surveillance and trade practice, both of which are governed by SEF Core Principle 2 and DCM Core Principle 4.
- 1.2.2 A SEF and a DCM is each considered a self-regulatory organization under CFTC rules. For example, 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 conducts market surveillance of the Facility to comply with CFTC regulations.

## 2. **Governance**

- 2.1 **Governance – The governance structure and governance arrangements of the exchange ensure:**
- (a) **effective oversight of the Exchange,**
- 2.1.2 The Applicant is a Delaware limited liability company that is member-managed pursuant to Section 18-402 of the *Limited Liability Company Act* of Delaware. The board of managers of the Applicant (the “**Board**”) is constituted in accordance with the Operating Agreement of the Applicant dated October 18, 2011 (the “**Operating Agreement**”) and manages the Applicant.
- 2.1.3 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; and

(d) overseeing and reviewing recommendations from the Applicant's committees and the Chief Compliance Officer.

2.1.4 Each director of the Board (each a "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.

#### **Fitness Standards**

2.1.5 See paragraph 2.2.1.

#### **Composition**

2.1.6 The Board currently consists of four directors. Each Director of the Board holds office for a term of one year or until such Director's successor is elected by holders of a majority of the Applicant's Class A Units at the next annual meeting of the Applicant, or until such Director's earlier death, resignation or removal.

2.1.7 At least thirty-five (35%) percent of the directors of the Applicant must be Public Directors, as such term is defined from time to time in the rules, regulations, orders, directives or any interpretation thereof promulgated by the CFTC. Currently, two of the four directors are Public Directors. "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. The DCM Core Principles set forth this requirement for Public Directors, which the CFTC is expected to also adopt under the SEF Core Principles.

2.1.8 Potential directors are proposed by the Nominating Committee and must be approved by the Applicant's shareholder in order to assume office. Any vacancies caused by death, resignation or any other reason may be immediately filled by the Applicant's shareholder without a proposal from the Nominating 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 the shareholder, at the annual meeting or at a special meeting called for that purpose.

#### **Qualifications**

2.1.9 See paragraph 2.2.1.

#### **Verification of Qualifications**

2.1.10 In order to verify that each director is qualified to serve, the Applicant requires (a) a written statement from each prospective director containing the following: (x) biographical information demonstrating the prospective director's experience in the Applicant's scope and intended scope of financial services (including ancillary services valuable for the Applicant to fulfill its business purposes); and (y) representations that the

prospective director has (i) no disciplinary offenses that would be disqualifying under Section 1.63(b) of the CFTC's regulations, (ii) no felony conviction in the last 10 years and (iii) no grounds for refusal to register under Section 8a(2) of the Commodity Exchange Act; and (b) each director to 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 review 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 shareholder and the Board prior to the election of the prospective director.

### **Conflicts of interest**

- 2.1.11 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. 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 a participant, vendor or other person that could be significantly and disproportionately impacted by a decision of the Board.
- 2.1.12 Prior to any deliberation or vote on the merits of any topic being considered by the Board or a committee of the Board, a director with a potential conflict of interest that does not choose to abstain from the deliberations and voting must disclose the potential conflict of interest to the Chairman of the Board or the chairman of the relevant committee. Under such circumstances, the director should consider recusing himself or herself from participating in the decision. The director is encouraged to consult with the Applicant's General Counsel and any necessary external advisors in advance of the topic being discussed or voted upon. In the event that all directors may be subject to a conflict of interest with respect to any topic being considered by the Board, the Chairman of the Board shall notify the shareholder of the Applicant, which may call a special meeting of shareholder to make a determination on the topic being considered by the Board.
- 2.1.13 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.

2.1.14 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 of “Material relationships”.

2.1.15 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**

2.1.16 Compensation awarded to Public Directors and other non-executive directors is not linked to the Applicant’s business performance.

#### **Self-Review**

2.1.17 The Board reviews its performance and that of its individual directors on an annual basis. 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**

2.1.18 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 of the shareholders, at the Applicant’s annual meeting or at a special meeting called for that purpose.



## **Board Committees**

2.1.19 The Applicant's Governance Policy contemplates four standing committees of the Board: a Nominating Committee, an Exchange Access Committee, a Trading Protocol 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.

- (a) *Nominating Committee* – the responsibilities of the Nominating Committee are to: (i) identify individuals qualified to serve on the Board, consistent with criteria specified by the Board and any composition requirements that the CFTC promulgates; and (ii) nominate individuals to the shareholder of the Applicant for designation as directors. The Applicant has established the Nominating Committee but it has remained inactive as there have been no changes to the Board since the Applicant's inception. The Nominating Committee currently consists of three directors, two of whom are Public Directors.
- (b) *Exchange Access Committee* – The responsibilities of the Exchange Access Committee are to: (i) determine the standards and requirements for initial and continuing Facility participation eligibility; (ii) review appeals of staff denials of Facility membership or participation applications; and (iii) approve rules that would result in different categories or classes of Participants receiving disparate access to the Facility. The Applicant has established the Exchange Access Committee but it has remained inactive to date as the Applicant has yet to a Participant access to the Facility. The Exchange Access Committee currently consists of three directors, two of whom are Public Directors.
- (c) *Trading Protocol Committee* – The responsibilities of the Trading Protocol Committee are to: (i) designate and modify from time to time, the products eligible for execution on the Facility; (ii) establish, adopt, amend, supplement or otherwise modify from time to time, specifications for any contract, agreement, or transaction approved for trading on the Facility; (iii) consider formal recommendations provided by participants; (iv) establish and modify from time to time the rules, standards, conventions, processes or other trading protocols applicable to swaps traded on the Applicant's Facility; and (v) perform other activities consistent with its committee charter. The Trading Protocol Committee currently consists of three directors, two of whom are Public Directors.
- (d) *Regulatory Oversight Committee* – The responsibilities of the Regulatory Oversight Committee, which currently consists of two Public Directors, are to:
  - (i) Monitor the Facility's self-regulatory program for sufficiency, effectiveness, and independence;
  - (ii) Review the size and allocation of the Facility's regulatory budget and resources; and the number, hiring and termination, and compensation of regulatory personnel;

- (iii) Review the performance of the Chief Regulatory Officer, and make recommendations with respect to such performance to the Board;
- (iv) Recommend changes that would ensure fair, vigorous, and effective regulation; and
- (v) Review all regulatory proposals prior to implementation and advise the Board as to whether and how such changes may impact regulation; and
- (vi) 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 disciplinary committees and panels.

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

2.1.20 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 SEF Core Principle 7 – *Financial Integrity of Transactions* (“**SEF Core Principle 7**”) and DCM Core Principle 11 – *Financial Integrity of Transactions* (“**DCM Core Principle 11**”). The Applicant fulfills this requirement in part through compliance with SEF Core Principle 3 – *Swaps Not Readily Subject to Manipulation* (“**SEF Core Principle 3**”) and DCM Core Principle 3 – *Contracts Not Readily Subject to Manipulation* (“**DCM Core Principle 3**”). Stability of the market infrastructure is enhanced through compliance with SEF Core Principle 13 – *Financial Resources* (“**SEF Core Principle 13**”) and DCM Core Principle 21 – *Financial Resources* (“**DCM Core Principle 21**”). SEF Core Principle 13 and DCM Core Principle 21 requires the Applicant 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,**

2.1.21 At all times the Board must be composed of at least 35%, but no less than two, Public Directors. Currently, the Board has two (2) Public Directors, ensuring the Board and all Committees thereof are properly balanced among the interests of the various participants on the Applicant’s Facility. The Nominating Committee and the Exchange Access

Committee are each comprised of three directors, two of whom are Public Directors. Also, The Regulatory Oversight Committee of the Board must consist only of Public Directors, appointed by the Board. Paragraph 2.1.13 above contains a discussion of the criteria for Public Director independence.

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

2.1.22 The Applicant, through its conflicts of interest rules, policies and procedures, as well as its compliance with SEF Core Principle 12 – *Conflicts of Interest* and DCM Core Principle 16 – *Conflicts of Interest*, 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 CFTC also conducts its 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 2.1.11 through 2.1.15 above. More specifically, Applicant’s Rule 215 requires directors, officers, members of a Disciplinary Panel (as defined in 7.1.11 below) or any other person authorized to exercise Applicant’s authority in connection with an inquiry, investigation or disciplinary proceeding, to disclose in writing to the Board any material conflicts of interest that makes any such individual an “interested person”. Under certain conditions, the Board may allow such interested persons to participate in deliberations; however, they must abstain from voting on the matter. In circumstances where it is determined the entire Board are interested persons with respect to a matter subject to a Board vote, the Applicant’s Chief Executive Officer is empowered to appoint a panel of individuals who are not interested persons with respect to the matter to vote with the same authority as the Board.

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

2.1.23 See paragraph 2.2.1 below 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.

2.1.24 The Applicant remunerates its directors, officers and employees appropriately and commensurate with each individual’s position, responsibility and prevailing market levels. See paragraph 2.1.16 regarding remuneration of Public Directors and paragraph 2.1.19(d) regarding oversight by the Regulatory Oversight Committee of the Board of remuneration of regulatory employees.

2.1.25 Pursuant to the 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 Operating Agreement 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 No individual may serve as a Director if either (i) a De-Registration Basis exists with respect to such individual, or (ii) such individual has committed a Serious Disciplinary Offense in the preceding three years. The terms “Serious Disciplinary Offense” and “De-Registration Basis” are defined in the Rulebook. 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 demonstrate sufficient experience in the Applicant’s scope or intended scope of financial services and satisfy the fitness standards described above.

### **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 core principles relevant to products traded on the Facility include: SEF Core Principle 2 – *Compliance with Rules* (“SEF Core Principle 2”), DCM Core Principle 7 – *Availability of General Information* (“DCM Core Principle 7”), SEF Core Principle 3, DCM Core Principle 3, SEF Core Principle 4 – *Monitoring of Trading and Trade Processing* (“SEF Core Principle 4”), DCM Core Principle 4 – *Prevention of Market Disruption* (“DCM Core Principle 4”), SEF Core Principle 6 – *Positions Limits or Accountability*, SEF Core Principle 7, DCM Core Principle 11, SEF Core Principle 9 – *Timely Publication of Trading Information* (“SEF Core Principle 9”) and DCM Core Principle 8 – *Reporting of Trade Information* (“DCM Core Principle 8”). In addition to compliance with these core principles, the CFTC requires the Applicant to demonstrate that new products are not susceptible to manipulation (see SEF Core Principle 3 and DCM Core Principle 3).

3.1.2 Specifications for swaps that trade on the Applicant’s Facility are set forth in Chapter 10 of the Rulebook. When the Applicant wishes to add or change a product, the Applicant files changes to its Rulebook with the CFTC at least one business day prior to adding a new product or at least ten business days prior to changing a product. The CFTC may object to the rule change or stay the rule change and request further information at any time. Alternatively, the Applicant may choose to request prior CFTC approval, for example if a new product is complex or controversial, or if the product has more than one regulator and the other regulator requires pre-approval.

3.1.3 The decision to request prior CFTC approval is at the discretion of the Applicant. CFTC Regulation 40.2, which sets forth the procedure for DCMs and SEFs to self-certify a product, does not provide guidance as to when a product should be self-certified versus

submitted to the CFTC for review and approval under CFTC Regulation 40.3. The CFTC places the onus on DCMs/SEFs to determine if a product should be submitted for CFTC review and approval because it possesses unique or controversial attributes.

3.1.4 The Applicant has determined that certain swaps that trade on the Applicant's Facility should be made available to trade ("MAT"). The MAT determination was made by self-certification filed with the CFTC on October 21, 2013. In making this MAT determination, the Applicant applied the six factors set forth in CFTC Regulation 37.10(b) for SEFs (the identical six factors apply to DCMs under CFTC Regulation 38.12). These factors, set forth below, are primarily quantitative; however, certain aspects of their application may also involve a qualitative analysis.

- (i) Whether there are ready and willing buyers and sellers;
- (ii) The frequency or size of transactions;
- (iii) The trading volume;
- (iv) The number and types of market participants;
- (v) The bid/ask spread; or
- (vi) The usual number of resting firm or indicative bids and offers.

**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 In order to introduce new products or change existing products on the Facility, the Applicant must conduct 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 CFTC has 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 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 most 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 The Applicant has implemented: (i) pre-trade limits on order size, (ii) price collars or bands around the current price and (iii) message throttles. The Applicant has the power to

set daily price limits, position limits and position accountability limits, as necessary, as set out in the Rulebook. Section 9.3 of this application for more details concerning the way that the Applicant measures, manages and mitigates the trading risk associated with products traded on the Facility. Most SEFs have collectively agreed with the CFTC that it is not reasonable or appropriate at this time for SEFs to set position limits or position accountability levels for swaps. Because of the fungible nature of swaps, it is not possible for a SEF to review positions, which would be more appropriate to be conducted by the clearing houses or the CFTC itself.

#### 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 SEF Core Principles and DCM 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 compliance with all Facility rules. Chapter 3 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 3 of the Rulebook.

- upon initial application for trading privileges on the SEF, represent to the Applicant that it is an ECP. In addition, at least annually, a SEF participant must represent that it has been and continues to be as of such date, an ECP;
- 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, CFTC regulations and SRO regulations, including those concerning record-keeping, reporting, financial requirements and trading procedures; and in the case of Ontario participants, that they are appropriately registered, exempt from registration, or are not required to be registered, in accordance with applicable Ontario laws and regulations at the time of their onboarding onto the Facility; and
- notify the Applicant immediately upon becoming aware that (i) it fails to meet its minimum financial requirements, including the requirements for ECP eligibility, (ii) it fails to meet any of the participant eligibility requirements set forth in Rule 302 of the Rulebook, or (iii) any of its traders authorized to trade on the Applicant's Facility qualify for de-registration pursuant to the Applicant's Rulebook.

4.1.2 SEF Core Principle 11 – *Antitrust Considerations* (“**SEF Core Principle 11**”) and DCM Core Principle 19 – *Antitrust Considerations* (“**DCM Core Principle 19**”) requires that, unless necessary or appropriate to achieve the purposes of applicable law, a SEF or DCM 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.

4.1.3 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. Pursuant to the procedures set forth in Rule 307 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 Exchange Access Committee 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 Exchange Access 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 Exchange Access 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 Exchange Access Committee constitutes the final action of the Applicant with respect to the matter in question and is not subject to appeal and the Applicant does not provide any further rights of appeal.

- 4.1.4 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.
- 4.1.5 The Applicant keeps records of each participant granted access to the Facility and each denial of access, including reasons for such denial of access.

## **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 Both a SEF and a DCM are considered self-regulatory organizations under CFTC rules. As a result, the Applicant 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 5 (Trading Practices and Business Conduct) of the Rulebook.
- 5.1.2 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 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 5 (Trading Practices and Business Conduct) of the Rulebook.
- 5.1.3 Investigating and enforcing rule violations are necessary components of regulatory safeguards. The Facility's disciplinary rules, including the conducting of investigations, prosecution of violations and imposition of sanctions are described Chapter 6 (Disciplinary Rules) of the Rulebook. 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.
- 5.1.4 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 and position data, maintain profiles of markets and participants, and to detect trading patterns potentially indicative of market abuses.

5.1.5 For a complete discussion of how the Applicant ensures the protection of its participants' due process rights, see paragraph 7 below.

## 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 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 10 of its Rulebook, which include: Chapter 1 (Definitions), Chapter 2 (Exchange Ownership and Governance), Chapter 3 (Trading Privileges), Chapter 4 (Obligations of Exchange Users), Chapter 5 (Trading Practices and Business Conduct), Chapter 6 (Disciplinary Rules), Chapter 7 (Arbitration Rules), Chapter 8 (Clearing), Chapter 9 (Miscellaneous) and Chapter 10 (Interest Rate Swap Contracts). See paragraph 4.1.1 above for a discussion of the fair, non-discriminatory and open basis on which the Facility provides access to participants.

(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 is obligated to comply with the CEA, the SEF Core Principles, the DCM Core Principles and the CFTC Regulations (collectively, the "U.S. Regulations"). As a result, the Applicant must implement rules that require compliance with the U.S. Regulations by its participants.

6.1.3 The Rulebook is subject to the standards and requirements outlined by the SEF Core Principles and the DCM Core Principles. At a high level, the Rulebook seeks to ensure fair and orderly markets accessible to all eligible participants. This aim is accomplished by establishing rules that reflect the SEF Core Principle and DCM Core Principle criteria discussed below:

The Rules are not contrary to the public interest and are designed to:

- (i) **ensure compliance with applicable legislation.** SEF Core Principle 1 – *Compliance with SEF Core Principles* and DCM Core Principle 1 – *Designation as a Contract Market* requires the Applicant to comply with all applicable CFTC requirements and core principles to be designated a SEF and a DCM and maintain such designations. 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. SEF Core Principle 2 and DCM Core Principle 7 requires a SEF or DCM to ensure participants consent to SEF or DCM rules and jurisdiction prior to accessing its markets. Chapter 3 of the Rulebook governs membership requirements for participants and establishes compliance with the rules that brings market participants within the jurisdiction of the CFTC and the scope of the SEF Core Principles and DCM Core Principles.
- (ii) **prevent fraudulent and manipulative acts and practices.** SEF Core Principle 2 and DCM Core Principle 2 requires a SEF or DCM 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. SEF Core Principle 3 and DCM Core Principle 3 requires a SEF or DCM to ensure the swaps it trades are not readily susceptible to manipulation. The Applicant complies with these core principles by including narrative descriptions of the product terms and conditions of every swap. Also, Chapter 5 of the 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.** SEF Core Principle 9 and DCM Core Principle 8 requires a SEF or DCM to promote transparency by making timely public disclosures of trading information. The Applicants conforms to these core principles by publishing daily information on settlement prices, volume, open interests, and opening and closing ranges for actively traded swaps. SEF Core Principle 7 and DCM Core Principle 11 require a SEF or DCM to ensure the financial integrity of transactions entered into on its markets. The Applicant's data and order entry systems offer simultaneous and equivalent access to all market participants. SEF Core Principle 11 and DCM Core Principle 19 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 the foregoing components, which are required by applicable SEF Core Principles and DCM Core Principles, are set forth in its Rulebook and complied with and enforced by the Applicant as a matter of course encourage transparency and 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.** Rule 218 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 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. In addition to the foregoing, the CFTC and the Commission have entered into a memorandum of understanding (“MOU”) providing for access to non-public documents and information sharing, generally. See paragraph 16.2.1 for more information on MOUs.
- (v) **promote a framework for disciplinary and enforcement actions.** SEF Core Principle 2 and DCM Core Principle 7 requires a SEF or DCM to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 6 of the Rulebook describes the Applicant’s rule enforcement procedures.
- (vi) **ensure a fair and orderly market.** SEF Core Principle 3 and DCM Core Principle 3 requires a SEF or DCM to ensure that swaps traded on the facility are not readily subject to manipulation. SEF Core Principle 4 and DCM Core Principle 4 requires a SEF or DCM 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. SEF Core Principle 9 and DCM Core Principle 8 requires timely public disclosure of trade information, all of which is published daily. SEF Core Principle 14 – *System Safeguards* and DCM Core Principle 20 – *System Safeguards* requires a SEF or DCM 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 core principles and resulting rules of the Facility illustrate how it ensures 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 and DCM Core Principle 7 require the Applicant to adopt a rule enforcement program, disciplinary procedures and sanctions. In response to this requirement, Chapter 6 of the Rulebook sets out the Applicant's rules for rule enforcement.

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 employees of the Applicant designated as market regulation staff ("**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**") 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 Applicant that, in the judgment of the Market Regulation Staff, indicates a reasonable basis for finding that a violation has occurred or will occur.

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.

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 Respondent may attend the hearing. 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.

7.1.10 Chapter 6 of the Rulebook 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. The Applicant retains records of all investigations it conducts. All information, records, materials and

documents provided to a Disciplinary Panel and all deliberations, testimony, information, records, materials and documents related thereto shall be treated as non-public and confidential and shall not be disclosed, except as necessary to further an investigation or as required by law.

- 7.1.11 Pursuant to Rule 610 of the Rulebook, the Board has the authority to appoint individuals at the recommendation of the Applicant's Chief Compliance Officer (the "CCO"), each to serve for a term of one-year, subject to reappointment by the Board, as potential participants on a Disciplinary Panel. A "**Disciplinary Panel**" is a Review Panel or a Hearing Panel appointed by the Board at the recommendation of the CCO or the Chief Regulatory Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in Chapter 6 of the Rulebook, including conducting inquiries, investigations, disciplinary proceedings and appeals from disciplinary proceedings, summary impositions of fines, summary suspensions or other summary actions. When recommending individuals for a Disciplinary Panel, the CCO or the Chief Regulatory Officer must recommend at least three individuals that would satisfy the conditions for being deemed a Public Director (as defined in Paragraph 2.1.7 above) and at least three individuals who represent the views of the applicable market participants. Each Disciplinary Panel shall be comprised of at least one individual deemed a Public Director and the remaining individuals from those representing the views of the applicable market participants, with the latter being chosen in a manner that prevents any group or class of industry participants from dominating or exercising disproportionate influence on the Disciplinary Panel being formed.
- 7.1.12 Pursuant to Chapter 7 of the Rulebook, the Applicant offers an alternative dispute resolution forum through the National Futures Association for all Persons (as that term is defined in the Rulebook), including Ontario Participants, involved in disputes arising from any activity on or through the Facility.

## **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 Inc. ("CME") and LCH.Clearnet Ltd. ("LCH"), which have obtained an exemption from recognition as a clearing agency in Ontario and recognition as clearing agency in Ontario, respectively, and are registered as derivatives clearing organizations ("DCO") with the CFTC. Rule 301 of the Rulebook requires each participant of the Facility transacting for its own account to establish a clearing relationship with a clearing firm, or be a member of a clearing house and eligible to clear at such clearing house the contract to be executed on the Facility. 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 If a trade is rejected by CME or LCH for any reason other than operational or clerical errors, the trade is void. If the trade fails for operational or clerical errors, the Applicant has the option of correcting the error and re-submitting the trade for clearing as provided for in CFTC No Action Letter 15-24, which is valid until June 15, 2016, unless extended by the CFTC.

**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 As noted above, CME and LCH are registered as DCOs with the CFTC. 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 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 CCO 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. The Applicant participates in an annual industry-wide disaster recovery test sponsored by the Futures Industry Association and encourages Facility participants to also participate in the test.

8.2.4 Based on the foregoing requirements and compliance therewith by each of CME and LCH, the Applicant has assured itself that each clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

## **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 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 5.1.2 above, the Applicant has also established an automated trade surveillance system capable of detecting potential trade practice and violations of the Rulebook. The Applicant does not outsource its trade surveillance.
- 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 Disaster Recovery and Business Continuity Policy with respect to the Facility. The Policy describes the Applicant's response to and address both small-scale and wide-scale service disruptions to the Applicant's Facility.
- 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.



- 9.1.7 With respect to the Applicant's financial reporting, please see paragraph 13.1.1 below.
- 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 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. These capacity tests reasonably inform the Applicant's current and future capacity estimates.
- 9.2.2 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 Disaster Recovery and Business Continuity Policy.
- 9.2.3 Configuration management is the subject of internal audits and is also included in the Applicant's Disaster Recovery tests.
- 9.2.4 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 Disaster Recovery and Business Continuity Policy. The Applicant's Disaster Recovery

and Business Continuity Policy 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 Disaster Recovery and Business Continuity Policy are sufficient to ensure continued fulfillment of all duties of the Applicant under the CEA and CFTC Regulations.

- 9.2.5 The Applicant's data centers are located in Tier 1 facilities that have fully redundant power and cooling systems and full-time manned and electronic security and surveillance. The Applicant executes vulnerability scanning biweekly and penetration tests twice annually. Access to its network requires a private connection or firewall permission, which mitigates our susceptibility to service attacks. In addition, the Applicant executes a third-party risk assessment of systems and policies annually and monitors system resource usage and capacity daily. Performance tests are executed for each new software release or hardware change.
- 9.2.6 The Applicant employs a configuration management system to ensure systems are configured appropriately and to identify potential points of failure, lack of back-up and redundant capabilities. These configurations are backed-up and replicated. The Applicant complies with the data/record retention policy defined by the CFTC.
- 9.2.7 The Applicant has developed and follows a Software Development Life Cycle to ensure proper development and testing methods are maintained for its systems.
- 9.2.8 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. The Applicant tests its Business Continuity and Disaster Recovery Plan three times each year: once during the industry-wide FIA Disaster Recovery Tests and twice internally.
- 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: reasonability checks and limits (levels that provide warnings or prevents trader from entering prices outside certain limits), message throttles, functionality that cancels all orders on disconnect, the ability for a firm to suspend its own users, and the Applicant's ability to suspend users, firms and the market as a whole, in order to halt trading if warranted.

## **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 has adequate financial and staff resources to carry on its activities in full compliance with its regulatory requirements and with best practices. Under U.S. Regulations, the Applicant must submit unaudited financial statements to the CFTC on a quarterly basis and maintain adequate (i) financial resources to cover its operating costs for a period of at least one year and (ii) liquid assets to cover its operating costs for a period of at least six months, each calculated on a rolling basis. The Applicant maintains the current minimum financial resources required, and will maintain any future minimum financial resources required 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. Regulations. The U.S. Regulations also require that the Applicant implements rules that require compliance with the U.S. Regulations by its participants. The Rulebook, which address SEF and DCM trading practices, are subject to the standards and requirements outlined by the SEF Core Principles and DCM Core Principles. At a high level, the SEF Core Principles, DCM Core Principles and Rulebook both seek to ensure fair and orderly markets accessible to all eligible participants. The foregoing illustrates how the Applicant's trading practices are fair, properly supervised and not contrary to 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 5 of the Rulebook. As noted in 11.1.1 above, the Rulebook is subject to the standards and requirements outlined by the SEF Core Principles and DCM Core Principles and is available online to the public. The Rulebook provides that the Applicant will accept and handle orders in compliance with the SEF Core Principles and DCM Core Principles, which require that the Applicant's system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent. The Applicant submits therefore 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 SEF Core Principle 9 and DCM Core Principle 8 requires a SEF or DCM to make public timely information concerning transactions executed on the Facility. The Applicant fulfills these core principles by reporting real time data and required creation data to its website daily, which consists of primary economic terms and confirmation data as soon as technologically practicable for each executed swap, including, but not limited to, previous day high, low, open and close price and total volume, as applicable. The Applicant reports this swaps data to DTCC Data Repository (U.S.) LLC (“DTCC”), the SDR for the Applicant's Facility. DTCC is a designated trade repository in Ontario. As a

Facility for trading swaps, the Applicant is not required to record and publish order information.

## **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 CFTC as a SEF and as a DCM. A Facility that is a SEF and DCM 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 SEF Core Principle 2 and DCM Core Principle 7 requires a SEF or DCM 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. SEF Core Principle 2 and DCM Core Principle 7 also requires a SEF or DCM to adopt a rule enforcement program, disciplinary procedures and sanctions. Section 7 of this application describes the resources available to the Applicant to investigate and discipline participants for rule violations. Also, Chapter 6 of the Rulebook sets out the Applicant's disciplinary rules and procedures.

12.2.2 The Applicant is responsible for conducting an annual compliance review to assess all of the SEF Core Principles and DCM Core Principles. For the purposes of the annual review, the Exchange Regulation Department conducts periodic reviews in a number of areas to ensure compliance with the SEF Core Principles and DCM Core Principles, including, but not limited to reviews of: documentation, audit trail data, policies and procedures, testing documentation and quarterly reviews of financial resource calculation and downstream reporting to DCOs and the SDR.

**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 SEF Core Principle 10 – *Recordkeeping and Reporting* and DCM Core Principle 18 - *Recordkeeping*. 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 on 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 To date, the Applicant has not outsourced any of its key services or systems to a service provider, nor has it entered into any material licensing or services agreements with third parties. As described elsewhere in this Application, the Applicant has entered into agreements for the reporting of swap data and clearing agreements governing the Applicant's relationship with the clearing houses to which the Applicant submits swaps which are cleared.

#### **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 a SEF or DCM must charge comparable fees for participants receiving comparable access to, or services from, the SEF or DCM. The Applicant complies with this requirement and therefore fees charged by the Applicant do not create an unreasonable condition or limit on access to the Facility 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 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. To date, the Applicant has not charged Participants any fees for using the Facility. Once the Applicant begins charging fees, it will publish 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 Rule 218 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 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 the CFTC may require. Also, the Applicant may enter into any information-sharing arrangement with any person or body (including the CFTC, 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).

16.1.2 The Applicant's CCO and General Counsel are responsible for ensuring that the Applicant remains in compliance with all applicable regulatory and legal requirements and responds in a timely manner to all requests for information from regulators and government authorities.

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

16.2.1 The CFTC has 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 CFTC and the Commission are parties to an MOU that was entered into by the parties on March 25, 2014<sup>1</sup>.

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<sup>1</sup>The MOU is available at [http://www.osc.gov.on.ca/documents/en/About/mou\\_20140327\\_nmou-covered-entities.pdf](http://www.osc.gov.on.ca/documents/en/About/mou_20140327_nmou-covered-entities.pdf)

## 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 CFTC and during these examinations the IOSCO standards to which they are subject are taken into account.

## PART IV SUBMISSIONS BY THE APPLICANT

### 1. Submissions Concerning the Exchange Relief

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. Both a SEF and a DCM are considered self-regulatory organizations under CFTC rules and have certain obligations to monitor participants’ trading activity. Because the Applicant 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 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 OTHER MATTERS**

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

If you have any questions or require anything further, please do not hesitate to contact us.

Yours very truly,



Karen O'Connor

cc: Fran Kenck and George Sapio, *trueEX LLC*  
Blair Wiley, *Osler, Hoskin & Harcourt LLP*