



November 21, 2012

Sent by e-mail to: comments@osc.gov.on.ca then mailed

The Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

Dear Sirs:

Re: Proposed Amendments to OSC Rule 13-502 and Companion Policy 13-502CP

ICE Futures Canada, Inc. ("ICEFC" or the "Exchange") appreciates the opportunity to comment on the proposed amendments to the Ontario Securities Commission (OSC) Rule 13-502 Fees and Companion Policy 13-502CP Fees.

ICE Futures Canada

ICEFC operates Canada's only agricultural commodity futures exchange. It has been in continuous operation since 1887, first listing a futures contract in 1904. The Exchange was acquired by IntercontinentalExchange, Inc. (ICE) in August 2007.

ICEFC currently offers trading in futures contracts and options on futures contracts in canola, milling wheat, durum wheat and barley, and is the world's premier marketplace for canola pricing. ICEFC contracts are traded on the ICE Platform, an integrated technology infrastructure with significant global presence, which currently includes 900 futures participant firms worldwide.

ICE operates a diverse set of regulated exchanges and clearinghouses in three countries, and is a leading global marketplace for futures and OTC derivatives across a variety of product classes, including agricultural and energy commodities, foreign exchange and equity indexes.

ICEFC is extensively regulated. It is registered as a commodity futures exchange and a Self-Regulatory Organization under sections 15 (1) and 14 (1) of *The Commodity Futures Act (Manitoba)* (CFAM) by The Manitoba Securities Commission (MSC), its principal regulator. It also has reporting obligations to the OSC with respect to an order issued on September 25, 2012, and to the Autorité des marchés financiers du Québec (AMF) under Decision No. 2010-PDG-0034. It received a Part 30.10 Order (dated May 21, 2001) and no-action relief (dated December 15, 2004) from the U.S. Commodity Futures Trading



Commission (CFTC)¹. ICEFC operates in Switzerland under an order issued by FINMA, the statutory regulatory authority. In addition, ICEFC is able to provide screen based trading access in a number of jurisdictions under various conditions and exemptions.²

The designated clearinghouse for ICEFC is ICE Clear Canada, Inc. (ICECC). ICECC is also extensively regulated, with designation as a recognized clearinghouse pursuant to s. 16(1) of the CFAM, exemption from recognition as a clearinghouse by the AMF by order dated February 23, 2010, and exemption from the requirements of s. 21.2(0.1) of *The Securities Act (Ontario)* by order effective March 1, 2011. Each of these orders provide for reporting requirements.

Comments on OSC Rule 13-502 and Companion Policy 13-502CP

This response focuses on the proposed amendments to the fees for non-Ontario based (“foreign”) exchanges and clearinghouses that require exemptive relief from the OSC in order to offer derivatives products and/or clearinghouse services to Ontario residents.

The proposed amendments provide for new initial application fees and new annual fees for foreign exchanges and clearinghouses. There is a \$75,000 fee to file an initial application for each of an exchange and clearinghouse. Subsequent to an exemptive order being issued, the proposed annual fee is \$15,000.00 for exchange relief (Appendix B.1) and \$15,000 for clearinghouse relief (Part E to Appendix C). To date there have been no fees assessed for these activities.

ICEFC raises the following issues with the proposed amendments to fees for foreign exchanges and clearinghouses;

- a) The proposed fees are excessive when compared to the fees charged by other statutory regulatory authorities and are not consistent with the fees that an exempting regulator should be charging;
- b) The proposed fees do not distinguish between exchanges located in Canada under the primary regulatory oversight of another Canadian statutory regulatory authority and exchanges and/or clearinghouses located outside of Canada;
- c) The proposed fees do not provide for a ‘true’ accounting of costs, but instead divide the costs among all foreign exchanges and clearinghouses, without reference to the work actually expended by staff of the OSC, the size of the exchange and/or clearinghouse, number of product classes offered, complexity of products (or, in the case of clearinghouses, complexity of risk), number of participants and similar;

¹ Pursuant to the requirements of the Dodd-Frank Act, ICEFC submitted an application for registration as a Foreign Board of Trade to the CFTC on August 9, 2012. ICEFC is entitled to continue operating under the no-action letter until the CFTC completes its review of the application.

² Full details of the Jurisdictions ICEFC offers screen based trading access to can be found at https://www.theice.com/publicdocs/futures_canada/Futures_Canada_Jurisdictions.pdf



- d) The proposed fees are not transparent and the process for setting the fees does not provide any measure by which registrants and the public can assess the reasonableness and fairness of the fees being charged; and
- e) The proposed fees are likely to result in discriminatory treatment and potential for reduced market access.

Further discussion on each of these points follows.

- a) The proposed fees are excessive;

The proposed fees are excessive, whether measured by either a comparison to other regulators, or by the resources that should be expended by a regulator in the oversight of an exchange or clearinghouse that is under the primary regulatory jurisdiction of a regulator that adheres to comparable standards of regulation.

The attachment to this letter sets out the current regulatory costs in several of the world's largest markets for initial application filing fees and annual fees for foreign exchanges and clearinghouses. With the exception of the United Kingdom's Financial Services Authority, the fees proposed by the OSC would exceed the costs to obtain exemptive relief in the most significant marketplaces in the world, including the United States of America, Singapore, Hong Kong, Australia and Dubai. In many of the largest market jurisdictions, including the United States of America, there are no initial application fees or annual fees.

The OSC is only one of ten provinces and three territories in Canada that operate under legislation to oversee market-related activities in their jurisdictions. If the other statutory regulatory authorities in Canada follow suit and assess similar fees, Canada would become the most expensive jurisdiction in the world for foreign exchanges and clearinghouses to obtain exemptive relief.

The OSC is urged to determine whether foreign exchanges and/or clearinghouses located outside Canada which apply for exemptive relief are able to demonstrate that they are subject to a "comparable" regulatory regime by their home country regulator. Such an approach would result in significantly reduced costs, to both the OSC and to applicants. It is unnecessary for the OSC to review all detailed information and processes of each exchange and clearinghouse, as that imposes significant burdens on the applicants without corresponding benefits.

A review of the OSC's website evidences that the exchanges and clearinghouses outside Canada which have obtained exemptive relief to date are regulated by national regulators which apply IOSCO standards in their regulatory oversight processes and are generally considered to be the pre-eminent regulators of derivatives markets and clearinghouses.³ The OSC should show deference to these regulators which would reduce the oversight work of its staff.

³ See http://www.osc.gov.on.ca/en/Marketplaces_exchanges_index.htm and http://www.osc.gov.on.ca/en/Marketplaces_clearing-agencies_index.htm



ICEFC supports the initiative of the OSC to update and standardize its exemptive orders for foreign exchanges and clearinghouses such that the orders clearly articulate the application representations, the criteria for relief and all ongoing reporting requirements.

- b) The proposed fees do not distinguish between exchanges and clearinghouses located in Canada which operate under the primary regulatory oversight of another Canadian provincial securities regulator and exchanges and clearinghouses located outside of Canada;

The OSC is urged to review the proposed amendments to Rule 13-502 which treat all exchanges and clearinghouses located outside Ontario similarly. There should be a different fee structure and different oversight requirements for exchanges and clearinghouses located in Canada, but outside Ontario. In the example of ICEFC, the legislation that it operates under, the CFAM, was based upon, and is almost identical to, *The Commodity Futures Act (Ontario)*. Staff of the MSC are responsible for, and conduct, all regular oversight of both ICEFC and ICECC, as provided for in the CFAM. In addition, the MSC reviews the operations of ICEFC and ICECC against IOSCO published principles and requirements.

The OSC, together with the securities commissions of Québec, Manitoba, Saskatchewan, Alberta and British Columbia, are signatories to the *“Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems”* which has been in place since November 2002 and was recently updated, effective January 1, 2010. This MOU provides for a system where the home province acts as the “primary” regulatory of an exchange and the other provinces act as “exempting” regulators. ICEFC submits that all parties to the MOU should show deference to the primary regulator, becoming involved only where significant issues relevant solely to the exempting provinces’ jurisdiction arise.

ICEFC submits that the MOU should be enhanced to include derivative clearinghouses and that a similar process of deference to the primary regulator be adhered to by all “exempting” regulators.

There is no regulatory value in requiring the same information, such as rule amendments or monthly financial filings, to be sent to, and reviewed by, staff in four or more different provincial securities commissions. It is duplicative, inefficient and unnecessary and does not provide for either enhanced investor protection or efficient and transparent capital markets (the two stated goals of the CSA jurisdictions)⁴.

where the home regulators include the U.K.’s Financial Services Authority and the U.S. Commodity Futures Commission.

⁴ CSA website – at <http://www.securities-administrators.ca/>. The website of the Canadian Securities Administrators notes that the mission of these regulators is to protect investors, provide for fair, efficient and transparent markets, and reduce systemic risk. It is further noted that “...in pursuing these three objectives, securities regulators try to protect investors while supporting efficient capital markets.”



c) The proposed fees are not based on a true accounting of actual costs;

The proposed fees are not based on a fair, measurable process. Unlike some regulators that set out hourly rates and maintain time records to prove time and encourage efficiency, the OSC is proposing to take all costs related to the oversight of non Ontario-based exchanges and clearinghouses and divide them up between the exempted exchanges and clearinghouses – without reference to actual time or costs, and without disclosure of any detail.

This approach assesses and charges exchanges and clearinghouses of different sizes, products, risk parameters and vastly different resources exactly the same fee. The result is that the OSC is proposing to charge ICEFC, a small regional exchange with a suite of "plain vanilla" agricultural futures and options contracts, the terms and risk parameters of which are well understood, the same fees as the Chicago Mercantile Exchange (CME), an exchange which, in its own words is "*...the world's largest and most diverse derivatives marketplace*" and which offers hundreds of products in all assets classes, including interest rates, equity indexes, foreign exchange, energy, metals, agricultural commodities, and alternative investment products. The complexity of the products offered and the increased risk analysis that is required on these products is significantly more than that of ICEFC. By any fair or reasonable measure, the fees charged should be based on the actual work required to oversee the risk posed by an exchange or clearinghouse to Ontario-based participants.

The OSC, as an entity which has the power to essentially set its own fees, has an obligation to ensure that its processes are fair. The one size fits all approach to fees that it is proposing in 13-502 is unfair as it compels smaller exchanges and clearinghouses to subsidize the additional risks and costs attached to larger exchanges and clearinghouses with additional and complex products.

d) The process of fee determination is not transparent;

The OSC is in a unique position in being permitted to set its own fees without any measurable oversight. It is cautioned to utilize these powers of fee assessment carefully, particularly given that any 'surplus' that it collects can, and has been, appropriated by the Minister of Finance to be paid into the Consolidated Revenue Fund. At a minimum, the actual costs of each department, including the time spent on various projects and files, should be recorded, determined and published.

e) The proposed fees result in discriminatory treatment and potential for reduced market access for Ontario investors

The OSC must consider the fact that the fees that it is proposing to assess against foreign exchanges and clearinghouses are likely to be duplicated by the other provincial and territorial securities commissions in Canada. If that were to happen, the costs to operate an exempt exchange or clearinghouse in Canada would be the most expensive in the world, and prohibitively expensive to all but the largest



derivative marketplaces. By setting such high fees, the OSC is discriminating against, and unfairly restricting competition from, smaller derivative exchanges and clearinghouses.

Unlike broker-dealers or FCMs, derivatives exchanges do not have to operate within Canada. If the costs rise to an unreasonable level, foreign exchanges and clearinghouses will simply refuse to register and refuse to permit access to their markets to Ontario residents. Significant as it is within Canada, the Ontario markets comprise a very small percentage of the world's markets.

The result of increasing fees to foreign exchanges and clearinghouses will be harmful and unfair to residents of Ontario. Large institutional entities, including Canadian banks and businesses, have affiliates and subsidiaries that they will utilize to gain access to the markets they require, regardless of whether or not those markets have sought exemptive relief from the OSC; however, smaller Ontario companies and retail clients will be unable to access any exchanges that have not received exemptive relief from the OSC. The result will be reduced trading opportunities to smaller Ontario based investors. It is submitted that the OSC has an obligation to ensure that the proposed amendments to 13-502 do not result in reduced competition and fewer investment options for small Ontario-based investors.

ICEFC appreciates the opportunity to comment on proposed Rule 13-502.

Yours truly,

A handwritten signature in black ink, appearing to read "E. Bradley Vannan", written in a cursive style.

E. Bradley Vannan
President & COO

Encl.



COUNTRY	FOREIGN BOARD OF TRADE (Application Fee)	FOREIGN BOARD OF TRADE (Annual Fee)
Australia	\$1,448 AUD (\$1,495.37 CDN at Nov 21)	No annual fee. Various fees applicable to specific matters. i.e. letter with changes to rules \$135 AUD, provision of Annual Report \$330 AUD.
Bermuda	\$0	\$0
Czech Republic	\$0	\$0
Denmark	\$0	\$0
Dubai	\$10,000 US (\$9,977.90 CDN at Nov 21)	\$0 (at this time)
Gibraltar	\$0	\$0
Hong Kong	\$10,000 HKD (\$1,287.30 CDN at Nov 21)	\$10,000 HKD (\$1,287.30 CDN at Nov 21)
Iceland	\$0	\$0
Ireland	\$0	\$0
Israel	\$0	\$0
Italy	\$0	\$0
Japan	\$0	\$0
Lithuania	\$0	\$0
Luxembourg	\$0	\$0
New Zealand	Hourly rate	\$0
Panama	\$0	\$0
Poland	\$0 (note: limit on traders)	\$0
Singapore	\$4,000 SGD (\$3,254.75 CDN at Nov 21)	\$10,000 SGD (\$8,136.88 CDN at Nov 21)
South Africa	286,000 ZAR (\$32,194.69 CDN at Nov 21)	13,800 ZAR (\$1,553.45 CDN Nov 21)
Sweden	\$0	\$0
Switzerland	\$0	\$0
United Arab Emirates	\$0	An amount determined by Regulation based on an assessment of the services rendered by the Exchange.
United Kingdom	£50,000 (\$79,487.45 CDN at Nov 21)	£50,000 (\$79,487.45 CDN at Nov 21)
United States	\$0	\$0