



Atlanta Calgary Chicago Houston London New York Singapore Winnipeg

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Sent by e-mail to: jstevenson@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca and mailed

The Canadian Securities Administrators

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Superintendent of Securities, Department of Justice, Government of Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut
Superintendent of Securities, Consumer, Corporate and Insurance Services, Office of the
Attorney General, Prince Edward Island
Saskatchewan Financial Services Commission
Superintendent of Securities, Government Services of Newfoundland and Labrador
Ontario Securities Commission

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8

M^e Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22^e étage
C..P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3

Dear Sirs:

Re: Proposed National Instrument 23-103

ICE Futures Canada, Inc. ("ICE Futures Canada" or the "Exchange") appreciates the opportunity to comment on the rulemaking issued by the Canadian Securities Administrators (CSA) in proposed National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* and its related companion policy (collectively NI 23-103).



As background, ICE Futures Canada operates Canada's leading agricultural commodity futures exchange. It has been in continuous operation since 1887, first listing a futures contract in 1904. The Exchange was acquired by Intercontinental Exchange, Inc. (ICE) in July 2007. 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.

ICE Futures Canada currently offers trading in futures contracts and options on futures contracts in canola and western barley, and is the world's premier marketplace for canola pricing.

ICE Futures Canada contracts are traded on the ICE Platform, an integrated technology infrastructure with significant global presence, which currently includes 900 futures participant firms worldwide. In 2004, ICE Futures Canada was the first derivatives exchange in North America to convert to a fully electronic trading platform. It has operated under two electronic trading systems, including the ICE Platform.

ICE Futures Canada is extensively regulated. It is registered as a commodity futures exchange and as a Self-Regulatory Organization under sections 15 (1) and 14 (1) of *The Commodity Futures Act (Manitoba)* (CFAM) by the Manitoba Securities Commission, its principal regulator. It also has reporting obligations to the Ontario Securities Commission with respect to orders issued in 1979, and to the Autorité des marchés financiers du Québec 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). ICE Futures Canada operates in Switzerland under an order issued by FINMA, the statutory regulatory authority. In addition, ICE Futures Canada is able to provide screen based trading access in a number of other jurisdictions under various conditions and exemptions.¹

ICE Futures Canada is a signatory to the "Boca Raton Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organisations", and to memorandums of understanding with other exchanges and self-regulatory organizations. It is a member of the Intermarket Surveillance Group, an organization of worldwide equity and derivative marketplaces with the stated purpose of coordinating and developing programs and procedures to identify and deal with fraudulent and manipulative activities across markets and for information sharing.

In light of its extensive and direct experience in facilitating a commodity futures exchange and operating an electronic trading system, ICE Futures Canada has the expertise to evaluate NI 23-103 and the merits and implications of the proposals therein as same relate to commodity futures marketplaces and electronic trading.

¹ Full details of the Jurisdictions ICE Futures Canada offers screen based trading access to can be found on the website at https://www.theice.com/publicdocs/futures_canada/Futures_Canada_Jurisdictions.pdf



Comments on NI 23-103

ICE Futures Canada encourages the CSA to clarify the applicability of the concept of "Direct Electronic Access" contemplated and referred to in NI 23-103, such that it is clear that it applies only to exchanges where registered dealer participants are the only entities that are direct market participants with unique marketplace participant identifiers (i.e. the concept of "dealer-sponsored access" for equity exchanges).

Although a reading of NI 23-103 implies that it is applicable to equity exchanges only, the generality of the wording utilized in the definition of "Direct Electronic Access" and the fact that "marketplace" is defined in reference to National Instrument 21-101, which includes commodity futures exchanges, could cause confusion. The details of Part IV of NI 23-103 provide further evidence that NI 23-103 was not intended to apply to commodity futures exchanges. In telephone discussions with staff of various provincial securities commissions, although most acknowledged that "Direct Electronic Access" as contemplated in NI 23-103 was not intended to apply to commodity futures exchanges and their access models, there were some commissions that were unable to confirm whether NI 23-103 applied to commodity futures exchanges or not.

Equity exchanges and commodity futures exchanges operate very differently and have discrete methods of market access. In addition, the risks outlined in NI 21-103 are dealt with quite differently as between equity exchanges and commodity futures exchanges.

Unlike equity exchanges which provide direct market access to a select group of registered broker dealers (the "market participants") who in turn may provide direct (or "dealer sponsored") access services for their clients or other entities, ICE Futures Canada provides direct market access only to entities that are registered with it as Direct Access Trading Participants (DATP). DATPs are required to enter into written agreements with the Exchange which incorporate the rules of ICE Futures Canada (the "Rules"). ICE Futures Canada's DATPs are located throughout the world and include various entities including Futures Commission Merchants (FCMs), Grain Merchants, and proprietary trading firms. DATPs may have clients only if they are properly registered as FCMs with all relevant statutory authorities². However, FCMs are prohibited from providing direct market access to the ICE Platform and the ICE Futures Canada marketplace to their clients.

Every DATP must be a Clearing Participant of the designated clearinghouse of the Exchange, ICE Clear Canada, Inc. (ICE Clear Canada) or have entered into a Clearing Authorization and Guaranty form (Clearing Guaranty) with a Clearing Participant of ICE Clear Canada. The relevance of the Clearing Guaranty is based on the fact that ICE Clear Canada manages many of the risk factors identified in the Comment section of NI 23-103, including all liability risk and credit risk. There is never an issue as to financial responsibility for trades, as every trade under a DATP's Member Mnemonic (including its client trades) are pegged to and directed to a specific Clearing Participant and that Clearing Participant is responsible. Clearing Participants

² The Rules require that FCMs meet the statutory and regulatory requirements of their home jurisdiction and of every jurisdiction of which their client base is resident.



can set financial and trade size parameters prior to orders entering the ICE Platform to manage each participant they clear.

ICE Clear Canada protects and manages all liability risk and credit risk of the marketplace. This is achieved through a multi-layered risk management process, including stringent oversight of the financial and operational status of Clearing Participants, daily settlement of all trades and payments, intra-day margin calls to cover periods of unusual market volatility, collection of position risk margin to cover concentration in relation to capital risk, and the maintenance of a liquid Clearinghouse guarantee fund.

All risks identified in the Comment section relative to trading, including regulatory transgressions, market disruption, and sub-delegation are the responsibility of the Exchange. As a Self-Regulatory Organization, ICE Futures Canada is responsible to ensure that all market participants³, whether DATPs or clients of DATPs, comply with the Rules and with the relevant provisions of the CFAM. The Exchange is responsible for all trade surveillance and market surveillance. The Exchange has an investigation and inspection mandate with respect to all market participants, regardless of location.

ICE Futures Canada has the ability to determine and track every user of the ICE Platform in its markets. The Rules require that all DATPs, Trading Participants,⁴ and employees of DATPs and Trading Participants have their own unique user ID and that they use these unique user IDs in every transaction (unlike clients of dealer participants in the equity exchange context). Additionally, every individual which enters a bid and an offer into the ICE Platform can be identified, regardless of method of access or category of registration. The identifying information collected in the Exchange's audit trail includes full legal name, employer company, phone number, email address, country of residence, and in some countries, date of birth.

Since the Exchange converted to a solely electronic exchange in 2004, it has been responsible for ensuring that it enacted rules, maintained policies and procedures, and has contractual agreements to provide for the necessary protection of the marketplace.

ICE Futures Canada commends the approach taken in NI 23-103 which focuses on principle-based regulation rather than prescriptive rule-making. We support the position that marketplaces are best suited to determining, along with input from their customers, the best ways to meet the regulatory objectives set by statutory regulatory authorities.

As a global derivatives exchange, ICE Futures Canada must ensure that its rules are applicable, without conflict, in all of the jurisdictions it operates in. ICE Futures Canada urges the CSA to carefully review the applicability and impact of the proposed rule changes in NI 23-103 as they relate to derivatives markets to ensure they are consistent with the many regulatory initiatives

³ "market participant" means any Person which accesses, utilizes or otherwise avails itself of any aspect of the Exchange's markets, either directly or indirectly.

⁴ Trading Participants are a category of registration which is entitled to reduced transaction fees, but not entitled to direct market access. Trading Participants must trade as a client of a DATP that is a registered FCM.



currently underway with respect to derivatives trading and marketplace regulation, most particularly in the United States and the European Union. Consistency in regulatory approach is critical to properly functioning marketplaces with participants that extend beyond national borders.

ICE Futures Canada appreciates the opportunity to comment on proposed National Instrument 23-103.

Yours truly,

A handwritten signature in black ink, appearing to read "E. Bradley Vannan", written over a horizontal line.

E. Bradley Vannan
President & COO