# 7.

# Bourses, chambres de compensation, organismes d'autoréglementation et autres entités réglementées

7.1 Avis et communiqués
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## 7.1 AVIS ET COMMUNIQUÉS

**Protocole d'entente sur la surveillance des bourses et des systèmes de cotation et de déclaration des opérations**

À la suite de son approbation par le gouvernement, l'Autorité des marchés financiers (l'« Autorité » ) publie le *Protocole d'entente sur la surveillance des bourses et des systèmes de cotation et de déclaration des opérations* intervenu entre l'Alberta Securities Commission (l'« ASC ») , l'Autorité, la British Columbia Securities Commission (la « BCSC »), la Commission des valeurs mobilières du Manitoba (la « CVMM »), la Commission des valeurs mobilières de l'Ontario (la « CVMO ») et la Saskatchewan Financial Services Commission (la « SFSC »).

L'Autorité publie également la *Liste des bourses, des autorités responsables et des autorités de dispense relative au Protocole d'entente sur la surveillance des bourses et des systèmes de cotation et de déclaration des opérations au 1er janvier 2010*. Comme indiqué sur la Liste des bourses, il n'y a pas d'autorité de dispense pour ICE Futures Canada Inc. en ce moment. Il s'agit d'une situation temporaire, car cette bourse a déposé une demande de dispense de reconnaissance à titre de bourse dans plusieurs territoires.

Le protocole d'entente prendra effet le 1er janvier 2010. Il remplacera tout protocole d'entente sur la surveillance des bourses et des systèmes de cotation et de déclaration des opérations intervenu antérieurement entre l'ASC, la Commission des valeurs mobilières du Québec, maintenant l'Autorité, la BCSC, la CVMM et la CVMO.

(Les textes sont reproduits ci-après.)

**ICE Futures Europe – Demande de dispense de reconnaissance à titre de bourse ou de marché organisé**

L'Autorité des marchés financiers (l'« Autorité ») publie la demande, déposée par ICE Futures Europe, de dispense de reconnaissance à titre de bourse ou de marché organisé en vertu de la *Loi sur les instruments dérivés,* L.R.Q., c. I-14.01. L'Autorité invite toutes les personnes intéressées à lui présenter leurs observations relativement à cette demande.

(Les textes sont reproduits ci-après.)

**Commentaires**

Toute personne désirant soumettre des commentaires est invitée à les faire parvenir par écrit, au plus tard le 18 janvier 2010, à l'attention de :

Me Anne-Marie Beaudoin
Secrétaire de l'Autorité
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Télécopieur : 514.864.6381
Courrier électronique : consultation-en-cours@lautorite.qc.ca

**Information complémentaire**

Pour de plus amples renseignements, on peut s'adresser à :

Élaine Lanouette
Analyste
Direction de la supervision des OAR
Autorité des marchés financiers
Téléphone : 514.395.0337, poste 4356
Numéro sans frais : 1.877.525.0337, poste 4356
Télécopieur : 514.873.7455
Courrier électronique : elaine.lanouette@lautorite.qc.ca

**Protocole d'entente sur la surveillance des bourses et des systèmes de cotation et de déclaration d'opérations**

**entre**

**l'Alberta Securities Commission (l'« ASC »)**

**l'Autorité des marchés financiers (l'« Autorité »)**

**la British Columbia Securities Commission (la « BCSC »)**

**la Commission des valeurs mobilières du Manitoba (la « CVMM »)**

**la Commission des valeurs mobilières de l'Ontario (la « CVMO »)**

**et**

**la Saskatchewan Financial Services Commission (SFSC)**

**(individuellement, une « partie » et, collectivement, les « parties »)**

Les parties conviennent de ce qui suit :

**1. Principes fondamentaux**

a) Régime de l'autorité responsable

i) Chaque bourse reconnue (une « bourse ») et chaque système de cotation et de déclaration d'opérations reconnu (un « SCDO ») soumis au présent protocole d'entente relève d'une autorité responsable (une « autorité responsable ») chargée de sa surveillance, et d'une ou plusieurs autorités de dispense (une « autorité de dispense »).

ii) L'autorité de dispense d'une bourse ou d'un SCDO dispense celle-ci ou celui-ci d'être reconnu en tant que bourse ou SCDO en considération de ce qui suit :

A) la bourse ou le SCDO est et demeurera reconnu par l'autorité responsable en tant que bourse ou SCDO;

B) l'autorité responsable est chargée de la surveillance réglementaire de la bourse ou du SCDO;

C) l'autorité responsable informe l'autorité de dispense de ses activités de surveillance et celle-ci a l'occasion de lui faire part de ses observations sur la surveillance de la bourse ou du SCDO conformément au présent protocole d'entente.

iii) L'autorité responsable est chargée de la mise en application d'un plan de surveillance (le « plan de surveillance ») de la bourse ou du SCDO, lequel concerne notamment l'objet et les modalités prévus à l'article 3.

iv) Les parties conviennent de travailler de bonne foi au règlement des questions soulevées par une autorité de dispense à l'égard du plan de surveillance mis en œuvre par l'autorité responsable.

b) Portée

Les parties appliquent les modalités du présent protocole d'entente relativement à la surveillance de toute bourse ou de tout SCDO désigné dans la liste intitulée « Liste des bourses, des autorités responsables et des autorités de dispense relative au Protocole d'entente sur la surveillance des bourses et des systèmes de cotation et de déclaration d'opérations » (la « liste des bourses »), publiée par chaque partie concurremment au présent protocole d'entente. La liste des bourses ne fait pas partie du présent protocole d'entente. Elle peut être modifiée de temps à autre et chaque partie la publie après modification.

c) Protocole d'entente antérieur

Le présent protocole d'entente remplace tout protocole d'entente sur la surveillance des bourses et des systèmes de cotation et de déclaration d'opérations intervenu antérieurement entre l'ASC, la Commission des valeurs mobilières du Québec, maintenant l'Autorité, la BCSC, la CVMM et la CVMO.

**2. Définition**

Est « autorité responsable » la partie qui est désignée sur la liste des bourses comme autorité responsable de la surveillance d'une bourse ou d'un SCDO en particulier par consensus des parties qui ont reconnu ou dispensé cette bourse ou ce SCDO d'être reconnus ou sont en voie de le faire.

## 3. Plan de surveillance

a) Le plan de surveillance[1] a pour objet de vérifier que chaque bourse ou SCDO observe des normes appropriées en matière de fonctionnement et de réglementation du marché selon le type d'activité que la bourse ou le SCDO exerce. Le cas échéant, ces normes concernent notamment :

i) une représentation équitable en matière de gouvernance et d'établissement des règles;

ii) la gestion efficace des conflits d'intérêts;

iii) une structure adéquate de propriété ou de contrôle;

iv) la viabilité financière;

v) des ressources suffisantes pour remplir les fonctions relatives au marché et à la réglementation;

vi) un accès équitable pour les participants aux marchés et les émetteurs;

vii) des marchés ordonnés, grâce à un examen approprié des produits négociés, des règles de négociation et des exigences financières que doivent respecter les participants aux marchés;

viii) la transparence, assurée par un accès rapide à de l'information exacte sur les ordres et les opérations;

ix) l'intégrité des marchés, grâce à l'adoption de règles qui ne sont pas contraires à l'intérêt public, interdisent les pratiques commerciales déloyales, préviennent la manipulation et l'abus de marché et les abus envers les clients, et favorisent des principes de négociation justes et équitables;

x) la surveillance de la conduite des participants aux marchés et l'application des règles et obligations régissant leur conduite;

xi) la délimitation et la gestion efficaces des risques;

xii) des mécanismes et des systèmes efficaces de compensation et de règlement;

[1] Les modalités décrites dans le plan de surveillance correspondent aux exigences minimales de surveillance exercée à l'égard d'une bourse ou d'un SCDO. L'autorité responsable est libre de prendre des dispositions supplémentaires en matière de surveillance.

xiii) l'échange de renseignements et la coopération entre organismes de réglementation;

xiv) une réglementation appropriée visant les sociétés dont les titres sont inscrits ou cotés;

xv) un processus acceptable d'élaboration des produits et instruments financiers;

xvi) des limites de positions et d'opérations précises;

xvii) des procédures efficaces de gestion et de livraison des stocks;

xviii) une bonne coordination de la surveillance des titres sous-jacents sur le marché.

b) L'autorité responsable établit et met en application le plan de surveillance, lequel comprend au moins les modalités suivantes :

i) l'examen de l'information critique de nature financière et fonctionnelle et de l'information concernant la gestion des risques et tout changement significatif aux activités déposées par la bourse ou le SCDO, y compris l'information déposée en vertu du *Règlement 21-101 sur le fonctionnement du marché* concernant :

A) sa gouvernance;

B) ses règles;

C) ses systèmes et son fonctionnement;

D) l'accès;

E) ses critères d'admission et (ou) d'élaboration des instruments financiers;

F) les droits;

G) sa viabilité financière;

H) la réglementation;

ii) s'il y a lieu, l'examen et l'approbation des modifications aux règlements, règles, politiques et autres documents semblables (les « règles ») de la

bourse ou du SCDO conformément aux procédures établies, le cas échéant, par l'autorité responsable;

iii) l'inspection périodique des fonctions de la bourse ou du SCDO, notamment, s'il y a lieu :

A) ses politiques en matière de financement des sociétés : ses exigences minimales d'inscription à la cote ou de cotation, ses exigences de maintien de l'inscription à la cote ou de la cotation, ses exigences de maintien de catégorie, le parrainage et l'information continue;

B) l'arrêt et la suspension des opérations et la procédure de radiation;

C) la coordination avec les marchés des titres sous-jacents;

D) le contrôle des limites de positions et d'opérations;

E) le contrôle et l'application des règles : les procédures suivies pour repérer les cas de non-conformité et le règlement des cas en suspens;

F) l'accès : les exigences relatives à l'accès aux installations de la bourse ou du SCDO et l'application équitable de ces exigences;

G) la transparence de l'information : les procédures suivies pour la diffusion de l'information du marché;

H) la gouvernance : les procédures en matière de gouvernance, dont l'établissement des règles et des politiques;

I) la gestion des risques;

J) les systèmes et la technologie.

c) L'autorité responsable a toute discrétion en ce qui concerne les modalités de mise en œuvre du plan de surveillance, notamment l'ordre dans lequel les fonctions décrites au sous-paragraphe 3 b) iii) sont inspectées et le calendrier d'inspection. Toutefois, l'autorité responsable inspecte ces fonctions au moins une fois tous les trois ans. Une fois qu'elle a obtenu l'approbation interne nécessaire et lorsqu'elle transmet à la bourse ou au SCDO le rapport final de l'inspection effectuée en vertu du paragraphe 3 b) iii), elle fournit également à chaque autorité de dispense une copie du rapport et de tout commentaire de la bourse ou du SCDO sur le rapport.

d) Si des émetteurs ou d'autres parties directement visées par une décision de la bourse ou du SCDO dans le territoire d'une autorité de dispense font appel de la décision auprès de l'autorité responsable ou demandent la tenue d'une audience et l'examen de la décision par l'autorité responsable, celle-ci fournit le matériel de vidéoconférence ou tout autre matériel électronique nécessaire pour permettre la tenue d'une telle audience et y faciliter la participation des parties dans le territoire de l'autorité de dispense. L'autorité responsable voit également à offrir des services de traduction simultanée ou autres services nécessaires pour permettre aux parties de participer à l'audience en français ou en anglais, à leur demande.

e) L'autorité responsable informe par écrit chacune des autorités de dispense de tout changement important à la façon dont elle s'acquitte des obligations prévues au présent protocole d'entente.

**4. Participation d'une autorité de dispense**

a) L'autorité responsable reconnaît qu'une autorité de dispense peut exiger d'obtenir de la bourse ou du SCDO :

i) une copie de l'information déposée par la bourse ou le SCDO conformément au sous-paragraphe 3 b) i), en même temps qu'elle est déposée auprès de l'autorité responsable;

ii) une copie de toutes les règles que la bourse ou le SCDO dépose auprès de l'autorité responsable conformément aux procédures de cette dernière, visées au sous-paragraphe 3 b) ii), en même temps qu'elles sont déposées auprès de l'autorité responsable;

iii) une copie de toutes les règles définitives dès qu'elles sont approuvées par l'autorité responsable conformément aux procédures de cette dernière, visées au sous-paragraphe 3 b) ii);

iv) dans le cas d'une enquête conduite par une autorité de dispense et sur demande expresse de celle-ci, des renseignements écrits sur les participants aux marchés, les actionnaires ou les activités de marché de la bourse ou du SCDO.

b) Si une autorité de dispense informe l'autorité responsable de préoccupations particulières concernant les activités de la bourse ou du SCDO dans son territoire et qu'elle lui demande de procéder à une inspection de la bourse ou du SCDO dans son territoire, l'autorité responsable peut décider d'inspecter :

i) soit les bureaux de la bourse ou du SCDO dans le territoire de l'autorité de dispense;

ii) soit une fonction des bureaux de la bourse ou du SCDO dans le territoire de l'autorité de dispense.

L'autorité de dispense peut, dans sa demande, proposer que des membres de son personnel participent à l'inspection de l'autorité responsable. Cette dernière peut pour sa part exiger, comme condition préalable à l'inspection, l'assistance de membres du personnel de l'autorité de dispense, auquel cas celle-ci fait tous les efforts pour lui procurer cette assistance.

c) Si l'autorité responsable informe l'autorité de dispense qu'elle ne peut procéder ou ne procédera pas à l'inspection visée au paragraphe 4 b), cette dernière peut effectuer l'inspection sans la participation de l'autorité responsable. Dans ce cas, elle présente une copie des résultats de l'inspection à l'autorité responsable en même temps qu'elle les transmet à la bourse ou au SCDO.

**5. Échange d'information**

a) Sur demande écrite d'une autorité de dispense, l'autorité responsable procure ou demande à la bourse ou au SCDO de procurer à l'autorité de dispense toute information sur les participants aux marchés, les actionnaires et les activités de marché de la bourse ou du SCDO, notamment des listes d'actionnaires et de participants, des renseignements sur les produits et les opérations et les décisions concernant des mesures disciplinaires.

b) En outre, dans la mesure du possible et si les circonstances le justifient, l'autorité responsable avise préalablement les autorités de dispense de tout événement important ou de toute décision importante prise par elle, la bourse ou le SCDO, qui pourraient avoir une incidence significative sur les activités de la bourse ou du SCDO.

**6. Comité de surveillance**

a) Un comité de surveillance conserve le mandat de servir de tribune pour traiter les questions soulevées et les propositions formulées à l'égard de la surveillance des marchés par les parties (le « comité de surveillance »).

b) Le comité de surveillance comprend des représentants de chacune des parties ayant des responsabilités ou de l'expertise dans le domaine de la surveillance et de la réglementation des marchés.

c) Les membres du comité de surveillance se réunissent en personne au moins une fois par année et tiennent au moins trimestriellement des conférences téléphoniques.

d) Les parties présentent au comité de surveillance, au moins trimestriellement, un rapport résumant leurs activités de surveillance pour la période visée, incluant tout changement important apporté au plan de surveillance, notamment aux procédures d'examen et d'approbation des règles de la bourse ou du SCDO.

e) Le comité de surveillance présente aux Autorités canadiennes en valeurs mobilières, au moins annuellement, un rapport écrit sur les activités de surveillance des membres du comité pour la période visée.

**7. Comité d'examen des différends**

a) Les parties reconnaissent :

i) soit que plusieurs bourses ou SCDO peuvent déposer simultanément les mêmes règles auprès de différentes autorités responsables pour examen et approbation;

ii) soit qu'une bourse ou qu'un SCDO peut déposer auprès de son autorité responsable pour examen et approbation une règle identique à une règle existante présentée par une autre bourse ou un autre SCDO auprès d'une autre autorité responsable et qui a été adoptée;

iii) soit qu'une autorité de dispense peut avoir des préoccupations importantes sur une règle déposée par la bourse ou le SCDO pour examen et approbation auprès de son autorité responsable conformément aux procédures de cette dernière, visées au sous-paragraphe 3 b) ii).

b) Si les situations visées au paragraphe 7 a) se produisent, les autorités responsables travaillent de bonne foi au règlement des questions ou des préoccupations soulevées par les parties à un différend ou à un désaccord dans le but d'amener les autorités responsables à un consensus ou de répondre aux préoccupations de l'autorité de dispense.

c) Les parties au présent protocole d'entente créent un comité composé des présidents ou d'autres membres de la haute direction des parties en cause (le « comité d'examen des différends ») qui est chargé de tenter d'amener les parties en cause à un consensus sur toute question faisant l'objet d'un différend ou d'un désaccord soulevé par les situations visées au paragraphe 7 a). Le comité d'examen des différends formule des recommandations aux parties. Le personnel

des parties en cause dans le différend ou le désaccord peut soumettre le cas litigieux au comité d'examen des différends.

d) Le comité d'examen des différends est composé du président ou d'un autre membre de la haute direction de chacune des parties en cause dans un différend ou un désaccord soulevé par les situations visées au paragraphe 7 a). Pour l'application du présent article et si deux autorités responsables agissent conjointement à l'égard d'une bourse ou d'un SCDO, les autorités responsables conjointes sont considérées comme des parties distinctes.

**8. Dérogation et résiliation**

a) Les parties peuvent déroger d'un commun accord aux stipulations du présent protocole d'entente.

b) Si l'autorité responsable ou une autorité de dispense d'une bourse ou d'un SCDO estime qu'une autre partie n'exécute pas de façon satisfaisante les obligations du protocole d'entente, elle peut l'en aviser par écrit en lui décrivant de façon raisonnablement détaillée le manquement présumé. Si la partie notifiée n'a pas convaincu la partie notifiante, dans les deux mois de la signification de l'avis, soit qu'elle exécute ses obligations de façon satisfaisante, soit qu'elle a pris ou prendra des mesures acceptables pour les exécuter correctement, la partie notifiante peut, par voie d'un avis écrit transmis à l'autre partie, résilier le présent protocole d'entente en ce qui concerne cette bourse ou ce SCDO dans un délai d'au moins six mois à compter de la signification de l'avis de résiliation. Dans ce cas, la partie notifiante transmet à la bourse ou au SCDO une copie de l'avis de résiliation en même temps qu'elle le transmet à toutes les autres parties.

c) Si un changement important dans la propriété, la structure ou les activités d'une bourse ou d'un SCDO a une incidence sur la surveillance de cette bourse ou de ce SCDO, l'autorité responsable ou toute autorité de dispense peut aviser par écrit les autres parties de ses préoccupations. S'il n'est pas possible de parvenir à une solution dans les deux mois de la signification de l'avis, la partie notifiante peut, par voie d'un avis écrit transmis aux autres parties, résilier le présent protocole d'entente dans la mesure où il vise cette bourse ou ce SCDO dans un délai d'au moins six mois à compter de la signification de l'avis de résiliation. Dans ce cas, la partie notifiante transmet à la bourse ou au SCDO une copie de l'avis de résiliation en même temps qu'elle le transmet à toutes les autres parties.

d) Pour l'application du présent article, s'il y a lieu, les autorités responsables conjointes de la bourse ou du SCDO sont considérées comme une seule partie.

**9. Modification et retrait du protocole d'entente**

a) Les parties peuvent d'un commun accord modifier le présent protocole d'entente. Toute modification se fait par écrit, par les représentants dûment autorisés de chaque partie, et est subordonnée à l'approbation ministérielle en Ontario et à l'approbation gouvernementale au Québec. La liste des bourses ne fait pas partie du présent protocole d'entente.

b) Les parties conviennent que l'autorité en valeurs mobilières de tout autre territoire où une bourse ou un SCDO est reconnu ou dispensé de reconnaissance peut devenir partie au présent protocole d'entente.

c) Toute partie peut se retirer du présent protocole d'entente en tout temps sur avis écrit d'au moins 90 jours transmis à toutes les autres parties.

**10. Date de prise d'effet**

Le présent protocole d'entente prend effet le 1er janvier 2010.

Alberta Securities Commission

Par : _____

Titre : _____

Date : _____

Autorité des marchés financiers

Par : _____

Titre : _____

Date : _____

British Columbia Securities Commission

Par : _____

Titre : _____

Date : _____

Pour l'application de la Loi sur le ministère du Conseil exécutif (L.R.Q., c. M-30)

Par : _____

Titre : Secrétaire général associé aux affaires intergouvernementales canadiennes

Date : _____

Commission des valeurs mobilières du Manitoba

Par : _____

Titre : _____

Date : _____

Commission des valeurs mobilières de l'Ontario

Par : _____

Titre : _____

Date : _____

Saskatchewan Financial Services Commission

Par : _____

Titre : _____

Date : _____

**Liste des bourses, des autorités responsables et des autorités de dispense relative au Protocole d'entente sur la surveillance des bourses et des systèmes de cotation et de déclaration d'opérations**
**au 1er janvier 2010**

| **Bourse – SCDO** | **Autorité(s) responsable(s)** | **Autorité(s) de dispense(s)** |
|---|---|---|
| **Bourse de Montréal Inc.** | • Autorité des marchés financiers | • Commission des valeurs mobilières de l'Ontario |
| **Bourse de croissance TSX Inc.** | • Alberta Securities Commission<br>• British Columbia Securities Commission | • Autorité des marchés financiers<br>• Commission des valeurs mobilières du Manitoba<br>• Commission des valeurs mobilières de l'Ontario |
| **CNSX Markets Inc.** | • Commission des valeurs mobilières de l'Ontario | • Alberta Securities Commission<br>• Autorité des marchés financiers<br>• British Columbia Securities Commission<br>• Commission des valeurs mobilières du Manitoba |
| **ICE Futures Canada Inc.** | • Commission des valeurs mobilières du Manitoba | |
| **Natural Gas Exchange Inc.** | • Alberta Securities Commission | • Autorité des marchés financiers |

**Liste des bourses, des autorités responsables et des autorités de dispense relative au Protocole d'entente sur la surveillance des bourses et des systèmes de cotation et de déclaration d'opérations**
**au 1er janvier 2010**

| **Bourse – SCDO** | **Autorité(s) responsable(s)** | **Autorité(s) de dispense(s)** |
|---|---|---|
| | | • Commission des valeurs mobilières du Manitoba<br>• Commission des valeurs mobilières de l'Ontario |
| **TSX Inc.** | • Commission des valeurs mobilières de l'Ontario | • Alberta Securities Commission<br>• Autorité des marchés financiers<br>• British Columbia Securities Commission |

Atlanta Calgary Chicago Houston London New York Singapore

16 December 2009

Ms. Jacinthe Bouffard
SRO Oversight Director
Autorité des marchés financiers
800 Square Victoria, 22nd Floor
C.P. 246, Tour de la Bourse
Montréal (Québec)
Canada H4Z 1G3

Dear Ms. Bouffard,

**ICE Futures Europe: Application under Section 86 of the *Derivatives Act* for Exemption from Recognition as an Exchange or as a Published Market and for Exemption from Other Requirements**

We are filing this application with the *Autorité des marchés financiers* (the "**AMF**") for obtaining the following decisions:

- a decision under Section 86 of the *Derivatives Act* (the "**Act**") exempting ICE Futures Europe from the requirement to be recognised by the AMF as an exchange or as a published market under Section 12 of the Act;
- a decision under Section 86 of the Act exempting ICE Futures Europe from the requirement of Section 82 of the Act to be qualified by the AMF as a person who creates or markets derivatives;
- a decision under Section 86 of the Act exempting ICE Futures Europe from *Regulation 21-101 respecting Marketplace Operation* ("**Regulation 21-101**"); and
- a decision under Section 86 of the Act exempting ICE Futures Europe from *Regulation 23-101 respecting Trading Rules* ("**Regulation 23-101**").

## BACKGROUND TO ICE FUTURES EUROPE

ICE Futures Europe (also referred to as the "**Exchange**") is the world's leading fully electronic energy futures and options exchange listing the leading global crude oil benchmarks. It was established in 1980 and provides a highly regulated electronic marketplace where industry participants can manage their price risk exposure in the physical energy market. ICE Futures Europe is an indirect wholly-owned subsidiary of IntercontinentalExchange, Inc. ("**ICE, Inc.**"), a public company governed by the laws of the State of Delaware and listed on the New York Stock Exchange on 16 November 2005. ICE Futures Europe has more than 150 members ranging from

MONTREAL:2391472.11



ICE Futures Europe
Milton Gate
60 Chiswell Street
London EC1Y 4SA, UK
phone +44 (0)20 7065 7700
fax +44 (0)20 7638 4964
online www.theice.com

global investment banks, energy trading companies to proprietary traders, and daily volumes represent a notional value of over US $10 billion. Our main contract, ICE Brent Crude futures, is used in the complex for determining the price for two thirds of the world's crude oil. ICE Clear Europe Limited provides clearing services for all ICE Futures Europe Contracts (as defined below).

ICE Futures Europe is a private company governed by the laws of the United Kingdom and is a Recognised Investment Exchange subject to supervision by the U.K. Financial Services Authority pursuant to the U.K.'s *Financial Services and Markets Act 2000*. ICE Futures Europe completed in 2006 the transition from open outcry floor-based trading to fully electronic trading. The electronic trading system being used (generally known as the "**ICE Platform**") is owned and operated by ICE, Inc. and is provided to ICE Futures Europe under the terms of a Licensing and Technical Services Agreement to provide ICE Futures Europe with an electronic trading facility which is accessed by members of ICE Futures Europe ("**Members**") over a secure internet connection. ICE Futures Europe offers a variety of energy commodity derivatives contracts including commodity futures contracts and futures contract options (collectively, "**ICE Futures Europe Contracts**") which are traded electronically on the ICE Platform. Currently, ICE Futures Europe offers five categories of ICE Futures Europe Contracts: (i) coal contracts, (ii) emissions contracts, (iii) U.K. natural gas contracts, (iv) crude oil and refined products contracts, and (v) U.K. electricity contracts.

In addition to being a Recognised Investment Exchange in the United Kingdom, ICE Futures Europe has secured relevant regulatory approvals or statements of non-objection, or has satisfied itself that it does not require regulatory approvals, to allow direct access to the ICE Platform from several jurisdictions as further described in Section 1.3 below. No jurisdiction has denied a request by ICE Futures for an approval or a statement of non-objection of this type.

In Canada, ICE Futures Europe received regulatory approval from the British Columbia Securities Commission dated 4 May 2005, from the Alberta Securities Commission dated 3 February 2006 and from the Ontario Securities Commission dated 1 September 2006 to permit it to offer direct electronic access to trading in ICE Futures Europe Contracts through the ICE Platform to market participants in those jurisdictions.

## PROPOSED ACTIVITIES IN THE PROVINCE OF QUÉBEC

ICE Futures Europe proposes to offer direct electronic access to trading in ICE Futures Europe Contracts through the ICE Platform to certain market participants in the Province of Québec, either by way of membership in ICE Futures Europe or through order-routing arrangements.

### Membership in ICE Futures Europe

Entities wishing to trade directly in ICE Futures Contracts on the ICE Platform must be admitted as Members and will be subject to the membership requirements and procedures outlined in Section 22 of this application.

Members resident in the Province of Québec would be "accredited counterparties" and would only be entitled to become non-clearing Members. ICE Futures Europe expects that Québec Members would be comprised principally of dealers engaged in the business of trading derivatives in the Province of Québec that are registered (or deemed to be registered) with the AMF under the Act.

**Order-routing Arrangements through Members**

Entities that are not Members would have access to trading in ICE Futures Contracts by becoming order-routing clients of a Member.

A Member takes responsibility for trades made by its order-routing clients and accepts all contingent liabilities for those orders when routed onto the ICE Platform. The Member must conduct its own due diligence of prospective order-routing clients to ensure that they satisfy relevant regulatory, financial resource, risk and anti-money laundering standards. ICE Futures Europe regulations provide that Members are responsible for all acts and conduct on the ICE Platform of any person acting through "responsible individuals" of the Member, including order-routing clients.

Residents of the Province of Québec that are "accredited counterparties" would be able to trade ICE Futures Europe Contracts through any Member, whether or not registered with the AMF. ICE Futures Europe is not seeking an exemption from the registration requirement set out in Sections 54 and 56 of the Act for its Members that are not registered with the AMF and is relying on the statutory exemption granted to persons authorised to act as dealers or advisers (or authorized to exercise similar functions) under legislation applicable in a jurisdiction outside the Province of Québec where their head office or principal place of business is located, provided they carry on business solely for "accredited counterparties" and their activities involve standardized derivatives offered primarily outside the Province of Québec, in accordance with Section 11.14 of the *Derivatives Regulation* (Québec).

Residents of the Province of Québec that are not "accredited counterparties" would be able to trade ICE Futures Europe Contracts only through Members having a registration with the AMF that permits them to trade derivatives.

ICE Futures Europe expects that Québec-based order-routing clients will be comprised principally of utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity.

ICE Futures Europe will ensure that the guidance it provides to Members with respect to the Province of Québec indicates that a Member is permitted to grant access to ICE Futures Europe Contracts to a client in the Province of Québec provided such client qualifies as an "accredited counterparty". In addition, ICE Futures Europe's regulations state that ICE Futures Europe expects Members to assume all responsibility for keeping themselves fully apprised of all

regulations, rules, requirements, policies and laws applicable in overseas jurisdictions when facilitating direct access to ICE Futures Europe for clients based in such jurisdictions.

ICE Futures Europe enforces its rules against Members through the legally binding contract between the two parties, which includes an agreement by Members to be bound by ICE Futures Europe's regulations. Since Members are accountable for the actions of their order-routing clients, ICE Futures Europe will not take any direct action against a Member's order-routing clients. However, in the event of market abuse which may relate to activities of a Québec-based order-routing client, the FSA may wish to pursue directly such client.

**EXEMPTIONS FROM SECTIONS 12 AND 82 OF THE ACT AND FROM REGULATIONS 21-101 AND 23-101**

**Exemption from the Requirement to be Recognised as an Exchange or as a Published Market under Section 12 of the Act**

As described in greater detail in this application, ICE Futures Europe is subject to the requirements of the U.K.'s *Financial Services and Markets Act 2000* as well as oversight from the U.K. Financial Services Authority, which, we submit, is similar to the regulatory framework applicable in the Province of Québec. Recognition requirements to be met by Recognised Investment Exchanges such as ICE Futures Europe are stringent and do take into consideration elements such as governance, fees, fair and equitable access, regulation, market operations, systems and technology as well as clearing and settlement, as prescribed by the AMF.

Furthermore, ICE Futures Europe confirms that it has the power to co-operate fully with the AMF and self-regulatory organizations in the Province of Québec, and to provide information and documents with respect to its operations that could be reasonably requested by the AMF.

Finally, ICE Futures Europe's regulator, the U.K. Financial Services Authority, is a signatory to the IOSCO Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information and to the Tokyo Communiqué on Supervision of Commodity Futures Markets dealing with the exchange of information among commodity futures exchanges.

Based on the foregoing, ICE Futures Europe seeks an exemption from the requirement of Section 12 of the Act allowing it to carry on derivatives activities in the Province of Québec without being recognised by the AMF as an exchange, a published market or otherwise. We believe this exemption would not be detrimental to the protection of investors in the Province of Québec and would contribute to make Québec's derivatives market more efficient.

**Exemption from the Requirement to be Qualified under Section 82 of the Act**

Section 82 of the Act states that a person, other than a recognised regulated entity, who creates or markets a derivative, must be qualified by the AMF before the derivatives is offered to the

public. ICE Futures Europe hereby seeks an exemption from this requirement to be qualified by the AMF in order for it to carry on derivatives activities within the conditions set out in this application.

**Exemption from Regulation 21-101 and Regulation 23-101**

ICE Futures Europe submits to the AMF that the application of Regulation 21-101 and Regulation 23-101 regarding marketplace operation and trading rules to ICE Futures Europe would result in duplication of the U.K. regulatory framework and hereby seeks an exemption from Regulation 21-101 and Regulation 23-101.

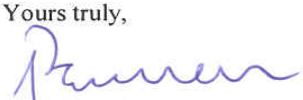
**CONFIDENTIALITY, CONSENT AND INFORMATION**

Strict confidentiality is requested with respect to all exhibits accompanying this application as these documents contain financial, business and technical information, the disclosure of which would result in serious harm to ICE Futures Europe. The foregoing confidentiality request notwithstanding, permission is granted to the AMF to publish this letter of application for exemptions in the AMF Bulletin for public comment.

Enclosed is a certificate of an authorized signatory of ICE Futures Europe certifying the truth and accuracy of the facts contained herein.

Should you require any further information or have any question on the information provided in this application, please do not hesitate to contact the undersigned or our counsels in Québec, E.A. (Ward) Sellers (514.904.8116, wsellers@osler.com) or Josée Kouri (514.904.5764, jkouri@osler.com) from Osler, Hoskin & Harcourt LLP.

Yours truly,



Patrick Davis
Head of Legal and Company Secretary

Enclosures

c: Elaine Lanouette
*SRO Oversight, Autorité des marchés financiers*

Ward Sellers and Josée Kouri
*Osler, Hoskin & Harcourt LLP*

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## SECTION 1 – CORPORATE GOVERNANCE

### 1. LEGAL STANDING OF ICE FUTURES EUROPE (EXHIBIT A)

**1.1** ICE Futures is recognised as a Recognised Investment Exchange ("**RIE**") under the U.K.'s *Financial Services and Markets Act 2000* ("**FSMA**") and is subject to supervision by the U.K. Financial Services Authority ("**FSA**") pursuant to the FSMA. The FSA places particular importance on the corporate governance arrangements of RIE when assessing whether they satisfy the recognition requirement to be a fit and proper person. As outlined in Section 2.4.3G of the FSA's *Recognised Investment Exchange and Recognised Clearing Houses Sourcebook* (the "**REC Sourcebook**"), the assessment covers, *inter alia*:

- the constitutional documents;
- how effectively the board of directors of the RIE oversees the recognised body's regulatory functions;
- the avenues of communication between the regulatory/compliance department and the board of directors;
- the size and composition of the board of directors, including the extent to which the RIE's members are represented and the number of independent directors;
- the distribution of responsibilities amongst its committees; and
- the independence of the regulatory department from the commercial part of the business.

**1.2** As stated above, ICE Futures Europe is a RIE subject to supervision by the FSA pursuant to the FSMA. Please refer to Exhibit A for an extract from the FSA Register demonstrating ICE Futures Europe's status as an RIE under to the FSMA as well as a letter from the FSA dated 14 August 2008 confirming that ICE Futures Europe is in compliance with the requirements and conditions imposed by Section 285 of the FSMA and the FMSA Regulations (*Recognition Requirements for Investment Exchanges and Clearing Houses*) 2001 as amended (the "**Recognition Requirements**").

**1.3** The Exchange has received permission from a number of national regulatory authorities in order to enable participants to trade directly from those jurisdictions.

(i) The Exchange has received a number of no-action reliefs from the Commodities and Futures Trading Commission ("**CFTC**") in the United States in recent years in respect of its products. On 14 April 2003, the Exchange received no-action

relief to make all of its contracts available in the US on the ICE Platform during the course of the entire trading day.

(ii) Recognition as a Recognised Trading System Provider under Section 36 of the Singapore Securities and Futures Act was confirmed on 6 May 2004. By virtue of Regulation 4 of the Securities and Futures Regulations 2005, the Exchange is from the 1 July 2005 deemed a Recognised Market Operator.

(iii) On 23 August 2006, the Hong Kong Securities and Futures Commission authorised the Exchange as a provider of automated trading systems.

(iv) On 8 May 2006, the Dubai Financial Services Authority issued a Recognition Notice permitting ICE Futures Europe to operate an exchange from a location outside the Dubai International Financial Centre.

(v) On 27 May 1999, the Swiss Federal Banking Commission (the "SFBC") granted the Exchange authorisation to act as a foreign stock exchange in Switzerland. The SFBC (now the FINMA – Swiss Financial Market Supervisory Authority) confirmed on 5 September 2003 that the electronic trading of Brent Crude futures and options, Gas Oil futures and options and NBP Natural Gas futures contracts did not impact on this authorisation.

(vi) ICE Futures Europe has received regulatory approval for, or a statement of no-objection or legal advice that there is no legislative or regulatory impediment to the trading of all its futures and options contracts in their jurisdiction from: Australia, Bermuda, Cayman Islands, China, Columbia, Guernsey, Israel, Japan, Republic of Korea, Lebanon, Mexico, Monaco, the Netherlands Antilles, South Africa, Spain, Sweden, Turkey, and the United Arab Emirates.

(vii) As of 1 November 2007 and the implementation of the Markets in Financial Instruments Directive (Directive 2004/39/EC) ("**MIFID**"), ICE Futures Europe has the status of regulated market and has the ability to make arrangements to facilitate access to its markets on the ICE Platform in European Economic Area ("**EEA**") Member States, pursuant to Article 42 of the *Markets in Financial Instruments Directive*. ICE Futures Europe has notified the FSA (home Member State regulator) of its intention to facilitate access to all EEA Member States (http://www.fsa.gov.uk/Pages/Doing/Regulated/Notify/apply/index.shtml).

(viii) No jurisdiction has denied a request by ICE Futures Europe for an approval or a statement of non-objection of this type.

**1.4** ICE Futures Europe received regulatory approval from the British Columbia Securities Commission dated 4 May 2005, from the Alberta Securities Commission dated 3 February 2006 and from the Ontario Securities Commission dated 1 September 2006 to

permit it to offer direct electronic access to trading in ICE Futures Europe Contracts through the ICE Platform to market participants in those jurisdictions.

**1.5** The ICE Futures Europe Board of Directors (the "**Board**") has the following members (details of education, experience and length of office at Exhibit C):

| | |
|---|---|
| Lord Fraser of Carmyllie | Non-executive and Senior Independent Director |
| Mr. Robert Mabro | Non-executive Independent Director |
| Mr. Peter Nicholls | Non-executive Independent Director |
| Sir Robert Reid | Chairman |
| Mr. Scott Hill | IntercontinentalExchange Inc. |
| Mr. Jeffrey Sprecher | IntercontinentalExchange Inc. |
| Mr. David Peniket | President and Chief Operating Officer |

**1.6** Article 65 of ICE Futures Europe's Articles of Association provides that at each annual general meeting of ICE Futures Europe one third of the directors subject to retirement by rotation or, if their number is not three or a multiple of three, the number nearest to but not less than one-third, shall retire from office. Article 31 requires all directors except the chairman, chief executive and each of the independent directors to retire by rotation at an annual general meeting.

**1.7** ICE Futures Europe is a private unlimited company having a share capital (Registered Number 01528617) and was incorporated under the *Companies Acts 1948 to 1976* at Cardiff (United Kingdom) on 17 November 1980 (see Exhibit A for ICE Futures Europe's constating documents).

**1.8** The registered office is

Milton Gate, 60 Chiswell Street, London ECIY 4SA, United Kingdom

**1.9** ICE Futures Europe's beneficial owner is ICE Futures Holdco No. 1 Ltd, a subsidiary of ICE Futures Holdings Ltd., which is in turn owned by ICE Netherlands C.V. and IntercontinentalExchange Holdings.

**1.10** The ultimate owner of ICE Futures Europe is IntercontinentalExchange, Inc ("**ICE, Inc.**"), a public corporation formed on 16 June 2000, governed by the laws of the State of Delaware and listed on the New York Stock Exchange since 1 November 2005. A diagrammatic representation of the ICE, Inc. group structure is attached at Exhibit A.

Address:

2100 RiverEdge Parkway, Suite 500, Atlanta, GA 30328, USA

Registered office:

The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801, USA

Tel: +1 770 857 4700

Fax: +1 770 951 1307

Website: www.theice.com

Ice, Inc.'s Corporation number is Number 010286075 - 3246189.

ICE, Inc.'s business is the operation of an electronic trading system for the trading of commodity and energy products.

**1.11** ICE, Inc. Board of Directors:

| | |
|---|---|
| Jeffrey C. Sprecher | Chairman and CEO |
| Charles R. Crisp | Non-Executive Director. |
| Jean-Marc Forneri | Non-Executive Director |
| Fred W Hatfield | Non-Executive Director |
| Terrence F. Martell | Non-Executive Director |
| Sir Callum McCarthy | Non-Executive Director |
| Sir Robert Reid | Non-Executive Director |
| Frederic V. Salerno | Non-Executive Director |
| Fred W Schoenhut | Non-Executive Director |
| Judith A. Sprieser | Non-Executive Director |
| Vincent Tese | Non-Executive Director |

**1.12** No ICE, Inc. shareholder owns more than a 20% stake of ICE Futures Europe.

## 2. FAIR REPRESENTATION

**2.1** The Articles of Association of ICE Futures Europe provide that the number of directors on the board of directors of ICE Futures Europe (the "**Board**") shall be not less than two and not more than 16, including at least two and not more than five independent directors. The Board currently comprises seven directors, four of whom, including the chairman, are considered independent by the FSA. The president and chief operating officer is the only ICE Futures Europe executive officer on the Board. The Board delegates certain functions to sub-committees, comprised of independent directors only, for example the Risk and Audit Committee (the "**RAC**"), and others comprised of independent directors and representatives of members of ICE Futures Europe

("**Members**"), for example the Authorization, Rules and Conduct Committee (the "**ARC**").

**2.2** The ARC is chaired by an independent director and is comprised of approximately 12 representatives from a cross-section of ICE Futures Europe Members and industry participants. The ARC is responsible for approving all new ICE Futures Europe Members, conducting disciplinary investigations and hearings, imposing sanctions and supervising ICE Futures Europe's regulatory and compliance functions.

Having seen and considered the results of a disciplinary investigation and considered the defence, the ARC may, if it deems appropriate, on behalf of the Exchange, continue to proceed with the disciplinary proceedings and refer the matter to a Disciplinary Panel. Disciplinary Panels are appointed by the Exchange and by the Remuneration and Appointments Committee. A Disciplinary Panel consists of a chairman sitting alone or together with one or two other persons; such persons may be drawn from market practitioners, lawyers or other suitable persons. Serving members of the ARC or Directors of the Exchange may not be appointed to a Disciplinary Panel. Expert assessors may be appointed, at the discretion of the ARC or the Disciplinary Panel itself, to sit with and advise the Disciplinary Panel but not to vote. No person shall serve on or sit with a Disciplinary Panel if he has a personal or financial interest in or has been involved in any investigation into or previous Disciplinary Panel hearing on the matter under consideration. The Member and/or the person alleged to have committed the infringement and the Exchange may object to any particular appointment to the Disciplinary Panel. The objection will be determined by the chairman of the Disciplinary Panel and, in the event that the objection is against the chairman of the Disciplinary Panel, then this will be determined by the chairman of the Appeals Panel.

**2.3** In order to maintain its status as a RIE, ICE Futures Europe must continue to satisfy the recognition requirements of the FSMA, to be a "fit and proper person". The FSA monitors ICE Futures Europe on an ongoing basis to confirm compliance with this requirement by reviewing ICE Futures Europe's constitution documents, the effectiveness of its Board in overseeing regulatory functions, avenues of communication between the compliance department of ICE Futures Europe ("**ICE Futures Europe Compliance**") and the Board, Board size, composition and the proportion of independent directors, distribution of responsibilities among Board committees and the independence of the regulatory department from the commercial business of ICE Futures Europe.

The FSA expects to have an open, cooperative and constructive relationship with UK RIEs to enable it to have a broad picture of the UK RIEs' activities and their ability to meet the Recognition Requirements. This dialogue is conducted through a series of quarterly meetings with the executives at the RIEs and monthly meetings with the RIEs' regulatory and compliance functions, as well as day-to-day contact as needed.

## 3. PROVISIONS FOR DIRECTORS AND OFFICERS

**3.1** The directors of ICE Futures Europe are appointed either by ordinary resolution of the shareholders or by decision of the directors, on the recommendation of a Nominations Committee (comprised of at least the chairman, the chief executive, an independent director and a director who is an employee, consultant, director or the representative of a person who trades on the Exchange), subject to the Articles of Association. The executive officers of ICE Futures Europe are appointed by the directors of ICE Futures Europe.

**3.2** The remuneration of directors and officers is reviewed on an annual basis by the Compensation Committee of ICE, Inc., which is comprised entirely of independent directors.

**3.3** The global insurance program of ICE, Inc. and its affiliates (collectively, the "**ICE Group**") provides professional indemnity and directors and officers coverage to all directors and executive officers of ICE Futures Europe. The potential exposure of ICE Futures Europe's directors to claims is monitored to ensure that indemnity limits are adequate and appropriate. The chair of the RAC may elevate any concerns identified relating to the level of coverage to the Audit Committee of ICE, Inc., the meetings of which he attends. ICE Futures Europe and ICE, Inc. hold periodic insurance review meetings during which such issues are discussed with the ICE Group's insurance brokers.

## 4. FITNESS

**4.1** Nominees to the Board are scrutinized by the board of ICE Futures Europe to ensure that all directors have adequate levels of competence and integrity in order that ICE Futures Europe will continue to be a "fit and proper person" in accordance with the Recognition Requirements. A due diligence investigation of each candidate's past conduct is commissioned, including, with respect to former employees of Members, a review of any disciplinary history under the regulations of ICE Futures Europe ("**ICE Futures Europe Regulations**").

**4.2** All employees and officers of ICE Futures Europe are subject to detailed pre-employment screening which is conducted by an external, independent agency and includes, *inter alia*, credit review, verification of academic qualifications and employment history and a review of the information supplied in support of the individual's application (including references). In addition, senior management appointees are subject to further checks on their professional memberships, qualifications and directorships and, where appropriate, checks of any criminal records.

**4.3** The ICE Futures Europe Articles of Association provide for the automatic dismissal of any director that is, or is employed by an ICE Futures Europe Member that is, found guilty of a serious disciplinary offence under ICE Futures Europe Regulations or the rules of any other regulatory body, disqualified for serving as a director or found guilty of any

criminal offence that adversely affects such director's ability to act in a "fit and proper" manner as a director.

## 5. AFFILIATED ENTITIES AND SERVICE PROVIDERS (EXHIBIT B)

**5.1** ICE Futures Europe Contracts are traded on the integrated electronic platform for side-by-side trading of energy products in both futures and OTC markets (the "**ICE Platform**") owned and operated by ICE, Inc. under the terms of a Licensing and Technical Services Agreement ("**LTSA**"). The LTSA between ICE Futures Europe and ICE, Inc. covers a wide range of commercial matters, including, *inter alia*, agreements relating to the licence provision, Atlanta services, London services and Disaster Recovery, and has been reviewed by the FSA. We would be happy to respond to specific questions which you may have about the document.

**5.2** Corporate and other information about ICE, Inc. are contained in Section 1.

**5.3** Of the various available software tools for accessing the ICE Platform, several are offered to ICE Futures Europe market participants by independent software vendors ("**ISVs**"). These third-party providers of front-end software must receive a certificate of conformance, and their ability to access the trading data and the live production environment of the ICE Platform is governed by agreements in place with ICE Futures Europe. A list of conformed ISVs is available at Exhibit B.

**5.4** Member firms and approved market participants may also create their own proprietary software solutions to the ICE open application programme interface, subject to a *Direct Access Interface Development and Maintenance Agreement*, for the purposes of accessing the ICE Platform trading system to trade ICE Futures Europe Contracts. The agreement governs the relationship between ICE, Inc., ICE Futures Europe and the Member firm or approved market participant in the development and testing of its user interface via a test environment and addresses the use of the Member's interface following the issue of a conformance certificate. The entities using member-owned development solutions are listed in Exhibit B.

**5.5** Clearing and settlement services for all ICE Futures Europe Contracts are provided by ICE Clear Europe Limited which acts as central counterparty to, and clears, ICE Futures Europe Contracts submitted to it for clearing. Under Rule B.3.1(g), ICE Futures Europe participants must either be members of ICE Clear Europe Ltd. or be parties to an agreement with a clearing member. As discussed in Section 13.7 below, ICE Futures Europe participants do not and will not have any other choice of clearing and settlement firm.

## 6. DIRECTORS, KEY OFFICERS AND MEMBERS OF STANDING COMMITTEES (EXHIBIT C)

**6.1** The members of the ICE Futures Europe Board are listed at paragraph 1.2, and full details of their qualifications and relevant work experience are available in Exhibit C. The same information is also provided for ICE Futures Europe's key officers: Director of Regulation, Head of Legal and Company Secretary, and the Vice President of Compliance.

**6.2** The RAC (see paragraph 2.1) is made up entirely of independent non-executive directors:

| Committee Member | Company/Position | Appointed |
|---|---|---|
| Peter Nicholls (Chair) | Independent Non-Executive Director | 12/00 |
| Lord Fraser of Carmyllie | Independent Non-Executive Director | 10/97 |
| Robert Mabro | Independent Non-Executive Director | 10/98 |

**6.3** The ARC is chaired by an independent non-executive director and is made up of the following representatives of ICE Futures Europe Members:

| Committee Member | Company/Position | Appointed |
|---|---|---|
| Lord Fraser of Carmyllie (Chair) | Independent Non-Executive Director | 12/00 |
| Nigel Avey | MF Global UK Ltd | 12/00 |
| Charles Brimble | ADM Investor Services Int'l Ltd | 12/00 |
| Christine Crosley | Shell Int'l Trading and Shipping Co | 08/05 |
| Gordon Humphreys | Sempra Energy Europe Ltd | 12/00 |
| Jonathan Maidman | Individual Participant | 11/04 |
| Mark Satterthwaite | Deutsche Bank AG | 11/03 |
| Richard Seaman | Industry Specialist | 12/00 |
| David Thompson | Industry Specialist | 12/00 |

## 7. AFFILIATED ENTITIES (EXHIBIT D)

**7.1** ICE Futures Europe is part of a group of companies owned by ICE, Inc. (see paragraph 1.10 above and 8 below). A diagrammatic representation of the ICE Group is available at Exhibit A. The financial statements of ICE, Inc. are provided as Exhibit D.

## 8. OWNERSHIP OF ICE FUTURES EUROPE (EXHIBIT E)

**8.1** The ownership structure of ICE Futures Europe is set out in the ICE Group Corporate Structure diagram at Exhibit A.

**8.2** ICE, Inc. acquired IPE Holdings plc (renamed ICE Futures Holdings plc in October 2005, and reregistered as ICE Futures Holdings Limited on 2 July 2007), indirect parent of ICE Futures Europe, in a share for share exchange on 18 June 2001.

**8.3** ICE, Inc. is effectively 100% beneficial owner of ICE Futures Europe. As such, and via the ICE Group structure, ICE, Inc. has a controlling interest in ICE Futures Europe under the terms of Subsection 1.3(2) of Regulation 21-101.

## SECTION 2 — RULES

### 9. ICE FUTURES EUROPE REGULATIONS (EXHIBIT F)

**9.1** All trading in ICE Futures Europe Contracts is conducted in accordance with ICE Futures Europe Regulations (including the Trading Procedures) and the rules of ICE Clear Europe Limited. ICE Futures Europe Regulations are applicable to ICE Futures Europe Members without regard to jurisdictional boundaries as such obligations arise by virtue of the contractual relationship between ICE Futures Europe and ICE Futures Europe Members. ICE Futures Europe Regulations contain substantive provisions relating to membership requirements, training and competence, risk management, trading procedures, reporting and business conduct standards, procedural provisions relating to discipline, arbitration, the default of ICE Futures Europe Members and other provisions. ICE Futures Europe Members are required to act in accordance with the spirit as well as the letter of ICE Futures Europe Regulations.

**9.2** ICE Futures Europe Regulations are designed to enable ICE Futures Europe to fulfil the Recognition Requirements, most notably the requirement to provide a fair and orderly market that is operated with due regard to investor protection. ICE Futures Europe Regulations also impose the FSA's high-level "Statements of Principle" and other regulatory guidance issued by the FSA relevant to ICE Futures Europe business.

**9.3** ICE Futures Europe Members and their Responsible Individuals (as defined in paragraph 19.1) are subject to disciplinary action in the event of failure to comply with ICE Futures Europe Regulations. Disciplinary action may result in suspension, expulsion or unlimited fines. ICE Futures Europe Members are accountable for the actions of their Responsible Individuals. Firms that cease to be ICE Futures Europe Members and Responsible Individuals who are de-registered remain subject to ICE Futures Europe's disciplinary jurisdiction for a period of one year after the deregistration becomes effective or for as long as disciplinary proceedings continue.

**9.4** ICE Futures Europe Regulations apply equally to all ICE Futures Europe Members. They differ for ICE Futures Europe Clearing Members and ICE Futures Europe Non-Clearing Members only in relation to membership criteria (largely driven by financial resource requirements and clearing arrangements). The U.K. Office of Fair Trading has reviewed

the ICE Futures Europe Regulations to ensure that these regulations do not create any barriers to competition.

**9.5** The ARC is responsible for reviewing the ICE Futures Europe Regulations to ensure they are compliant with ICE Futures Europe's legal and regulatory obligations, including the Recognition Requirements, the REC Sourcebook, other FSA rules and policies and applicable international law such as the European Convention on Human Rights. The ARC is comprised of representatives from a cross-section of ICE Futures Europe Members. This structure ensures that all constituents in ICE Futures Europe's trading community are represented in order to benefit from the widest possible range of expertise and also to avoid discrimination or any burden on competition when considering an applicant for ICE Futures Europe Membership. The ICE Futures Europe Complaints Resolution Procedure permits any person to submit a complaint about ICE Futures Europe's regulatory functions, contracts or business to the ICE Futures Europe independent Complaints Commissioner in accordance with the Recognition Requirements to have effective arrangements for the investigation and resolution of complaints. Once the ICE Futures Europe Independent Complaints Commissioner has completed an investigation, a report and recommendations are published, which may include recommendations that ICE Futures Europe make a compensatory payment to the complainant or take remedial action.

Under Section 300B(1) of FSMA (Duty to notify proposal to make regulatory provision[1]), a UK recognised body that proposes to make any regulatory provision must give written notice of the proposal to the FSA without delay, having first advised its normal supervisory contact of its intention to give notice under Section 300B(1).

Where a UK RIE is to circulate a notice proposing any amendment to a document relating to its constitution, the UK RIE must provide the FSA with the proposed amendment and the reason for the proposal for information purposes, in accordance with Sections 3.6.1R and 3.6.2R of the REC Sourcebook.

In the case of "excessive regulatory provision", FSMA empowers the FSA to direct a proposed regulatory provision not be made if it appears to the FSA that the proposed provision will impose an excessive requirement on persons affected (directly or indirectly) by it. A requirement is excessive if it is not required under EU Community law or any enactment or rule of law in the United Kingdom, and either (i) it is not justified as pursuing a reasonable regulatory objective, or (ii) it is disproportionate to the end to be achieved.

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[1] "regulatory provision" means any rule, guidance, arrangements, policy or practice, and references to making provision include, as the case may require, issuing guidance, entering into arrangements or adopting a policy or practice.

**9.6** A copy of the ICE Futures Europe Regulations has been provided as Exhibit F and the current Regulations are accessible via the following hyperlink: https://www.theice.com/futures_europe_regulations.jhtml.

## SECTION 3 — SYSTEMS AND OPERATIONS

### 10. SYSTEM CAPABILITY/SCALABILITY (EXHIBIT G)

**10.1** All ICE Futures Europe Contracts are traded solely electronically on the ICE Platform, which is owned and operated by ICE, Inc.

**10.2** ICE, Inc. developed the ICE Platform technology in compliance with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of IOSCO.

**10.3** Prior to migrating each ICE Futures Europe Contract to the ICE Platform, the operational integrity of the ICE Platform was thoroughly tested. The FSA rigorously evaluated the capability of the ICE Platform prior to its launch to ensure that it adequately supports order entry, order-routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements.

**10.4** The RAC reviews details of the performance of the ICE Platform and its associated and legacy systems, backup and disaster recovery arrangements.

**10.5** ICE, Inc. subjects the ICE Platform's critical systems to regular stress tests based on reasonable current and future capacity estimates. The ICE Platform is also tested for a range of externalities which may damage or impair the operation of the system, including, but not limited to, vulnerability to internal and external threats, including physical hazards and natural disasters and safeguarded against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service. The ICE Platform is subject to independent and ongoing audit review by ICE, Inc.'s auditors and an annual Statement of Auditing Standards 70 ("**SAS 70**") review by an independent auditing firm. These reviews cover the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans, business contingency/disaster recovery arrangements and other matters. ICE Futures Europe Members and other users may use the SAS 70 assessment of the ICE Platform as part of their own assessment of internal controls as they relate to the ICE Futures Europe Member's or user's financial statements.

## 11. ACCESS TO THE SYSTEM

**11.1** Trading takes place by entering orders onto the electronic trading system using a PC and a variety of electronic trading interfaces, including:

(i) ICE's own Graphical User Interface, "WebICE", which connects to the Internet;

(ii) software applications/front ends provided by independent software vendors; or

(iii) a trading participant's own tailor-made application connecting directly to ICE's global connection hub network or to its wide-area-network.

**11.2** A diagrammatic overview of ICE Futures Europe trading on the ICE Platform is provided as part of Exhibit G.

## 12. ORDER ENTRY

**12.1** The ICE Platform accepts several types of order for execution: specifically, GTC, limit orders, market orders, show volume orders, spread orders, inter product spread orders, stop limit orders and stop with protection orders. The system contains reasonability limits in all markets which limit the amount that the price can change in one trading sequence from the last traded price of that contract. A trader may submit orders into the trading server for a particular market if they have the correct trading rights and the trading day period for that market is valid for entering orders. A trader may reduce the volume of an order that has not fully traded or place a better price, without the time priority originally assigned to the order changing. Traders may also increase the volume or detrimentally change the price but this will change the time priority to the time the server receives the revision. A trader may delete any of their own orders that are active in the market; they cannot delete the orders of another trader (unless the trader is from the same company and they also have permissions through order security to do so). There are eight main types of trades:

12.1.1 A **good 'till cancelled** order ("**GTC**") is an order that remains active in the market each day until it has either been filled, withdrawn by the user or the market has expired. The GTC order is automatically reinstated each trading day and made "active" for the pre-open. The GTC original float date and time are used when determining priority.

12.1.2 A **limit order** is an order placed to buy or sell an instrument at a determined limit price or better. The order will sweep through all available resting orders until the limit price is reached, the required volume is filled or the reasonability level is reached. If the required volume is filled then the fill is reported back to the trader front-end. If the reasonability level is reached then the filled volume is reported back to the trader front-end, the unfilled balance is pulled from the market. If the

limit price is reached then any filled volume is reported back to the trader front-end and the balance of the limit order is published to the market if the user preference has been set to fill and float or killed if the fill and kill preference is set.

12.1.3 A **market order** is an order to buy or sell an instrument at the prevailing market price. The order will sweep through the available resting orders until either the full volume of the order is filled or the reasonability level is reached. In the event of the reasonability level being hit before the full volume is filled then the balance of the volume is not executed and is withdrawn from the market. The trader front-end will receive details of the volume filled. Market orders may be combined with outright and spread order types.

12.1.4 **Show volume orders** allow the trader to only show a designated volume of a limit to the market. Once this designated volume is completely filled then a new clip of the designated volume will immediately be added to the shown order until the entire order volume is traded out. As a new block of volume is added that block will have new time priority.

12.1.5 **A spread order** is an order to buy one month and sell an equal quantity of a second month at a specific differential. Spread orders may be placed for consecutive contract months, i.e. January/February, February/March, and for non-consecutive months in certain heavily-traded expiries, e.g. Jun/Dec half-years. The ICE Platform will support implied price functionality for the most liquid spread combinations in each contract. Spread orders for these combinations may be executed against either a matching spread order or by matching with separate outright orders which can be synthesized into a matching spread order. All other listed spread contracts may only trade against a matching spread order.

12.1.6 An **inter product spread** is an order to buy one product and sell a second product in a specific quantity ration at a specific differential. Inter product spread orders may be placed for months, Quarter and Cal Groups, i.e. January Brent/January WTI, Q1 WTI/Q1 Middle East Sour Crude, and Brent Cal09/WTI Cal09. The ICE Platform will not support implied price functionality for inter product spreads. Inter product spread orders may only trade against a matching spread order.

12.1.7 A **stop limit** is an order that rests above and below the market, for bids and offers respectively. Stop limit orders allow the order to be filled within a pre-defined range of prices. They are not viewable in the public order book, but are revealed to the user(s) with appropriate access permissions for order management purposes. The stop order has two components: the stop price and the limit price restricted to a percentage of the "no bust range" for the instrument. A stop limit order is triggered when the order's trigger price is traded on the market. The order

then enters the market as a limit order with the specified limit price. The order will be executed at all price levels from the trigger price up to and including the limit price. If the order is not fully executed, the remaining quantity of the order is left in the system at the limit price.

12.1.8 A **stop with protection** is an order that rests above and below the market, for bids and offers respectively. They are not viewable in the public order book, but are revealed to the user(s) with appropriate access permissions for order management purposes. The stop order has only one component: the stop price (or trigger price) and the Exchange will "protect" the stop order with a limit within some predetermined boundary. To accomplish this, ICE will set the protection price from the existing parameters set on the market for which the stop is floated.

## 13. ORDER EXECUTION, REPORTING, CLEARANCE AND SETTLEMENT

**13.1** All trading in ICE Futures Europe Contracts is conducted in accordance with ICE Futures Europe Regulations, as detailed in Section 2. ICE Futures Europe maintains rules, policies and other similar instruments to govern and regulate all aspects of its business and affairs and the rules are designed to, in particular,

(i) ensure compliance with the rules of ICE Futures Europe and securities legislation;

(ii) prevent fraudulent and manipulative acts and practices;

(iii) promote just and equitable principles of trade;

(iv) foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, the products traded on ICE Futures Europe;

(v) provide for appropriate discipline;

(vi) ensure a fair and orderly market; and

(vii) ensure that ICE Futures Europe's business is conducted in a manner so as to afford protection to investors.

**Trade Matching Algorithm**

**13.2** The ICE Platform utilizes the same trade matching algorithm for all contracts traded on ICE Futures Europe. The trading server will match orders on the basis of a price and time priority algorithm. The algorithm is a first-in first-out system that matches orders in a strict time sequence ("**FIFO Algorithm**"). The "oldest" order in the system at any time has the highest priority and is filled prior to any subsequently placed orders. Once a

standing order is completely filled, the remaining orders will be filled based upon the time of entry of the order, in accordance with the FIFO Algorithm. This means that the "best" price will always have the highest order priority, for buy orders that means those orders that have the highest price and for sell orders that means those orders that have the lowest price. If more than one order is in the market at a specific price then the trading server will give the highest priority to the order that arrived at the trading server first.

**13.3** Before a market opens, all orders that are in a market are eligible to be part of the uncrossing algorithm. The purpose of the algorithm running is to ensure that the market opens in an orderly fashion and that the maximum possible volume of trades is generated upon the opening of the market. The algorithm cycles through all orders in the market identifying the best bid and offer and producing matches where there is price crossing. All orders that are traded within a month, whether fully or partially, as part of the uncrossing algorithm trade at the same trade price.

**Recording and publishing details of pricing and trading**

**13.4** All direct users of ICE Futures Europe may gain access on a real-time basis via information vendors such as Reuters, Bloomberg, Comstock and Telerate, to the following information: ICE Futures Europe Contracts, bid/offer (including depth of market), daily high/low, last traded price (including volume and type of trade, i.e. whether it was part of a spread or an outright trade) and weighted-average price. This data is also provided to information subscribers through the ICE, Inc. subsidiary "ICE Data". Globally, there are approximately 21,000 quote vendor screens that receive ICE Futures Europe trading information. Post-trade information, including end-of-day price and settlement volumes, is located on the ICE Futures Europe website at www.theice.com.

**Information Technology Risk Management Procedures**

**13.5** The Trading Procedures set out processes to effectively deal with trading errors, trading halts and circuit breakers, ensure the competence, integrity and authority of users on the ICE Platform and ensure that users on the ICE Platform are adequately supervised. In addition, ICE Futures Europe's Error Trade Policy includes a range of systems functionalities and procedures in order to prevent and, if necessary, handle trading errors. The Trading Procedures require ICE Futures Europe Members to have adequate arrangements to ensure that all staff involved in the trading of ICE Futures Europe Contracts are fit and proper, suitable, adequately trained and properly supervised. Routing Members are required to control and supervise all access to the ICE Platform and must be able to check all orders entered on the ICE Platform prior to their submission to the trading server.

**13.6** ICE Futures Europe Regulations impose appropriate sanctions for breaches of the Trading Procedures.

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**Settlement and Clearing Arrangements**

**13.7** All trades in ICE Futures Europe Contracts are settled and cleared through ICE Clear Europe Limited. All ICE Futures Europe Clearing Members must also be members of ICE Clear Europe Limited ("**Clearing Members**") and ICE Futures Europe Non-Clearing Members must have clearing agreements in place with ICE Futures Europe Clearing Members. ICE Clear Europe Limited acts as counterparty and guarantor to each transaction executed on ICE Futures Europe. ICE Futures Europe participants do not and will not have any other choice of clearing and settlement firm.

Participants from the Province of Québec will not be permitted to become ICE Futures Europe Clearing Members, and will therefore have to enter into clearing agreements with ICE Futures Europe Clearing Members located outside the Province of Québec.

**13.8** ICE Clear Europe Limited is recognised by the FSA as a Recognised Clearing House ("**RCH**") under the FSMA and is subject to the regulation and oversight of the FSA. Part XVIII of the FSMA prescribes legislation for the U.K. relating to "Recognised Bodies". Section 286(1) of the FSMA empowers HM Treasury to make regulations setting out Recognition Requirements for a clearing house. Section 296 of the FSMA empowers the FSA to enforce the ongoing compliance requirements set out in the Recognition Requirements to ensure that RCHs, such as ICE Clear Europe Limited, continue to satisfy the Recognition Requirements. The FSA discharges this responsibility by conducting ongoing assessment of ICE Clear Europe Limited's regulations, procedures and practices to confirm that they are adequate for the protection of investors and the maintenance of an orderly market. The FSA's supervisory approach is outlined in Section 4 of the REC Sourcebook.

**13.9** ICE Clear Europe Limited has a guaranty fund of US $480 million (plus insurance coverage) and enables ICE Clear Europe Limited Members, including all ICE Futures Europe Clearing Members, to control their own risk without the additional uncertainty of the counterparty risk associated with bilateral agreements, insulating ICE Futures Europe Clearing Members from the effects of a default by another ICE Clear Europe Limited Member.

**13.10** A foreign applicant seeking membership to ICE Clear Europe Limited is subject to the same application process and requirements as U.K. applicants, including financial resource, capital, risk management and fitness requirements, as well as requirements to confirm regulatory status and compliance. All ICE Clear Europe Limited Members must be licensed and supervised as either a credit institution or an investment firm by a competent regulatory authority. If the regulatory authority is not within a member state of the European Union, the credit institution or investment firm must be subject to prudential rules that are equivalent to those applicable in the European Union.

**13.11** The deal capture system used by ICE Futures Europe is known as TRS (Trade Registration System). The two halves of a trade are entered separately by the buyer and the seller and TRS matches these to form a registered trade. TRS also allocates and designates the trades into a position keeping system. ICE Futures Europe has a contract with NYSE Euronext in relation to TRS, which is developed and maintained according to the terms of an Application Service Level Agreement. All ICE Futures Europe Clearing Members are required by the rules of ICE Clear Europe Limited ("**ICE Clear Europe Limited Rules**") to have a TRS terminal located in their office. The same computer terminal and data feed are used to feed into CPS (Clearing Processing System) which ICE Clear Europe Limited is licensed to use, and which has the following functions: settlement, position keeping, account transfers, calculation of margin, option exercise, tender notification and delivery/option allocation. Risk under all contracts on the Exchange is taken on under an open offer mechanism at the point of trade of the contract, unless rejected in circumstances specified under the ICE Clear Europe Limited Rules.

**13.12** ICE Futures Europe is represented on the Risk Committee of ICE Clear Europe Limited.

**13.13** Because ICE Clear Europe Limited and ICE Futures Europe are both Recognised Bodies regulated by the FSA, ICE Futures Europe takes comfort that the FSA subjects the technology and risk management systems of ICE Clear Europe Limited, including policies and procedures, contingency plans, default procedures and internal controls, to the same degree of scrutiny and oversight to which the technology and risk management systems of ICE Futures Europe is subject.

**13.14** Under the terms of the Clearing Services Agreement between ICE Futures Europe and ICE Clear Europe Limited, ICE Clear Europe Limited acts as central counterparty to, and clears, ICE Futures Europe Contracts submitted to it for clearing in accordance with the service levels prescribed in the Clearing Services Agreement. The provision and terms of the services to ICE Futures Europe are subject to periodic review in order to ensure ICE Futures Europe complies with the FSA's principles on material outsourcing, in order to ensure that ICE Futures Europe is able to meet the Recognition Requirements.

**13.15** As part of the software testing program leading up to the launch of each new ICE Futures Europe Contract, ICE Futures Europe arranges for joint system tests with ICE Clear Europe Limited and NYSE Euronext to ensure that the matching and clearing systems used when processing trades in ICE Futures Europe Contracts work appropriately in relation to the new ICE Futures Europe Contract. ICE Futures Europe works with ICE Clear Europe Limited to resolve any technical problems or other difficulties that are uncovered as a result of this advance testing program.

## 14. TRADING PRACTICES

**14.1** The FSA monitors trading practices on ICE Futures Europe to confirm compliance with the FSMA and the Recognition Requirements.

**14.2** The Trading Procedures set out in the ICE Futures Europe Regulations ensure that all trades are fair, properly supervised and not contrary to the public interest. The Trading Procedures prescribe specific requirements applicable to block trades[2] and trades on ICE Futures Europe's Exchange of Futures for Physical ("EFP") and Exchange of Futures for Swaps ("EFS") facility to ensure that market integrity is maintained. Currently all ICE Futures Europe Contracts are designated as Block Trade Contracts. A list of the Minimum Volume Thresholds for each Block Trade Contract is available online: https://www.theice.com/publicdocs/futures/ICE_Futures_Minimum_Volume_Threshold.pdf. All of the aforementioned facilities are available to any participant, including those from the Province of Québec, subject to the specific conditions set out in Section F of the ICE Futures Europe Regulations.

## 15. MARKET MAKING PROVISIONS

**15.1** In compliance with Section 3.9 of the REC Sourcebook, the FSA must assess all market making or incentive schemes proposed or anticipated by ICE Futures Europe to ensure that such schemes are not contrary to the operation of a fair and orderly market. ICE Futures Europe is required to advise all ICE Futures Europe Members in advance by way of a circular of the implementation of any market making scheme and to invite all ICE Futures Europe Members to participate, with the caveat that the scheme may be terminated at any time in order to maintain ICE Futures Europe's RIE status with the FSA or to meet its regulatory obligations.

**15.2** Currently, ICE Futures Europe has the following market maker and liquidity provider programs in place in relation to ICE Futures Europe Contracts: the ICE West Texas Intermediate Light Sweet Crude Oil Futures (**"ICE WTI Crude Futures"**) market maker program; the Combined ICE Futures New York Harbour Heating Oil Futures (**"ICE Heating Oil Futures"**) and ICE WTI Crude Futures Curve market maker program; the ICE WTI Crude Futures liquidity provider program; the ICE Brent Crude Futures/ ICE WTI Crude Futures Spread Facility liquidity provider program; the ICE Brent Crude Options, ICE Gasoil Options and ICE WTI Crude Options market maker program; the ICE Broker Options Builder market maker program; the ICE ECX EUA Futures and ICE ECX CER Futures Contracts Outright market maker program; the ICE ECX EUA Futures Options and ICE ECX CER Futures Options market maker program; the ICE ECX EUA and CER Daily Futures market maker program; the ICE New York Harbour Unleaded Gasoline Blendstock (RBOB) Futures (**"ICE NYH (RBOB) Gasoline Futures"**) and ICE Heating Oil Futures, ICE Brent Crude Futures/ICE Gasoil Futures/ICE Heating Oil Futures traded spread market maker program; and the ICE Gasoil Futures Crack and ICE Heating Oil Futures/ICE Gasoil Futures (ICE HOGO) market maker program.

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[2] See Section 4 of the Block Trade Procedures in the Trading Procedures at: https://www.theice.com/publicdocs/contractregs/XX%20TRADING%20PROCEDURES.pdf

## 16. MARKET LIMITS

**16.1** As a matter of policy, ICE Futures Europe does not impose any price or position limits on users of its markets. However, to safeguard a fair and orderly market, Rule G.13 of the ICE Futures Europe Regulations enables ICE Futures Europe to implement procedures to establish maximum price fluctuations on ICE Futures Europe in respect of each ICE Futures Europe Contract and to provide for any consequential restriction or suspension of business.

On 17 June 2008 ICE Futures Europe was notified by the US Commodity Futures Trading Commission ("**CFTC**") Amendment Letter of changes to the terms of the "No Action" letter issued in 1999 granting the Exchange permission to make its electronic trading screens available to Members in the USA. The changes impose conditions to be applied to the ICE WTI Crude Futures and Options, ICE Heating Oil Futures and ICE NYH (RBOB) Gasoline Futures Contracts (the "**Linked Contracts**"). These conditions require ICE Futures Europe to, *inter alia*, impose position limits or position accountability limits (including related hedge exemption provisions) that are comparable to those adopted by (i) the Designated Contract Market ("**DCM**") or derivatives transaction execution facility ("**DTEF**") or exempt commercial market ("**ECM**") for the contract against which the Linked Contract settles; or (ii) the DCM, DTEF or ECM for a financially-settled equivalent of such contract.[3] ICE Futures Europe has complied with the terms of the Amendment Letter.

**16.2** ICE Futures Europe sets price and volume reasonability limits to reduce the likelihood of erroneous trades, prevent the execution of trades at unrepresentative prices and reduce the market impact of such trades. ICE Platform users may also configure their systems to provide pre-confirmation messages that appear before the execution of all trades and to designate quantities, rather than trading the total quantity that is available at a specified price.

## 17. HOURS OF OPERATION

**17.1** The trading hours for ICE Futures Europe Contracts are:

| Contracts | Electronic Trading (ICE Platform) |
|---|---|
| Oil Contracts[4] | 23.00 Sunday – 23.00 Monday<br>01.00 – 23.00 Tuesday to Friday[5] |

[3] See ICE Futures Europe Circular No 08/058 dated 25 June 2008 at: https://www.theice.com/publicdocs/circulars/08058.pdf

[4] ICE Brent Crude Futures and Options Contacts, ICE Gasoil Futures and Options Contracts, ICE WTI Crude Oil Futures and Options Contracts, ICE NYH (RBOB) Gasoline Futures Contract and ICE Heating Oil Futures Contract, ICE Middle East Sour Crude Oil Futures Contract

[5] Hours extended from 22.00 on 31st July 2006

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| | |
|---|---|
| Utility Contracts[6] | 07.00 – 17.00 Monday to Friday |
| Coal Contracts[7] | 07.00 – 17.00 Monday to Friday |
| Emission Contracts[8] | 07.00 – 17.00 Monday to Friday |
| | GMT BST |

**18. CUSTODY OF FUNDS**

**18.1** This section is not applicable to ICE Futures Europe.

**19. TRAINING**

**19.1** ICE Futures Europe Regulations require ICE Futures Europe Members to register one or more "**Responsible Individuals**" that are responsible for all business conducted through their assigned trader mnemonic and to enter into a prescribed form of User Agreement that regulates their trading of ICE Futures Europe contracts on the ICE Platform. ICE Futures Europe Members may require Responsible Individuals to complete an online tutorial and examination to ensure that they have been adequately trained in the use of the ICE Platform.

**19.2** Section B.3.1 of the ICE Futures Europe Regulations requires an applicant for membership of ICE Futures Europe to be able to demonstrate, to the satisfaction of ICE Futures Europe, that the applicant is fit and proper to be a Member. Section 1.A.2 of the Trading Procedures also requires a Member to have adequate arrangements to ensure that all staff involved in the conduct of business on the ICE Platform are fit and proper, suitable, adequately trained and properly supervised.

**20. CAPACITY, CONTINGENCY AND BUSINESS CONTINUITY**

**20.1** ICE Futures Europe makes regular, periodic reviews to ensure that for each of its systems that support order entry, order routing, execution, data feeds, trade reporting and trade comparison, capacity and integrity requirements it:

(i) makes reasonable current and future capacity estimates;

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6 ICE UK Natural Gas Futures Contract, ICE UK Base Electricity Futures Contract and ICE UK Peak Electricity Futures Contract

7 ICE Rotterdam Coal Futures Contract, ICE Richards Bay Coal Futures Contract and ICE globalCOAL Newcastle Coal Futures Contract

8 ICE ECX EUA Futures and Futures Options Contracts, ICE ECX CER Futures and Futures Options Contracts, ICE ECX EUA Daily Futures Contract and ICE ECX CER Daily Futures Contract

(ii) conducts capacity stress tests of critical systems to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

(iii) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;

(iv) ensures that safeguards which 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;

(v) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;

(vi) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and

(vii) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

**20.2** ICE, Inc. subjects the ICE Platform's critical systems to regular stress tests based on reasonable current and future capacity estimates. See paragraph 10.5 for further details.

## 21. ICE FUTURES EUROPE CONTRACTS (EXHIBIT H)

**21.1** ICE Futures Europe offers twenty one energy contracts, namely:

| **ICE Futures Europe Contracts** | Corresponds to the Definition of a "Derivative" as provided for under Section 3 of the Act |
|---|---|
| ICE Brent Crude Futures | ✓ |
| ICE Brent Crude Options | ✓ |
| ICE Gasoil Futures | ✓ |
| ICE Gasoil Options | ✓ |
| ICE WTI Crude Futures | ✓ |
| ICE WTI Crude Options | ✓ |
| ICE Middle East Sour Crude Oil Futures Contract | ✓ |
| ICE NYH (RBOB) Gasoline | ✓ |

| | |
|---|---|
| Futures | |
| ICE Heating Oil Futures | ✓ |
| ICE UK Natural Gas Futures | ✓ |
| ICE UK Base Electricity Futures | ✓ |
| ICE UK Peak Electricity Futures | ✓ |
| ICE Rotterdam Coal Futures | ✓ |
| ICE Richards Bay Coal Futures | ✓ |
| ICE globalCOAL Newcastle Coal Futures | ✓ |
| ICE ECX EUA Futures | ✓ |
| ICE ECX CER Futures | ✓ |
| ICE ECX EUA Futures Options | ✓ |
| ICE ECX CER Futures Options | ✓ |
| ICE ECX EUA Daily Futures | ✓ |
| ICE ECX CER Daily Futures | ✓ |

The Contract Specifications for these products are provided as Exhibit H.

Participants from the Province of Québec having the appropriate permissions and satisfying the relevant conditions would be permitted to trade the aforementioned contracts and to make use of the Block Trade, EFS and EFP facilities (see Section 14.2). ICE Futures Europe does not list contracts for difference but does offer a number of products which, although not described as contracts for difference, are cash-settled against indices, such as the ICE Brent Crude Futures/WTI Crude Futures Spread and ICE WTI Crude Futures.

**21.2** Extensive market consultation and Board approval processes to which all ICE Futures Europe Contracts are subject ensure that the terms and conditions of ICE Futures Europe Contracts are in conformity with normal business practices for trades in such products, that they meet the needs of the relevant commodity sector and have widely acceptable specifications.

## SECTION 4 – ACCESS

### 22. MEMBERSHIP CRITERIA (EXHIBIT I)

**ICE Futures Europe Membership**

**22.1** ICE Futures Europe has developed rigorous membership criteria that must be complied with by all applicants before their applications are considered by the ARC. Specifically,

Rule B.3.1 of the ICE Futures Europe Regulations provides that each applicant for ICE Futures Europe membership must: (a) satisfy ICE Futures Europe that it is fit and proper; (b) maintain a properly established office for the conduct of its business on the Exchange; (c) provide details of the locations of all "Responsible Individuals" and ensure that such details remain current throughout the period of membership; (d) be able to demonstrate, to the satisfaction of ICE Futures Europe, that it has adequate systems and controls in place to ensure that all employees, agents and representatives who may act on its behalf or in its name in the conduct of business on the Exchange are fit and proper with suitable qualifications and experience and adequately trained and properly supervised to perform such functions; (e) be a clearing member of ICE Clear Europe Limited or be a party to a clearing agreement with an ICE Futures Europe Clearing Member; (f) be a party to an Electronic User Agreement which is in full force and effect; (g) be authorized or otherwise exempt, licensed or permitted by the appropriate regulatory body to trade on ICE Futures Europe; (h) hold all necessary licences, authorizations and consents, or benefit from available exemptions, so as to allow it to carry on business as an ICE Futures Europe Member in accordance with all applicable laws and regulations; (i) satisfy ICE Futures Europe that it has suitable financial standing by providing copies of the last 3 years' (and thereafter the latest) audited financial statements or such evidence as the ICE Futures Europe Board may require; and (j) provide any further information, and satisfy any further requirements, that ICE Futures Europe may require.

In September 2008, the ICE Futures Europe Board approved the introduction of the ICE Block Broker as a sub-category of ICE Futures Europe General Participant Membership. The ICE Block Broker sub-category applies to an entity admitted to the General Participant category of Membership for the sole purpose of accessing the ICE Block Facility to enter Block Trades brokered on behalf of Members and their clients. ICE Block Brokers apply for General Participant Membership of the Exchange in the usual manner and are subject to the Exchange's due diligence processes (see paragraph 22.2, below) although sight of the latest audited Annual Accounts only is sought. They are required to enter into the Electronic User Agreement but are not permitted to trade on the ICE Platform or hold positions, and are not required to enter into a Clearing Agreement.

**22.2** ICE Futures Europe applies its membership criteria by subjecting each applicant to an intensive due diligence process, including review of constituent documentation and financial statements, verification of regulatory authorization in the applicant's home jurisdiction, verification of membership with a trade or industry association in the applicant's home jurisdiction (where applicable), confirmation that all Responsible Individuals have appropriate qualifications in place (including any registration or licensing requirements for trading in commodity futures), verification of credit ratings (where applicable), conducting searches of relevant international and domestic financial services information databases and conducting other know-your client and anti-fraud procedures. Where appropriate, a third party agency may be commissioned to prepare a

company report regarding an applicant. Once the due diligence review is complete, each prospective member must be approved by the ARC.

**22.3** All ICE Futures Europe Members must be clearing members of ICE Clear Europe Limited or have entered into clearing arrangements with an ICE Futures Europe Clearing Member. ICE Clear Europe Limited Members are subject to minimum capital requirements (currently US $20 million) and other financial resource requirements.

**22.4** The forms governing membership of ICE Futures Europe and use of the ICE Platform (all provided as Exhibit I) are:

(i) Electronic User Agreement;

(ii) Application for Participant Membership; and

(iii) Responsible Individual (RI) Registration Form.

**22.5** Also appended is the Membership Due Diligence Matrix, a checklist completed by the Membership Department when reviewing applications for Participant Membership before submission to the ARC Committee for approval.

**23. FINANCIAL RESOURCE REQUIREMENTS (EXHIBIT J)**

**23.1** There are three categories of Member: General Participant; Trade Participant and Individual Participant. Further information on these categories is set out below:

23.1.1 General Participants. General Participants may trade on their own account and on behalf of clients. A General Participant will be permitted to clear its own business, client business and business for non-clearing members. In both situations the clearing Member must also be a member of ICE Clear Europe Limited. Clearing General Participants have a minimum net worth requirement of US $20 million. ICE Block Brokers are General Participant Members, are required to enter into the Electronic User Agreement, but are not permitted to trade on the ICE Platform or hold positions, and are not required to enter into a Clearing Agreement. There are currently 73 General Participants;

23.1.2 Individual Participants. Individual Participants are effectively individuals or sole traders trading only on their own account. There are no minimum net worth requirements imposed by ICE Futures Europe, although Individual Participants will need to prove their creditworthiness to their clearing firm. There are currently more than 50 Individual Participants; and

23.1.3 Trade Participants. Trade Participants are limited to trading on their own account. Trade Participants may have clearing or non-clearing status depending on whether

they are members of ICE Clear Europe Limited. Trade Participants who are also Members of ICE Clear Europe Limited must meet a minimum net worth requirement of US $20 million, although they are restricted to clearing proprietary business only. There are currently 84 Trade Participants.

**23.2** Participants from the Province of Québec will not be permitted to become clearing members, and will therefore have to enter into clearing agreements with ICE Futures Europe Clearing Members located outside the Province of Québec.

**23.3** The requirement to either have ICE Clear Europe Limited membership or, in the case of Québec-based participants, to have a clearing agreement in place with an ICE Futures Europe Clearing Member is a pre-requisite of the ICE Futures Europe Membership Application approval process. Confirmation of the applicant's clearing status is sought via Sections 1 and 5 of the Application for Participant Membership, and confirmed by the Membership Department on the Membership Due Diligence Matrix (see Appendices to Exhibit I).

**23.4** As a RIE, ICE Futures Europe is required under Section 2.7 of the REC Sourcebook to ensure that access to ICE Futures Europe is subject to criteria designed to protect the orderly functioning of its market and the interests of investors. In assessing whether ICE Futures Europe's access criteria satisfy these requirements, the FSA evaluates, among other things, whether its membership criteria are objective and applied in an objective and non-discriminatory manner. ICE Futures Europe has developed a rigorous membership approval process supervised by the ARC, the details of which are outlined in Section 22 above. This process is designed to ensure that all ICE Futures Europe Members are appropriately identified, are qualified to trade in commodity futures in their jurisdiction, have adequate financial resources and have exhibited proper conduct in other capital markets activities.

**23.5** Any applicant that is denied membership to ICE Futures Europe and any ICE Futures Europe Member whose membership or access to the ICE Platform is suspended is entitled to an explanation/reasons for the decision, the opportunity to make representations and to appeal the decision. The ARC maintains records of its membership application reviews and any resulting hearings or appeals.

**24. DETAILS OF ACCESS CRITERIA (EXHIBIT K)**

**24.1** In particular, ICE Futures Europe

(i) has written standards for granting access to trading on its facilities to ensure users have appropriate integrity and fitness;

(ii) has and enforces financial integrity standards for those persons who enter orders for execution on the system, including, but not limited to, credit or position limits and clearing membership;

(iii) does not unreasonably prohibit or limit access by a person or company to services offered by it;

(iv) keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access; and

(v) restricts access to adequately trained system users who have demonstrated competence in the functions that they perform.

**25. ORDER-ROUTING ACCESS**

**25.1** Rather than seeking ICE Futures Europe Membership, a market participant may choose to access trading on ICE Futures Europe by becoming an order routing client of an existing ICE Futures Europe Member. Under this approach, clients' orders are routed to ICE Futures Europe via the trader mnemonic of a Responsible Individual registered with the ICE Futures Europe Member. The ICE Futures Europe Member takes responsibility for such trades and accepts all contingent liabilities for those orders when routed onto the ICE Platform. The ICE Futures Europe Member must conduct its own due diligence of prospective order-routing clients to ensure that they satisfy relevant regulatory, financial resource, risk and anti-money laundering standards.

**25.2** Rule A.11.1(f) prohibits ICE Futures Europe Members from routing orders to ICE Futures Europe in or from a jurisdiction where ICE Futures Europe does not have the relevant regulatory status (if required) if to do so would bring ICE Futures Europe into disrepute with the regulatory authority within such jurisdiction or put ICE Futures Europe into breach of any regulatory obligations to which it might be subject within that jurisdiction. ICE Futures Europe provides specific guidance to ICE Futures Europe Members regarding the regulatory requirements of each jurisdiction in which ICE Futures Europe is authorized to carry on business.

**25.3** In Circular 04/05 (provided at Exhibit K), ICE Futures Europe outlined an ICE Futures Europe Member's obligations under the ICE Future Europe Regulations when providing order-routing access in an overseas jurisdiction, including restrictions on the types of firms that can trade directly over the ICE Platform, the requirement to periodically report trading statistics originating from that jurisdiction and, if applicable, the obligation to notify the relevant regulatory authority of the location of screens and the date of installation in that jurisdiction. Circular 04/05 states that ICE Futures Europe expects ICE Futures Europe Members to assume all responsibility for keeping themselves fully apprised of all regulations, rules, requirements, policies and laws applicable in overseas jurisdictions when facilitating direct access to ICE Futures Europe for clients based in

such jurisdictions. Further, in Circular 04/29 (see Exhibit K), ICE Futures Europe reminded ICE Futures Europe Members of their systems and controls obligations in relation to offering order-routing access to ICE Futures Europe for their clients.

**26. SUSPENSION OR TERMINATION OF ACCESS**

**26.1** ICE Futures Europe Members and their Responsible Individuals are subject to disciplinary action in the event of failure to comply with ICE Futures Europe Regulations. Disciplinary action may result in suspension, expulsion or unlimited fines of ICE Futures Europe Members and their Responsible Individuals. Since Members are accountable for the actions of their order routing clients, ICE Futures Europe is unlikely to take any direct action against a Member's order-routing clients. However, in the event of market abuse which may relate to activities of a Québec-based order-routing client, the FSA may wish to pursue directly such client. Firms that cease to be ICE Futures Europe Members and Responsible Individuals who are de-registered remain subject to ICE Futures Europe's disciplinary jurisdiction for a period of one year after the deregistration becomes effective or for as long as disciplinary proceedings continue.

**27. ACCESS FOR QUÉBEC PERSONS**

**27.1** ICE Futures Europe proposes to offer direct electronic access to trading in ICE Futures Europe Contracts through the ICE Platform to certain market participants in the Province of Québec, either by way of membership in ICE Futures Europe or through order-routing arrangements. Potential Members and order-routing clients of ICE Futures Europe Members in Québec will be "accredited counterparties" as defined in the Act. ICE Futures Europe expects that they will be comprised principally of (i) dealers that are engaged in the business of trading commodity futures in Québec and (ii) utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity.

**27.2** As described above, any Québec applicant for ICE Futures Europe Membership would be required to confirm to ICE Futures Europe that it is an "accredited counterparty" and that it is registered or exempt from registration to trade in commodity futures in the Province of Québec, in accordance with Rule B.3.1 of the ICE Futures Europe Regulations.

Québec market participants seeking to become General Participants would need to contact the FSA in order to ascertain whether they would require authorisation under FSMA in order to trade ICE Futures Europe Contracts on the ICE Platform. The following hyperlink provides information and contact details in relation to FSA authorisation: http://www.fsa.gov.uk/Pages/Doing/Do/index.shtml.

Québec market participants seeking to become Trade Participants of ICE Futures Europe would not be required to seek authorisation from the FSA or any other UK self-regulatory

organisation, so long as they can demonstrate they have the relevant exempt or authorised status in their home jurisdiction.

**27.3** Québec market participants would not be permitted to become ICE Futures Europe Clearing Members, as stated in paragraph 23.2, and would therefore need to enter into a clearing agreement with an ICE Futures Europe Clearing Member located outside Québec.

**27.4** ICE Futures Europe Members that provide order-routing access to customers will be responsible for ensuring that all Québec market participants to which they grant access are "accredited counterparties". As described in Section 25.2 above, Rule A.11.1 of the ICE Futures Europe Regulations and various Circulars prescribe rules and guidelines for ICE Futures Europe Members that seek to provide order-routing access to customers, including limitations on the types of information systems that may be used to offer such order-routing access.

**27.5** ICE Futures Europe will ensure that the guidance that it provides to ICE Futures Europe Members respecting its regulatory approval in the Province of Québec indicates that an ICE Futures Europe Member is permitted to grant access to ICE Futures Europe to a client in the Province of Québec provided that it meets the criteria described in Section 27.4 above.

**28. ICE FUTURES EUROPE MEMBERS (EXHIBIT L)**

**28.1** Exhibit L consists of a full list of ICE Futures Europe Member firms at the date of submission. The list states the name, address and telephone number of each General and Trade Participant Member (see paragraph 23.1), the markets in which it is active, and also whether that Member is a Clearing Member.

## SECTION 5 — LISTING CRITERIA

### REQUIREMENTS FOR LISTING NEW CONTRACTS (EXHIBIT M)

**29. ADMISSION OF FINANCIAL INSTRUMENTS TO TRADING**

**29.1** When listing a new contract on the ICE Platform, ICE Futures Europe must have due regard to the Recognition Requirements on the admission of financial instruments to trading - as outlined in Section 2.12 of the REC Sourcebook – and also take into account the "Guidance on standards of best practice for the design and/or review of commodity contracts" given in the Tokyo Communiqué on Supervision of Commodity Futures Markets.

**29.2** Under the Recognition Requirements Regulations Sections 4(2)(a) and 4(2)(c), a UK RIE must ensure that "appropriate arrangements are made for relevant information to be made

available (whether by the exchange or, where appropriate, by issuers of the investments) to persons engaged in dealing in investments on the exchange". Paragraph 7A of the Schedule to the Recognition Requirements Regulations (Admission of financial instruments to trading) states that "(2) The rules must ensure that all financial instruments admitted to trading on a regulated market operated by the exchange are capable of being traded in a fair, orderly and efficient manner (in accordance with Chapter V of the Commission Regulation, where applicable)". Sub-paragraph (3)(b) requires that the rules ensure that "all contracts for derivatives admitted to trading on a regulated market operated by the exchange are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions", and the exchange must "maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable the users of a multilateral trading facility operated by it to form investment judgements, taking into account both the nature of the users and the types of instrument traded" (Paragraph 7(4)). Paragraph 7(7) requires the exchange to "maintain arrangements regularly to review whether the financial instruments admitted to trading on a regulated market operated by it comply with the admission requirements for those instruments."

The FSA requires ICE Futures Europe to satisfy itself that there will be a proper market in all contracts which it intends to list, and to this end ICE Futures Europe conducts a substantial proper market review prior to launching a new contract. In the REC Sourcebook the FSA has set out a number of criteria which give guidance as to what this means in practice. This guidance states that there will be a proper market in a derivative contract if:

29.2.1 the terms of the derivative are sufficiently precise to provide for an understandable relationship between the price of the derivative and the price of the underlying;

29.2.2 the UK RIE has adequate procedures for obtaining information relevant for determining whether or not to suspend or discontinue trading in that derivative;

29.2.3 there is sufficient information available to persons considering whether to enter into that derivative to make a reasonably informed judgement about its value and the risks associated with it;

29.2.4 where the derivative relates to an underlying asset:

(i) the arrangements for determining the settlement price of the contract are such that the price properly reflects the price or other value measure of the underlying;

(ii) there are adequate arrangements to enable market participants to obtain relevant information about the underlying, as well as adequate settlement and delivery procedures for the underlying;

(iii) settlement and delivery, whether physical delivery or by cash settlement, is able to be effected in accordance with the contract terms and conditions of those financial instruments;

(iv) the price or other value measure of the underlying must be reliable and publicly available; and

(v) the contract establishing the instrument is likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available.

29.2.5 appropriate supervisory arrangements are in place to monitor trading and settlement in such financial instruments; and

29.2.6 there is a sufficient range of persons already holding the financial instrument (or, where relevant, the underlying asset) or interested in dealing in it to bring about adequate forces of supply and demand.

**29.3** Under REC 2.14 ICE Futures Europe is required to consult with its Members about changes to the ICE Futures Europe Regulations, which necessarily include proposed new contract specifications and rules. This requirement is satisfied by consulting with industry specialists when finalizing the details of the contract, and by circulating the contract specifications and rule amendments to Members by Circular.

Whereas the distribution of such a consultation Circular to the Membership and the FSA satisfies the notification requirements in the REC Sourcebook, in practice the FSA is apprised of planned new products at a much earlier stage as part of the supervisory dialogue it maintains with ICE Futures Europe, as detailed in REC 4.2.

**29.4** Any changes to the ICE Futures Europe Regulations required by the new contract are subject to approval by the ARC, and to consultation with Members. It is important to note that contract specifications are constantly under review and will be amended periodically. These changes may be a consequence of a range of issues, *inter alia*, amendment to the specification of the underlying commodity. As a matter of course a new contract will be the result of lengthy consultation with industry and ICE Futures Europe will consult with industry specialists in the relevant product area to ensure that any new contract meets the needs of that sector and has a widely acceptable specification.

**29.5** As a remit of the procedures for introducing new contracts described in this section, ICE Futures Europe would expect that its exemptions in the Province of Québec will exempt it from any approval or filing obligations under the Act.

## SECTION 6 — FEES

### 30. FEES (EXHIBIT N)

**30.1** ICE Futures Europe's process for setting fees is fair, transparent and appropriate. Any and all fees imposed by ICE Futures Europe on its participants are equitably allocated, do not have the effect of creating barriers to access and are balanced with the criteria that ICE Futures Europe has sufficient revenues to satisfy its responsibilities.

**30.2** All changes in fee levels (including incentive schemes or market-making arrangements) are approved by the ICE Futures Europe Board. Fees are applied equally across all ICE Futures Europe Members trading the relevant ICE Futures Europe Contract. All proposed changes to fees and incentives are communicated in advance by a circular distributed to all ICE Futures Europe Members and to the FSA, as required under REC 3.9.2.R of the REC Sourcebook. A full list of transaction charges, subscriptions, entrance fees and other relevant charges is available on the ICE Futures Europe website at www.theice.com, and is appended as Exhibit N.

## SECTION 7 — FINANCIAL VIABILITY

### 31. FINANCIAL VIABILITY (EXHIBIT O)

**31.1** As a Recognised Investment Exchange, ICE Futures Europe must satisfy the FSA on an ongoing basis that it has a minimum level of liquid financial resources and a minimum level of net capital, as set out in REC 2.3.7 of the REC Sourcebook. The FSA typically expects RIEs to calculate their regulatory capital based on six months of operating expenditures, although it recognises that alternative approaches may be appropriate in certain circumstances. As a matter of policy, ICE Futures Europe presently maintains a minimum level of liquid financial resources equal to 150% of the value of six months of operating expenditures.

**31.2** In determining whether ICE Futures Europe has financial resources sufficient for the proper performance of its functions, the FSA assesses, among other things, the operational and other risks to which ICE Futures Europe is exposed; the amount and composition of its capital, liquid financial assets and other financial resources; and the financial benefits, liabilities, risks and exposures arising from ICE Futures Europe's connection with any person, including its affiliates, shareholders and any person with whom it has a significant contractual relationship. ICE Futures Europe provides the FSA with its monthly management accounts in accordance with its financial reporting obligations under Section 3.8.4 of the REC Sourcebook.

**31.3** The Annual Group Report and Financial Statements for the year ended 31 December 2008 for ICE Futures Europe is provided as Exhibit O.

## SECTION 8 — REGULATION

### 32. ICE FUTURES EUROPE REGULATORY DEPARTMENT (EXHIBIT P)

### MEMBER AND MARKET REGULATION

**32.1** Trading on the ICE Platform is monitored in real time by ICE Futures Europe's market supervision team ("**Market Supervision**") which conducts the day-to-day supervision of the ICE Futures Europe's markets. The responsibilities of this team include monitoring of trading activity in ICE Futures Europe's markets to ensure that a fair and orderly market is maintained; front-line compliance monitoring; busting of trades which are out of line; assistance to customers with confirmation of orders working in the market and – if appropriate – killing such orders; and calculation and publication of settlement prices.

**32.2** Market Supervision refers potential breaches of the ICE Futures Europe Regulations to ICE Futures Europe's Compliance Department ("**ICE Futures Europe Compliance**") for further investigation and possible disciplinary action. ICE Futures Europe Compliance also conducts market surveillance on an ongoing basis by analysing the positions of ICE Futures Europe Members to identify any unusual exposure, reviewing daily reports on the exposure of clients of ICE Futures Europe Members and reviewing ICE Futures Europe Member reports regarding their open interest in all ICE Futures Europe Contracts. Trade audits of and routine visits to ICE Futures Europe Members, monitoring the delivery process of deliverable ICE Futures Europe Contracts and the settlement of large orders on the EFP/EFS facility are also part of the ICE Futures Europe Compliance market oversight toolkit. In order to ensure that ICE Futures Europe Regulations are enforced, ICE Futures Europe Compliance investigates reports of suspected misconduct and also carries out real-time monitoring on the ICE Platform to identify suspicious trades or patterns of trading. In order to facilitate its investigations, ICE Futures Europe Compliance produces a suite of bespoke daily reports that analyse possible price spikes, settlement trading and/or questionable trading or other business conduct practices. The data used to generate these daily reports is sourced from ICE Futures Europe's databases, the trade registration system, ICE Futures Europe Members' trading documentation and, where relevant, audio and telephone records. Members are obliged by ICE Futures Europe Regulations, as well as UK statutory and regulatory provisions, to record and retain such data for prescribed periods. Upon detecting evidence of misconduct, ICE Futures Europe Compliance will commence a formal investigation.

**32.3** The ICE Futures Europe Compliance Officer reports directly to the president and chief operating officer of ICE Futures Europe. The ICE Futures Europe Compliance Officer may report directly to the chair of the ARC in the event of any potential or actual conflict of interest.

**32.4** The ARC supervises ICE Futures Europe's compliance and regulatory functions, ensuring oversight that is independent from ICE Futures Europe's management. ICE Futures Europe Member representatives on the ARC include legal and compliance specialists as well as market practitioners. The Board receives regular reports regarding the discharge of ICE Futures Europe's regulatory and compliance functions.

**32.5** The ARC considers the results of investigations and determines appropriate next steps, which may include the initiation of disciplinary proceedings, further investigation, a warning issuance or no further action. Disciplinary proceedings may be conducted by a Summary Panel made up of members of the ARC or a Disciplinary Panel that is independent of ICE Futures Europe. Sanctions for breach of ICE Futures Europe Regulations range from a reprimand to a fine to suspension and, in extreme cases, revocation of ICE Futures Europe membership, as set out in Rule E.4.11 of the ICE Futures Europe Regulations.

**32.6** In the event that a breach of ICE Futures Europe Regulation is also a breach of the FSA's Code of Market Conduct (or involves markets outside ICE Futures Europe's regulatory jurisdiction, such as the underlying physical oil market), ICE Futures Europe will refer the case to the FSA, as outlined in the Operating Arrangements (Exhibit P).

**32.7** The FSA holds monthly supervisory meetings with the ICE Futures Europe Director of Regulation and Compliance Officer to discuss, among other things, the adequacy of the resources devoted to Market Supervision, ICE Futures Europe Compliance and enforcement. The ARC also monitors the workloads and responsibilities of these departments to ensure that adequate resources are provided. Generally, the chair of the ARC will raise any concerns with the Risk and Audit Committee and/or the Board, although elevation to the FSA would be appropriate if the ARC were concerned about a potential breach of the Recognition Requirements.

## 33. CONFLICTS OF INTEREST AND CONFIDENTIALITY

**33.1** ICE Futures Europe has appropriate conflict of interest provisions for all directors, officers and employees.

**33.2** As a Recognised Investment Exchange, ICE Futures Europe complies with the FSA's guidance on the management of conflicts of interest set out in Section 2.5.10 of the REC Sourcebook. Factors subject to the FSA's scrutiny include the size and composition of the Board and relevant committees; responsibilities of key individuals, especially where they also have responsibilities in other organizations; arrangements for transferring decisions or responsibilities to alternates; and arrangements to exclude individuals with a permanent conflict of interest from the process of making regulatory decisions about matters in which the conflict of interest would be relevant.

**33.3** ICE Futures Europe has appropriate procedures for ensuring that its directors, officers and employees comply with its conflicts of interest and confidentiality policies. For example, in cases where an ICE Futures Europe Member is subject to disciplinary action, any employee of such ICE Futures Europe Member that sits on the ARC must declare his or her conflict of interest and withdraw from the process.

**33.4** A strict information barrier is maintained between ICE Futures Europe Compliance and its commercial and administrative operations.

## 34. AVAILABILITY OF INFORMATION TO REGULATOR

**34.1** ICE Futures Europe has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory and enforcement purposes is available to the relevant regulatory authorities on a timely basis.

**34.2** The FSA's Notification Rules in Section 3 of the REC Sourcebook impose numerous reporting obligations on ICE Futures Europe, ICE Futures Europe is required to advise the FSA of disciplinary actions taken against any ICE Futures Europe Members, third party investigations of business transacted on the ICE Platform and defaults by ICE Futures Europe Members. The FSA also has access, upon request, to all records maintained by ICE Futures Europe as described below (Paragraph 36: Record Keeping).

**34.3** Currently, ICE Futures Europe is not under any legislative obligation to provide regular transaction reports or similar information to the FSA, although it does provide open interest data on a weekly basis. The Operating Arrangements address how the FSA and ICE Futures Europe would cooperate regarding investigations of market abuse, including leadership of investigations and information sharing.

**34.4** In accordance with the terms of ICE Futures Europe's no-action letter from the US CFTC, ICE Futures Europe must on a daily basis provide to the CFTC, through the FSA, a daily report of large trader positions in specified contracts.

**34.5** In certain jurisdictions (including the Netherlands, Singapore and Switzerland), ICE Futures Europe is required as a condition of authorization to provide the local regulatory authority with regular reports regarding the trading activities of ICE Futures Europe Members in their jurisdiction.

## 35. INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

**35.1** The ICE Futures Europe Regulations require ICE Futures Europe to cooperate with any other regulatory authority, including making arrangements for information sharing.

**35.2** ICE Futures Europe is a signatory to the Declaration on Co-operation and Supervision of International Futures Exchanges and Clearing Organisations as amended, March 1998

(commonly known as the "**Boca Declaration**") and the FSA is a signatory to the IOSCO Multilateral Memorandum of Understanding concerning Consultation and Cooperation and the Exchange of Information. The FSA is a signatory to the Tokyo Communiqué on Supervision of Commodity Futures Markets, which provides best practice guidance for exchanges and regulators in relation to information sharing (including international information sharing) and a framework for undertaking market surveillance.

### 36. RECORD KEEPING

**36.1** ICE Futures Europe maintains adequate provisions for keeping of books and records, including operations of ICE Futures Europe, audit trail information on all trades and compliance and/or violations of ICE Futures Europe's requirements and securities legislation.

**36.2** The Recognition Requirements require Recognised Bodies to ensure that satisfactory arrangements are made for recording transactions effected by, or cleared through, their facilities. When considering whether arrangements are satisfactory, the FSA considers whether arrangements are in place to create, maintain and safeguard an audit trail of transactions for a minimum of three years, and the quality and extent of the information recorded.

**36.3** ICE Futures Europe is also required to maintain various records pursuant to anti-money laundering legislation in force in the U.K., which forms the basis of the FSA Money Laundering Sourcebook. ICE Futures Europe is required to maintain for five years records containing evidence of customer identification details; information on the grounds for insolvency when a client becomes insolvent and the steps taken to recover the debt; transactions; internal and external suspicion reports and full details of the action taken; and information considered by the ICE Futures Europe Money Laundering Reporting Officer but not reported.

## SECTION 9 — OTHER

### 37. CONDITIONS TO AUTHORISATION

**37.1** ICE Futures Europe hereby confirms that it undertakes to comply with the conditions the AMF may reasonably impose on ICE Futures Europe exemption orders in the Province of Québec in accordance with the Act.

MONTREAL 2391472.11

**CERTIFICATE OF ICE FUTURES EUROPE**

The undersigned certifies that the information given in this report is true and correct.

DATED at ICE OFFICES, MILTON GATE, 60 GRESHAM ST, LONDON, EC1Y 4SA this 16th day of December 2009.

**ICE FUTURES EUROPE**

By: _____

Name: Patrick Davis
Title: Head of Legal and Company Secretary

MONTREAL 2391472.11

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## 7.2. RÉGLEMENTATION DE L'AUTORITÉ

### 7.2.1. Consultation

Aucune information.

### 7.2.2. Publication

**Avis : Corrections techniques au *Règlement modifiant le Règlement 23 101 sur les règles de négociation***

**I. Introduction**

Le 13 novembre 2009, les Autorités canadiennes en valeurs mobilières (« nous ») ont apporté des modifications aux textes suivants (les « modifications du 13 novembre ») :

1. le *Règlement 21 101 sur le fonctionnement du marché* et l'*Instruction générale relative au Règlement 21 101 sur le fonctionnement du marché*;

2. le *Règlement 23 101 sur les règles de négociation* (le « Règlement 23 101 ») et l'*Instruction générale relative au Règlement 23 101 sur les règles de négociation* (l'« Instruction générale 23 101 »).

Les éléments centraux des modifications du 13 novembre établissent un régime en vertu duquel tous les ordres à cours limité visibles, immédiatement accessibles et ayant un meilleur cours doivent être exécutés avant les autres ordres à cours limité à cours inférieurs, quel que soit le marché sur lequel ils sont saisis (le « régime de protection des ordres »). Les autres éléments des modifications du 13 novembre consistent notamment à interdire aux participants au marché de saisir intentionnellement des ordres qui figent ou croisent les marchés.

**II. Corrections techniques**

Les corrections techniques portent sur les dispositions relatives aux marchés figés ou croisés (les « dispositions sur les marchés figés ou croisés ») du Règlement 23-101 et de l'Instruction générale 23-101, lesquelles interdisent aux participants au marché de figer ou de croiser intentionnellement un marché en saisissant un ordre protégé visant à acheter un titre à un cours égal ou supérieur à la meilleure offre de vente protégée ou en saisissant un ordre protégé visant à vendre un titre à un cours égal ou inférieur à la meilleure offre d'achat protégée.

Nous comptions mettre en vigueur les dispositions sur les marchés figés ou croisés le 28 janvier 2010. Or, en raison d'une erreur rédactionnelle, les modifications du 13 novembre ne produisent pas cet effet. Nous avons donc corrigé l'erreur. Certaines définitions introduites dans le Règlement 23-101 et l'Instruction générale 23-101 par les modifications du 13 novembre entreront également en vigueur le 28 janvier 2010. Les modifications révisées sont publiées avec le présent avis.

Les corrections ne changent pas la date d'entrée en vigueur du régime de protection des ordres, qui demeure le 1er février 2011.

## III. Questions

Pour toute question, prière de s'adresser aux personnes suivantes :

Élaine Lanouette
Autorité des marchés financiers
514 395 0337, poste 4356

Serge Boisvert
Autorité des marchés financiers
514 395 0337, poste 4358

Tracey Stern
Commission des valeurs mobilières de l'Ontario
416 593 8167

Sonali GuptaBhaya
Commission des valeurs mobilières de l'Ontario
416 593 2331

Meg Tassie
British Columbia Securities Commission
604 899 6819

Doug Brown
Commission des valeurs mobilières du Manitoba
204 945 0605

Lorenz Berner
Alberta Securities Commission
403 355 3889

**Le 18 décembre 2009**

**RÈGLEMENT MODIFIANT LE RÈGLEMENT 23-101 SUR LES RÈGLES DE NÉGOCIATION**[*]

Loi sur les valeurs mobilières
(L.R.Q., c. V-1.1, a. 331.1, par. 1°, 2°, 3°, 8°, 9.1°, 32° et 34°; 2009, c. 25, a. 45; 2009, c. 58, a. 138)

**1.** L'article 1.1 du Règlement 23-101 sur les règles de négociation est modifié :

1° par l'insertion, après la phrase introductive, de la définition suivante :

« « fonctionnalité automatisée » : la capacité de faire ce qui suit :

*a)* permettre immédiatement que tout ordre entrant qui a été saisi sur le marché électroniquement porte la désignation « exécuter sinon annuler »;

*b)* exécuter immédiatement et automatiquement tout ordre désigné comme « exécuter sinon annuler » contre le volume affiché;

*c)* annuler immédiatement et automatiquement la tranche non exécutée de tout ordre désigné comme « exécuter sinon annuler » sans l'acheminer ailleurs;

*d)* transmettre immédiatement et automatiquement une réponse à l'auteur de tout ordre désigné comme « exécuter sinon annuler » en indiquant la mesure prise à l'égard de l'ordre;

*e)* afficher immédiatement et automatiquement toute information qui met à jour les ordres affichés sur le marché pour montrer toute modification de leurs conditions importantes; »;

2° par l'insertion, après la définition de « meilleure exécution », des suivantes :

« « offre d'achat protégée » : toute offre d'achat d'un titre coté, à l'exception d'une option, qui remplit les conditions suivantes :

*a)* elle est affichée sur un marché fournissant la fonctionnalité automatisée;

*b)* de l'information la concernant doit être fournie conformément à la partie 7 du Règlement 21-101 sur le fonctionnement du marché, adopté par la Commission des valeurs mobilières du Québec en vertu de la décision n° 2001-C-0409 du 28 août 2001, à une agence de traitement de l'information ou, en l'absence d'agence de traitement de l'information, à un fournisseur d'information qui respecte les normes établies par un fournisseur de services de réglementation;

« offre de vente protégée » : toute offre de vente d'un titre coté, à l'exception d'une option, qui remplit les conditions suivantes :

*a)* elle est affichée sur un marché fournissant la fonctionnalité automatisée;

*b)* de l'information la concernant doit être fournie conformément à la partie 7 du Règlement 21-101 sur le fonctionnement du marché à une agence de traitement

[*] Les seules modifications au Règlement 23-101 sur les règles de négociation, adopté par la décision n°2001-C-0411 du 28 août 2001 (Bulletin hebdomadaire vol. 32, n° 35 du 31 août 2001), ont été apportées par le règlement adopté par la décision n° 2002-C-0128 du 28 mars 2002 (Bulletin hebdomadaire vol. 33, n° 23 du 14 juin 2002), par le règlement approuvé par l'arrêté ministériel n° 2007-02 du 6 mars 2007 (2007, *G.O.* 2, 1741) et par le règlement approuvé par l'arrêté ministériel n° 2008-15 du 22 août 2008 (2008, *G.O.* 2, 5003).

de l'information ou, en l'absence d'agence de traitement de l'information, à un fournisseur d'information qui respecte les normes établies par un fournisseur de services de réglementation;

« ordre à cours calculé » : tout ordre, saisi sur un marché, d'achat ou de vente d'un titre coté, à l'exception d'une option, dont le cours remplit les conditions suivantes :

*a)* il n'est pas connu au moment de la saisie de l'ordre;

*b)* il n'est pas fondé, directement ou indirectement, sur le cours d'un titre coté au moment où l'engagement d'exécuter l'ordre a été pris;

« ordre à traitement imposé » : tout ordre à cours limité d'achat ou de vente d'un titre coté, à l'exception d'une option, qui remplit les conditions suivantes :

*a)* lorsqu'il est saisi sur un marché ou acheminé à un marché, l'une des situations suivantes s'applique :

*i)* il est immédiatement exécuté contre un ordre protégé, et toute tranche non exécutée est inscrite dans un registre ou annulée;

*ii)* il est immédiatement inscrit dans un registre;

*b)* il est désigné comme ordre à traitement imposé;

*c)* il est saisi ou acheminé en même temps qu'un ou plusieurs autres ordres à cours limité saisis sur un ou plusieurs marchés ou acheminés à un ou plusieurs marchés, au besoin, pour être exécutés contre tout ordre protégé à un meilleur cours que l'ordre visé au paragraphe *a*;

« ordre au cours de clôture » : tout ordre d'achat ou de vente d'un titre coté, à l'exception d'une option, qui remplit les conditions suivantes :

*a)* il est saisi sur un marché un jour de bourse donné;

*b)* il est subordonné aux conditions suivantes :

*i)* il doit être exécuté au cours de clôture du titre sur ce marché ce jour-là;

*ii)* il doit être exécuté après l'établissement du cours de clôture;

« ordre non standard » : tout ordre d'achat ou de vente d'un titre coté, à l'exception d'une option, qui est saisi sur un marché et assorti de conditions de règlement non standardisées qui n'ont pas été établies par le marché à la cote duquel le titre est inscrit ou sur lequel il est coté;

« ordre protégé » : une offre d'achat protégée ou une offre de vente protégée;

« transaction hors cours » : l'exécution d'un ordre à l'un des cours suivants :

*a)* dans le cas d'un achat, un cours plus élevé que toute offre de vente protégée;

*b)* dans le cas d'une vente, un cours inférieur à toute offre d'achat protégée. ».

**2.** L'article 1.2 de ce règlement est modifié par la suppression de « , adopté par la Commission des valeurs mobilières du Québec en vertu de la décision n° 2001-C-0409 du 28 août 2001, ».

**3.** L'article 3.1 de ce règlement est modifié par le remplacement, dans le paragraphe 2, de « de la Loi sur les valeurs mobilières (L.R.Q., c. V-V-1.1) » par « de la Loi sur les instruments dérivés (L.R.Q., c. I-14.01) et de la Loi sur les valeurs mobilières (L.R.Q., c. V-1.1), ».

**4.** L'intitulé de la partie 6 et l'article 6.1 de ce règlement sont remplacés par ce qui suit :

« **PARTIE 6 LES HEURES DE NÉGOCIATION ET LES ORDRES FIGÉS OU CROISÉS**

« **6.1. Les heures de négociation**

Chaque marché établit des règles concernant les heures de négociation pour les participants au marché.

« **6.2. Les ordres figés ou croisés**

Aucun participant au marché ne peut intentionnellement saisir sur un marché les ordres suivants :

*a)* un ordre protégé visant à acheter un titre à un cours égal ou supérieur à la meilleure offre de vente protégée;

*b)* un ordre protégé visant à vendre un titre à un cours égal ou inférieur à la meilleure offre d'achat protégée. ».

**5.** L'intitulé de la partie 6 et l'article 6.1 de ce règlement sont remplacés par ce qui suit :

« **PARTIE 6 LA PROTECTION DES ORDRES**

« **6.1. Les obligations des marchés en matière de protection des ordres**

1) Le marché établit, maintient et fait respecter des politiques et procédures écrites raisonnablement conçues pour faire ce qui suit :

*a)* empêcher sur celui-ci les transactions hors cours qui ne correspondent pas à celles visées à l'article 6.2;

*b)* assurer sa conformité à la présente partie lorsqu'il exécute une opération donnant lieu à une transaction hors cours visée à l'article 6.2.

2) Le marché examine et contrôle régulièrement l'efficacité des politiques et procédures visées au paragraphe 1 et en corrige rapidement les lacunes.

3) Le marché dépose auprès de l'autorité en valeurs mobilières et, le cas échéant, de son fournisseur de services de réglementation les politiques et procédures prévues au paragraphe 1 et leurs modifications significatives au moins 45 jours avant leur mise en œuvre.

« **6.2. La liste des transactions hors cours**

Les transactions hors cours visées au sous-paragraphe *a* du paragraphe 1 de l'article 6.1 sont les suivantes :

*a)* celles qui ont lieu lorsque le marché a conclu raisonnablement que le marché affichant l'ordre protégé contourné connaissait une panne, un défaut de

fonctionnement ou un retard important touchant ses systèmes, son matériel ou sa capacité à diffuser les données de marché;

*b)* l'exécution d'un ordre à traitement imposé;

*c)* les transactions hors cours effectuées par un marché qui achemine simultanément un ordre à traitement imposé pour exécution contre le volume total affiché de tout ordre protégé contourné;

*d)* les transactions hors cours lorsque, immédiatement avant, le marché affichant l'ordre protégé contourné affiche à son meilleur cours un ordre protégé dont le cours est égal ou inférieur à celui de cette transaction;

*e)* les transactions hors cours résultant de l'un des ordres suivants :

*i)* un ordre non standard;

*ii)* un ordre à cours calculé;

*iii)* un ordre au cours de clôture;

*f)* les transactions hors cours exécutées lorsque la meilleure offre d'achat protégée du titre visé par cette transaction était supérieure à la meilleure offre de vente protégée.

« **6.3. Les pannes, défauts de fonctionnements et retards importants touchant les systèmes ou le matériel**

1) Le marché qui a une panne, un défaut de fonctionnement ou un retard important touchant ses systèmes, son matériel ou sa capacité à diffuser les données de marché avise immédiatement les personnes suivantes :

*a)* tous les autres marchés;

*b)* tous les fournisseurs de services de réglementation;

*c)* ses participants au marché;

*d)* toute agence de traitement de l'information ou, en l'absence d'agence de traitement de l'information, tout fournisseur d'information qui diffuse ses données conformément à la partie 7 du Règlement 21-101 sur le fonctionnement du marché.

2) Si l'avis prévu au paragraphe 1 n'a pas été envoyé, le marché qui exécute une opération visée au paragraphe *a* de l'article 6.2 et achemine un ordre vers un autre marché avise immédiatement les personnes suivantes :

*a)* le marché dont il a raisonnablement conclu qu'il a une panne, un défaut de fonctionnement ou un retard important touchant ses systèmes, son matériel ou sa capacité à diffuser les données de marché;

*b)* tous les fournisseurs de services de réglementation;

*c)* ses participants au marché;

*d)* toute agence de traitement de l'information qui diffuse de l'information conformément à la partie 7 du Règlement 21-101 sur le fonctionnement du marché.

3) Le participant au marché qui conclut raisonnablement qu'un marché connaît une panne, un défaut de fonctionnement ou un retard important touchant ses systèmes, son

matériel ou sa capacité à diffuser les données de marché et qui achemine un ordre pour exécution contre un ordre protégé sur un autre marché affichant un cours inférieur avise du problème les personnes suivantes :

*a)* le marché qui semble rencontrer le problème;

*b)* tous les fournisseurs de services de réglementation.

« **6.4. Les obligations des participants au marché en matière de protection des ordres**

1) Le participant au marché ne peut saisir un ordre à traitement imposé que s'il a établi, maintient et fait respecter des politiques et procédures écrites raisonnablement conçues pour faire ce qui suit :

*a)* empêcher les transactions hors cours, sauf les suivantes :

*i)* celles qui ont lieu lorsque le participant au marché a conclu raisonnablement que le marché affichant l'ordre protégé contourné connaissait une panne, un défaut de fonctionnement ou un retard important touchant ses systèmes, son matériel ou sa capacité à diffuser les données de marché;

*ii)* les transactions hors cours effectuées par un participant au marché qui achemine simultanément un ordre à traitement imposé pour exécution contre le volume total affiché de tout ordre protégé contourné;

*iii)* les transactions hors cours lorsque, immédiatement avant, le marché affichant l'ordre protégé contourné affiche à son meilleur cours un ordre protégé dont le cours est égal ou inférieur à celui de cette transaction;

*iv)* les transactions hors cours résultant de l'un des ordres suivants :

A) un ordre non standard;

B) un ordre à cours calculé;

C) un ordre au cours de clôture;

*v)* les transactions hors cours exécutées lorsque la meilleure offre d'achat protégée du titre visé par cette transaction était supérieure à la meilleure offre de vente protégée.

*b)* assurer sa conformité à la présente partie lorsqu'il exécute les transactions hors cours visées aux sous-paragraphes *i* à *v* du paragraphe *a*.

2) Le participant au marché qui saisit un ordre à traitement imposé examine et contrôle régulièrement l'efficacité des politiques et procédures visées au paragraphe 1 et en corrige rapidement les lacunes.

« **6.5. Les ordres figés ou croisés**

Aucun participant au marché ne peut intentionnellement saisir sur un marché les ordres suivants :

*a)* un ordre protégé visant à acheter un titre à un cours égal ou supérieur à la meilleure offre de vente protégée;

*b)* un ordre protégé visant à vendre un titre à un cours égal ou inférieur à la meilleure offre d'achat protégée.

« **6.6. Les heures de négociation**

Le marché fixe les heures de négociation que ses participants doivent observer.

« **6.7. Disposition anti-échappatoire**

Il est interdit d'envoyer un ordre à une bourse, à un système de cotation et de déclaration d'opérations ou à un système de négociation parallèle qui n'exerce pas d'activité au Canada pour éviter de l'exécuter contre un ordre à un meilleur cours sur un marché.

« **6.8. Champ d'application**

Au Québec, la présente partie ne s'applique pas aux dérivés standardisés. ».

**6.** L'article 7.2 de ce règlement est modifié par le remplacement du paragraphe *c* par le suivant :

« *c)* la bourse reconnue transmet au fournisseur de services de réglementation l'information visée à la partie 11 du Règlement 21-101 sur le fonctionnement du marché, de même que toute autre information raisonnablement nécessaire à une surveillance efficace de ce qui suit :

*i)* la conduite et les activités de négociation des participants au marché sur les marchés et entre eux;

*ii)* la conduite de la bourse reconnue, le cas échéant; ».

**7.** L'article 7.4 de ce règlement est modifié par le remplacement du paragraphe *c* par le suivant :

« *c)* le système reconnu de cotation et de déclaration d'opérations transmet au fournisseur de services de réglementation l'information visée à la partie 11 du Règlement 21-101 sur le fonctionnement du marché, de même que toute autre information raisonnablement nécessaire à une surveillance efficace de ce qui suit :

*i)* la conduite et les activités de négociation des participants au marché sur les marchés et entre eux;

*ii)* la conduite du système reconnu de cotation et de déclaration d'opérations, le cas échéant; ».

**8.** L'article 7.5 de ce règlement est modifié par l'insertion, après les mots « conformément à la présente partie », des mots « et à la partie 8 ».

**9.** L'article 8.3 de ce règlement est modifié par le remplacement du paragraphe *d* par le suivant :

« *d)* le SNP transmet au fournisseur de services de réglementation l'information visée à la partie 11 du Règlement 21-101 sur le fonctionnement du marché, de même que toute autre information raisonnablement nécessaire à la surveillance efficace de ce qui suit :

*i)* la conduite et les activités de négociation des participants au marché sur les marchés et entre eux;

*ii)* la conduite du SNP; ».

**10.** L'article 9.3 de ce règlement est modifié par le remplacement des mots « au Principe directeur n° 5 de l'ACCOVAM, *Code de conduite à l'intention des sociétés membres de*

*l'ACCOVAM négociant sur le marché canadien des titres d'emprunt*, modifié » par les mots « à la Règle 2800 de l'OCRCVM, Code de conduite à l'intention des sociétés courtiers membres de la société négociant sur les marchés canadiens institutionnels de titres d'emprunt, et ses modifications ».

**11.** Les dispositions du paragraphe 1 et du paragraphe 2, dans la mesure où il édicte les définitions de « offre d'achat protégée », de « offre de vente protégée » et de « ordre protégé », de l'article 1 et des articles 2 à 4 et 6 à 10 du présent règlement entrent en vigueur le 28 janvier 2010.

**12.** Les dispositions du paragraphe 2, dans la mesure où il édicte les définitions de « ordre à cours calculé », de « ordre à traitement imposé », de « ordre au cours de clôture », de « ordre non standard » et de « transaction hors cours », de l'article 1 et de l'article 5 du présent règlement entrent en vigueur le 1er février 2011.

7

**MODIFICATION DE L'*INSTRUCTION GÉNÉRALE RELATIVE AU RÈGLEMENT 23-101 SUR LES RÈGLES DE NÉGOCIATION***

**1.** L'article 1.1 de l'*Instruction générale relative au Règlement 23-101 sur les règles de négociation* est modifié par le remplacement des mots « règlement canadien 23-101 sur » par les mots « *Règlement 23-101 sur* ».

**2.** Cette instruction générale est modifiée par l'insertion, après l'article 1.1.1, des suivants :

« **1.1.2. Définition de « fonctionnalité automatisée »**

L'article 1.1. du règlement prévoit une définition de l'expression « fonctionnalité automatisée », qui s'entend de la capacité de faire ce qui suit : 1) donner suite à un ordre entrant; 2) répondre à l'auteur de l'ordre; et 3) mettre l'ordre à jour en transmettant de l'information à une agence de traitement de l'information ou à un fournisseur d'information. Cette fonctionnalité permet d'exécuter immédiatement et automatiquement tout ordre entrant jusqu'à concurrence de la taille affichée et d'annuler immédiatement et automatiquement la tranche non exécutée de cet ordre sans l'inscrire dans le registre ni l'acheminer ailleurs. Elle ne nécessite aucune intervention humaine dans le traitement des ordres reçus. Le marché pourvu de cette fonctionnalité devrait disposer de systèmes, de politiques et de procédures appropriés pour traiter les ordres « exécuter sinon annuler ».

**1.1.3. Définition d'« ordre protégé »**

1) Selon la définition, un ordre protégé est « une offre d'achat protégée ou une offre de vente protégée ». Ces offres sont des ordres d'achat ou de vente d'un titre coté, à l'exception d'une option, qui sont affichés sur un marché fournissant la fonctionnalité automatisée et sur lesquels de l'information est fournie à une agence de traitement de l'information ou à un fournisseur d'information, selon le cas, conformément à la partie 7 du *Règlement 21-101 sur le fonctionnement du marché*. La mention « affichée sur un marché » s'applique à l'information sur le volume total déclaré sur un marché. Les volumes qui ne sont pas déclarés, qui constituent une « réserve » ou qui sont cachés ne sont pas considérés comme affichés sur un marché. L'ordre doit être fourni de façon à permettre aux autres marchés et participants au marché d'accéder facilement à l'information et de la verser dans leurs systèmes ou mécanismes d'acheminement des ordres.

2) Le paragraphe 3 de l'article 5.1 de l'*Instruction générale relative au Règlement 21-101 sur le fonctionnement du marché* indique que les ordres qui ne sont pas immédiatement exécutables ou sont assortis de conditions particulières ne sont pas considérés comme des « ordres » devant être fournis à une agence de traitement de l'information ou à un fournisseur d'information conformément à la partie 7 du *Règlement 21-101 sur le fonctionnement du marché*. Par conséquent, ils ne sont pas considérés comme des « ordres protégés » au sens du règlement et ne bénéficient pas de la protection des ordres. Toutefois, ceux qui exécutent des ordres contre ces types d'ordres sont tenus de les exécuter d'abord contre tous les ordres ayant un meilleur cours. En outre, l'obligation de protection des ordres s'applique aux ordres assortis de conditions particulières saisis sur un marché, s'il est possible de les exécuter contre des ordres existants malgré les conditions en question. ».

**3.** Cette instruction générale est modifiée par l'insertion, après l'article 1.1.3, des suivants :

« **1.1.4. Définition d'« ordre à cours calculé »**

Un « ordre à cours calculé » s'entend de tout ordre dont le cours n'est pas connu au moment de la saisie de l'ordre et n'est pas fondé, directement ou indirectement, sur le cours d'un titre coté au moment où l'engagement d'exécuter l'ordre a été pris. Les ordres visés sont les suivants :

*a)* l'ordre au cours du marché, dont le cours est calculé par le système de négociation du marché au moment fixé par ce dernier;

*b)* l'ordre au premier cours, dont le cours est le cours d'ouverture déterminé par le marché selon sa propre formule;

*c)* l'ordre au dernier cours, qui est exécuté au cours de clôture sur un marché donné, mais saisi avant que ce cours ne soit connu;

*d)* l'ordre au cours moyen pondéré en fonction du volume, dont le cours est fixé selon une formule qui mesure le cours moyen sur un ou plusieurs marchés;

*e)* l'ordre de base, dont le cours est fonction des cours auxquels une ou plusieurs opérations sur dérivés ont été effectuées sur un marché; ce type d'ordre doit être approuvé par un fournisseur de services de réglementation, ou encore par une bourse surveillant la conduite de ses membres ou un système de cotation et de déclaration d'opérations surveillant celle de ses utilisateurs.

**1.1.5. Définition d'« ordre à traitement imposé »**

1) L'ordre à traitement imposé informe le marché destinataire qu'il peut donner immédiatement suite à l'action indiquée par le marché ou le participant au marché ayant transmis l'ordre et que l'auteur de l'ordre respecte l'obligation de protection des ordres. Un marché ou un participant au marché peut désigner un ordre à traitement imposé par le sigle OTI. L'auteur de l'ordre peut ajouter des identificateurs donnant au marché les instructions suivantes :

*a)* exécuter l'ordre et annuler toute tranche non exécutée au moyen d'un identificateur « exécuter sinon annuler »;

*b)* exécuter l'ordre et inscrire dans le registre toute tranche non exécutée;

*c)* inscrire l'ordre dans le registre comme ordre passif en attente d'exécution;

*d)* éviter l'interaction avec la liquidité cachée au moyen d'un identificateur de contournement, au sens des Règles universelles d'intégrité du marché de l'OCRCVM.

La définition prévoit que plusieurs ordres à traitement imposé peuvent être acheminés simultanément pour exécution contre tout ordre protégé ayant un meilleur cours. En outre, les marchés ou les participants au marché peuvent n'envoyer qu'un seul ordre à traitement imposé pour exécution contre la meilleure offre d'achat protégée ou la meilleure offre de vente protégée. Le marché qui reçoit un ordre à traitement imposé peut exécuter les instructions de l'auteur sans vérifier si d'autres marchés affichent des ordres avec un meilleur cours ni appliquer ses politiques et procédures pour empêcher raisonnablement les transactions hors cours.

2) Que la saisie d'un ordre à traitement imposé soit accompagnée ou non d'un identificateur de contournement, son auteur doit éliminer tous les ordres visibles à un meilleur cours avant d'exécuter l'ordre à un cours inférieur. Par exemple, si un marché ou un participant au marché associe un identificateur de contournement à un ordre à traitement imposé pour éviter l'exécution contre la liquidité cachée, l'ordre est assujetti à des obligations de protection des ordres relativement à la liquidité visible. Si un ordre à traitement imposé interagit avec la liquidité cachée, l'obligation d'éliminer tous les ordres visibles à un meilleur cours avant d'exécuter l'ordre à un cours inférieur s'applique encore.

**1.1.6. Définition d'« ordre non standard »**

L'expression « ordre non standard » s'entend de tout ordre d'achat ou de vente d'un titre qui est assorti de conditions de règlement n'ayant pas été établies par le marché à la

cote duquel le titre est inscrit ou sur lequel il est coté. Le participant au marché ne peut cependant ajouter aucune condition de règlement à un ordre à la seule fin d'en faire un ordre non standard au sens de la définition. ».

**4.** La partie 6 de cette instruction générale est remplacée par la suivante :

« **PARTIE 6 LES HEURES DE NÉGOCIATION ET LES MARCHÉS FIGÉS OU CROISÉS**

**6.1. Les heures de négociation**

1) Selon l'article 6.1 du règlement, chaque marché établit des règles concernant les heures de négociation pour les participants au marché. Un marché peut autoriser les négociations hors séance sans limite de cours.

2) Le SNP peut négocier hors séance à des cours en dehors des cours acheteur et vendeur de clôture fixés par le marché sur lequel le titre est inscrit ou coté.

**6.2. Les marchés figés et croisés**

1) En vertu de l'article 6.2 du règlement, aucun participant au marché ne peut intentionnellement figer ni croiser un marché en saisissant un ordre protégé visant à acheter un titre à un cours égal ou supérieur à la meilleure offre de vente protégée ou en saisissant un ordre protégé visant à vendre un titre à un cours égal ou inférieur à la meilleure offre d'achat protégée. Du fait que l'article s'applique aux « ordres protégés », le participant au marché qui saisit un ordre visible affiché ne peut intentionnellement figer ou croiser un ordre visible affiché. L'article ne vise pas à interdire les ordres à cours limité négociables.

2) L'article 6.2 du règlement interdit à un participant au marché de figer ou de croiser intentionnellement un marché, par exemple en saisissant un ordre qui fige ou croise le marché en vue d'éviter d'acquitter les droits exigés par un marché ou de profiter des rabais offerts par un marché. Dans certaines situations, un marché figé ou croisé peut se produire accidentellement, par exemple :

*a)* en raison d'un ordre affiché sur un marché qui connaît une panne, un défaut de fonctionnement ou un retard important touchant ses systèmes, son matériel ou sa capacité à diffuser les données de marché;

*b)* en raison d'un ordre affiché à un moment où une offre d'achat protégée était plus élevée qu'une offre de vente protégée;

*c)* en raison d'un ordre affiché après que la totalité de la liquidité affichée a été exécutée et qu'un ordre en réserve a généré une nouvelle offre d'achat visible supérieure à l'offre de vente affichée ou de vente inférieure à l'offre d'achat affichée. ».

**5.** La partie 6 de cette instruction générale est remplacée par la suivante :

« **PARTIE 6 LA PROTECTION DES ORDRES**

**6.1. Les obligations des marchés en matière de protection des ordres**

1) En vertu du paragraphe 1 de l'article 6.1 du règlement, le marché doit établir, maintenir et faire respecter des politiques et procédures écrites raisonnablement conçues pour empêcher les transactions hors cours découlant d'ordres saisis sur le marché. Il peut s'acquitter de cette obligation de diverses façons. Par exemple, ses politiques et procédures peuvent empêcher raisonnablement ces transactions en prévoyant des algorithmes d'exécution qui les préviennent ou en établissant volontairement des liens directs avec d'autres marchés. Les marchés ne peuvent pas se décharger de leurs obligations en établissant des politiques et des procédures qui obligent les participants au marché à prendre des mesures raisonnables pour empêcher les transactions hors cours à leur place.

2) Il incombe aux marchés d'examiner et de contrôler régulièrement l'efficacité de leurs politiques et procédures ainsi que de prendre rapidement les mesures nécessaires pour corriger les lacunes dans la prévention des transactions hors cours et dans l'observation du paragraphe 2 de l'article 6.1 du règlement. On s'attend de manière générale à ce que les marchés conservent de l'information pertinente permettant aux autorités en valeurs mobilières d'évaluer adéquatement l'efficacité de leurs politiques et procédures. Cette information porterait notamment sur :

*a)* les mesures prises par le marché pour évaluer ses politiques et procédures;

*b)* les manquements ou les lacunes rencontrés;

*c)* les mesures prises pour corriger les manquements ou les lacunes.

3) Dans les politiques et procédures prévues au paragraphe 1 de l'article 6.1 du règlement, le marché devrait traiter de sa fonctionnalité automatisée et indiquer la façon dont il traite les réponses tardives qui peuvent résulter d'une panne ou d'un défaut de fonctionnement du matériel ou des systèmes d'un autre marché. Il devrait également y exposer la manière dont il traitera les ordres à traitement imposé reçus et leurs modalités d'utilisation.

4) La protection des ordres s'applique lorsque au moins deux marchés comportant des ordres protégés sont ouverts. Certains marchés tiennent une séance à des cours établis par eux pendant les heures normales de négociation pour les participants au marché qui sont évalués par rapport à un certain cours de clôture. En vertu du paragraphe *e* de l'article 6.2, ces marchés n'ont pas à prendre de mesures pour empêcher raisonnablement les transactions hors cours contournant les ordres affichés par un autre marché dans ces circonstances.

**6.2. Les obligations des participants au marché en matière de protection des ordres**

1) En vertu de l'article 6.4 du règlement, le participant au marché qui entend recourir aux ordres à traitement imposé doit établir, maintenir et faire respecter des politiques et procédures écrites raisonnablement conçues pour empêcher les transactions hors cours. On s'attend de manière générale à ce que ce participant au marché conserve de l'information pertinente permettant aux autorités en valeurs mobilières d'évaluer adéquatement l'efficacité de ses politiques et procédures. Cette information porterait notamment sur :

*a)* les mesures prises par le participant au marché pour évaluer ses politiques et procédures;

*b)* les manquements ou les lacunes rencontrés;

*c)* les mesures prises pour corriger les manquements ou les lacunes.

Ces politiques et procédures devraient également préciser les circonstances dans lesquelles il convient de recourir aux ordres à traitement imposé ainsi que la façon d'y recourir conformément au paragraphe *a* de l'article 6.4 du règlement.

2) La protection des ordres s'applique lorsque au moins deux marchés qui affichent des ordres protégés sont ouverts. Certains marchés tiennent une séance à des cours établis par eux pendant les heures normales de négociation pour les participants au marché qui sont évalués par rapport à un certain cours de clôture. En vertu de la disposition C du sous-paragraphe *iv* du paragraphe *a* de l'article 6.4 du règlement, le participant au marché n'a pas à prendre de mesures pour empêcher raisonnablement les transactions hors cours contournant les ordres affichés par d'autres marchés dans ces circonstances.

### 6.3. La liste des transactions hors cours

L'article 6.2 et les sous-paragraphes *i* à *v* du paragraphe *a* de l'article 6.4 du règlement contiennent une liste de transactions hors cours « autorisées » qui sont principalement conçues pour rendre possible la protection des ordres ainsi que certaines stratégies de négociation et types d'ordres utiles aux investisseurs.

*a) i)* Le paragraphe *a* de l'article 6.2 et le sous-paragraphe *i* du paragraphe *a* de l'article 6.4 du règlement s'appliquent lorsque le marché ou le participant au marché, selon le cas, a conclu raisonnablement qu'un marché connaît une panne, un défaut de fonctionnement ou un retard important touchant ses systèmes, son matériel ou sa capacité à diffuser les données de marché. Par retard important, on entend le défaut répété d'un marché de répondre à un ordre dès sa réception. Cette disposition vise à laisser de la latitude aux marchés et aux participants au marché lorsqu'ils traitent avec un marché dont les systèmes rencontrent des problèmes techniques (qu'ils puissent être résolus à brève échéance ou non).

*ii)* En vertu du paragraphe 1 de l'article 6.3 du règlement, il incombe au marché qui connaît une panne, un défaut de fonctionnement ou un retard important touchant ses systèmes, son matériel ou sa capacité à diffuser les données de marché d'en informer tous les autres marchés, ses participants au marché, toute agence de traitement de l'information ou, en l'absence d'agence de traitement de l'information, tout fournisseur d'information qui diffuse ses données conformément à la partie 7 du *Règlement 21-101 sur le fonctionnement du marché*, ainsi que les fournisseurs de services de réglementation. Toutefois, s'il manque à plusieurs reprises de répondre immédiatement aux ordres reçus et ne diffuse aucun avis pour signaler ses difficultés techniques, le marché qui lui achemine un ordre ou le participant au marché peut, en vertu des paragraphes 2 et 3 de l'article 6.3 du règlement respectivement, conclure raisonnablement que le marché rencontre des problèmes techniques, et se prévaloir en conséquence du paragraphe *a* de l'article 6.2 ou du sous-paragraphe *i* du paragraphe *a* de l'article 6.4 du règlement, selon le cas. En l'occurrence, ils doivent s'en prévaloir conformément à des politiques et procédures établies pour composer avec les réponses tardives des marchés et documenter les motifs de leur conclusion. Le marché qui achemine l'ordre ou le participant au marché ne peuvent plus se prévaloir de ces dispositions si le marché confirme, en réponse à l'avis, qu'il ne rencontre pas de problèmes techniques.

*b)* Le paragraphe *b* de l'article 6.2 du règlement prévoit une exception à l'obligation, pour les marchés, d'appliquer leurs politiques et procédures afin d'empêcher raisonnablement les transactions hors cours lorsqu'ils reçoivent un ordre à traitement imposé. En particulier, le marché qui reçoit un tel ordre peut immédiatement l'exécuter ou l'inscrire dans le registre (ou toute tranche restante), et ne pas appliquer ses politiques et procédures pour empêcher raisonnablement les transactions hors cours. Toutefois, les politiques et procédures du marché doivent inclure une description du traitement d'un ordre à traitement imposé. Le paragraphe *c* de l'article 6.2 et le sous-paragraphe *iii* du paragraphe *a* de l'article 6.4 du règlement prévoient une exception dans le cas où le marché ou le participant au marché achemine simultanément des ordres à traitement imposé pour exécution contre le volume total affiché de tout ordre protégé contourné. Cette exception tient à la possibilité que des ordres à traitement imposé acheminés simultanément ne soient pas exécutés simultanément, ce qui occasionne alors une ou plusieurs transactions hors cours du fait qu'un ordre à un cours moins élevé est exécuté en premier.

*c)* Le paragraphe *d* de l'article 6.2 et le sous-paragraphe *ii* du paragraphe *a* de l'article 6.4 du règlement prévoient une exception pour cause de variation des marchés. En particulier, l'exception permet la réalisation d'une transaction hors cours lorsque, immédiatement avant l'exécution de l'ordre qui y donne lieu, le marché sur lequel l'ordre a été exécuté affichait le meilleur cours, mais au moment de l'exécution, le marché fluctue et un autre marché affiche le meilleur cours. Cette exception pour cause de fluctuation des marchés permet, dans certaines circonstances, l'exécution d'un ordre sur un marché dans les limites du meilleur cours acheteur ou vendeur sur ce marché, mais hors des limites du meilleur cours acheteur ou vendeur sur l'ensemble des marchés. Tel pourrait être le cas, par exemple, dans les circonstances suivantes :

*i)* le meilleur cours acheteur ou vendeur affiché sur l'ensemble des marchés fluctue entre la saisie d'un ordre et son exécution sur un marché donné;

*ii)* une opération convenue hors marché est saisie sur un marché à un cours se situant dans la fourchette des meilleurs cours acheteur et vendeur affichés sur l'ensemble des marchés, mais avant l'exécution (c'est-à-dire la saisie) de l'ordre, le meilleur cours acheteur ou vendeur affiché sur l'ensemble des marchés fluctue, ce qui occasionne une transaction hors cours.

*d)* Le paragraphe *e* de l'article 6.2 et le sous-paragraphe *iv* du paragraphe *a* de l'article 6.4 du règlement permettent les ordres à cours calculé, les ordres non standards et les ordres au cours de clôture parce qu'ils présentent des caractéristiques particulières qui les distinguent des autres ordres. Ces caractéristiques concernent le cours (pour les ordres à cours calculé et les ordres au cours de clôture) et les conditions de règlement non standards (pour les ordres non standards) qui ne sont établies par aucune bourse ni aucun système de cotation et de déclaration d'opérations.

*e)* Le paragraphe *f* de l'article 6.2 et le sous-paragraphe *v* du paragraphe *a* de l'article 6.4 du règlement autorisent les opérations exécutées en cas de marché croisé pour un titre coté. Sans cette autorisation, aucun marché ne pourrait exécuter d'opérations dans ce cas parce qu'il s'agirait de transactions hors cours. Comme la protection des ordres ne s'applique qu'aux ordres ou tranches d'ordres affichés, il est possible que les ordres cachés ou en réserve restent dans le registre après exécution de tous les ordres affichés, ce qui peut entraîner des marchés croisés. Quiconque réalise une opération croisée intentionnellement pour tirer avantage de ces dispositions commet une infraction à l'article 6.5 du règlement.

**6.4. Les marchés figés et croisés**

1) En vertu de l'article 6.5 du règlement, aucun participant au marché ne peut intentionnellement figer ni croiser un marché en saisissant un ordre protégé visant à acheter un titre à un cours égal ou supérieur à la meilleure offre de vente protégée ou en saisissant un ordre protégé visant à vendre un titre à un cours égal ou inférieur à la meilleure offre d'achat protégée. Du fait que l'article s'applique aux « ordres protégés », le participant au marché qui saisit un ordre visible affiché ne peut intentionnellement figer ou croiser un ordre visible affiché. L'article ne vise pas à interdire les ordres à cours limité négociables. Le paragraphe *f* de l'article 6.2 et le sous-paragraphe *v* du paragraphe *a* de l'article 6.4 du règlement permettent de débloquer les marchés croisés qui se produisent accidentellement.

2) L'article 6.5 du règlement interdit à un participant au marché de figer ou de croiser intentionnellement un marché, par exemple en saisissant un ordre qui fige ou croise le marché en vue d'éviter d'acquitter les droits exigés par un marché ou de profiter des rabais offerts par un marché. Dans certaines situations, un marché figé ou croisé peut se produire accidentellement, par exemple :

*a)* en raison du temps de latence lorsqu'un participant au marché achemine à divers marchés plusieurs ordres à traitement imposé désignés comme « exécuter sinon annuler »;

*b)* en raison d'un ordre affiché sur un marché qui connaît une panne, un défaut de fonctionnement ou un retard important touchant ses systèmes, son matériel ou sa capacité à diffuser les données de marché;

*c)* en raison d'un ordre affiché à un moment où une offre d'achat protégée était plus élevée qu'une offre de vente protégée;

*d)* en raison d'un ordre affiché après que la totalité de la liquidité affichée a été exécutée et qu'un ordre en réserve a généré une nouvelle offre d'achat visible supérieure à l'offre de vente affichée ou de vente inférieure à l'offre d'achat affichée.

3) Si un participant au marché qui recourt à un ordre à traitement imposé choisit d'inscrire l'ordre ou toute tranche restante dans le registre, il doit veiller à ce que la partie de l'ordre qui est inscrite dans le registre n'ait pas pour effet de figer ou de croiser le marché. Les autorités en valeurs mobilières du Canada estiment que les marchés figés ou croisés résultant d'ordres à traitement imposé inscrits dans le registre ou de toute tranche restante d'ordres de ce type sont intentionnels et constituent une infraction à l'article 6.5 du règlement.

**6.5. Disposition anti-échappatoire**

L'article 6.7 du règlement interdit à quiconque d'envoyer un ordre à une bourse, à un système de cotation et de déclaration d'opérations ou à un système de négociation parallèle qui n'exerce pas d'activité au Canada pour éviter de l'exécuter contre un ordre ayant un meilleur cours sur un marché au Canada. Cet article vise à empêcher l'acheminement d'ordres à des marchés étrangers à la seule fin de contourner le régime canadien de protection des ordres. ».

**6.** L'article 7.3 de cette instruction générale est modifié par le remplacement des mots « au Principe directeur n° 5 de l'ACCOVAM, *Code de conduite à l'intention des sociétés membres de l'ACCOVAM négociant sur le marché canadien des titres d'emprunt*, et ses modifications » par les mots « à la Règle 2800 de l'OCRCVM, *Code de conduite à l'intention des sociétés courtiers membres de la société négociant sur les marchés canadiens institutionnels de titres d'emprunt*, et ses modifications ».

**7.** L'article 7.4 de cette instruction générale est modifié par l'insertion, dans le texte français et après le mot « titres », des mots « d'emprunt ».

**8.** Cette instruction générale est modifiée par l'addition, après l'article 7.4, des suivants :

« **7.5. L'entente entre le marché et le fournisseur de services de réglementation**

Le paragraphe *c* des articles 7.2 et 7.4 du règlement a pour objet de faciliter la surveillance exercée par les fournisseurs de services de réglementation sur les activités de négociation des participants au marché sur les marchés et entre eux. Il vise aussi à faciliter la surveillance, à des fins particulières, de la conduite des bourses reconnues et des systèmes reconnus de cotation et de déclaration d'opérations. Il peut amener le fournisseur de services de réglementation à surveiller les marchés qui l'ont engagé et à faire rapport à une bourse reconnue, à un système reconnu de cotation et de déclaration d'opérations ou à une autorité en valeurs mobilières si un marché ne respecte pas ses obligations réglementaires ou ses politiques et procédures. Bien que l'étendue de la surveillance puisse changer selon l'évolution des marchés, nous nous attendons à ce qu'elle porte au moins sur la synchronisation des horloges, l'utilisation des désignations, des symboles et des identificateurs spécifiques, les obligations relatives à la protection des ordres, ainsi que celles qui concernent la piste de vérification.

**7.6. La coordination de la surveillance et des mesures d'application**

1) En vertu de l'article 7.5 du règlement, les fournisseurs de services de réglementation, les bourses reconnues et les systèmes reconnus de cotation et de déclaration d'opérations doivent conclure une entente écrite visant à coordonner les mesures d'application des règles prévues aux parties 7 et 8. Cette coordination est nécessaire aux fins de la surveillance intermarchés.

2) Toute bourse reconnue ou tout système reconnu de cotation et de déclaration d'opérations qui n'a pas engagé de fournisseur de services de réglementation demeure dans l'obligation de coordonner ses activités avec celles d'un fournisseur de services de réglementation et des autres bourses ou systèmes de cotation et de déclaration d'opérations sur lesquels les mêmes titres se négocient afin d'assurer une surveillance intermarchés efficace.

3) À l'heure actuelle, l'OCRCVM est le seul fournisseur de services de réglementation pour les titres d'emprunt non cotés et les titres cotés, sauf les options et, au

Québec, les dérivés standardisés. Lorsque plusieurs fournisseurs de services de réglementation réglementent des marchés sur lesquels un certain type de titre se négocie, les fournisseurs doivent coordonner la surveillance et les mesures d'application des règles établies. ».

**9.** Les dispositions des articles 1, 2, 4 et 6 à 8 de la présente modification prennent effet le 28 janvier 2010.

**10.** Les dispositions des articles 3 et 5 de la présente modification prennent effet le 1er février 2011.

**Notice : Technical Corrections to *Regulation to amend Regulation 23-101 respecting Trading Rules***

## I. Introduction

The Canadian Securities Administrators (the CSA or we) published on November 13, 2009 amendments (November 13 Amendments) to the following instruments:

1. *Regulation 21-101 respecting Marketplace Operation* and related *Policy Statement to Regulation 21-101 respecting Marketplace Operation*; and

2. *Regulation 23-101 respecting Trading Rules* (Regulation 23-101) and related *Policy Statement to Regulation 23-101 respecting Trading Rules* (Policy Statement 23-101)

The key part of the November 13 Amendments introduces a framework to require all visible, immediately accessible, better-priced limit orders to be filled before other limit orders at inferior prices, regardless of the marketplace where the order is entered (Order Protection Rule). Other parts of the November 13 Amendments include a prohibition on market participants intentionally entering an order that locks or crosses the market.

## II. Technical Corrections

The technical corrections are to the provisions in Regulation 23-101 and Policy Statement 23-101 concerning locked and crossed orders (Locked and Crossed Order Provisions). The provisions prohibit a marketplace participant from intentionally locking or crossing a market by entering a protected order to buy a security at the same price or higher than the best protected offer or entering a protected order to sell a security at the same price or lower than the best protected bid.

The CSA intended to have the Locked and Crossed Order Provisions come into force on January 28, 2010. However, the November 13 Amendments contain a drafting error that does not implement this intention. Consequently, we have corrected this drafting error. As well, certain definitions in Regulation 23-101 and Policy Statement 23-101 found in the November 13 Amendments will also be in force on January 28, 2010. The revised amendments are published with this Notice.

There is no impact on the implementation date of the Order Protection Rule which remains February 1, 2011.

## III. Questions

Questions may be referred to any of:

Élaine Lanouette
Autorité des marchés financiers
514-395-0337 ext.4356

Serge Boisvert
Autorité des marchés financiers
514-395-0337 ext.4358

Tracey Stern
Ontario Securities Commission
416-593-8167

Sonali GuptaBhaya
Ontario Securities Commission
416-593-2331

Meg Tassie
British Columbia Securities Commission
604-899-6819

Doug Brown
Manitoba Securities Commission
204-945-0605

Lorenz Berner
Alberta Securities Commission
403-355-3889

**December 18, 2009**

**REGULATION TO AMEND REGULATION 23-101 RESPECTING TRADING RULES**[*]

Securities Act
(R.S.Q., c. V-1.1, s. 331.1, par. (1), (2), (3), (8), (9.1), (32) and (34); 2009, c 25, s. 45; 2009, c. 58, s. 138)

**1.** Section 1.1 of Regulation 23-101 respecting Trading Rules is amended:

(1) by inserting, after the introductory phrase, the following definition:

" "automated functionality" means the ability to

(a) immediately allow an incoming order that has been entered on the marketplace electronically to be marked as immediate-or-cancel;

(b) immediately and automatically execute an order marked as immediate-or-cancel against the displayed volume;

(c) immediately and automatically cancel any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere;

(d) immediately and automatically transmit a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to the order; and

(e) immediately and automatically display information that updates the displayed orders on the marketplace to reflect any change to their material terms;";

(2) by inserting, after the definition of "best execution", the following:

" "calculated-price order" means an order for the purchase or sale of an exchange-traded security, other than an option, that is entered on a marketplace and for which the price of the security

(a) is not known at the time of order entry; and

(b) is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to execute the order was made;

"closing-price order" means an order for the purchase or sale of an exchange-traded security, other than an option, that is

(a) entered on a marketplace on a trading day; and

(b) subject to the conditions that

(i) the order be executed at the closing sale price of that security on that marketplace for that trading day; and

(ii) the order be executed subsequent to the establishment of the closing price;

[*] Regulation 23-101 respecting Trading Rules, adopted pursuant to Decision No. 2001-C-0411 dated August 28, 2001 (*Bulletin hebdomadaire* Vol. 32, No. 35 dated August 31, 2001), was only amended by the Regulation adopted pursuant to Decision No. 2002-C-0128 dated March 28, 2002 (*Bulletin hebdomadaire* Vol. 33, No. 23 dated June 14, 2002), the Regulation approved by Ministerial Order No. 2007-02 dated March 6, 2007 (2007, *G.O.* 2, 1269) and the Regulation approved by Ministerial Order No. 2008-15 dated August 22, 2008 (2008, *G.O.* 2, 4550).

"directed-action order" means a limit order for the purchase or sale of an exchange-traded security, other than an option, that,

(a) when entered on or routed to a marketplace is to be immediately

(i) executed against a protected order with any remainder to be booked or cancelled; or

(ii) placed in an order book;

(b) is marked as a directed-action order; and

(c) is entered or routed at the same time as one or more additional limit orders that are entered on or routed to one or more marketplaces, as necessary, to execute against any protected order with a better price than the order referred to in paragraph (a);

"non-standard order" means an order for the purchase or sale of an exchange-traded security, other than an option, that is entered on a marketplace and is subject to non-standardized terms or conditions related to settlement that have not been set by the marketplace on which the security is listed or quoted;

"protected bid" means a bid for an exchange-traded security, other than an option

(a) that is displayed on a marketplace that provides automated functionality; and

(b) about which information is required to be provided pursuant to Part 7 of Regulation 21-101 respecting Marketplace Operation, adopted by the Commission des valeurs mobilières du Québec pursuant to decision No. 2001-C-0409 dated August 28, 2001, to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

"protected offer" means an offer for an exchange-traded security, other than an option,

(a) that is displayed on a marketplace that provides automated functionality; and

(b) about which information is required to be provided pursuant to Part 7 of Regulation 21-101 respecting Marketplace Operation to an information processor or, if there is no information processor, to an information vendor that meets the standards set by a regulation services provider;

"protected order" means a protected bid or protected offer; and

"trade-through" means the execution of an order at a price that is,

(a) in the case of a purchase, higher than any protected offer, or

(b) in the case of a sale, lower than any protected bid.".

**2.** Section 1.2 of the Regulation is amended by deleting ", adopted by the Commission des valeurs mobilières du Québec pursuant to decision No. 2001-C-0409 dated August 28, 2001".

**3.** Section 3.1 of the Regulation is amended by replacing, in paragraph (2), "the Securities Act (R.S.Q., C.V-V-1.1)" with "the Derivatives Act (R.S.Q., c. I-14.01) and the Securities Act (R.S.Q., c. V-1.1),".

**4.** The title of part 6 and section 6.1 of the Regulation are replaced with the following:

"**PART 6 TRADING HOURS AND LOCKED OR CROSSED ORDERS**

**"6.1. Trading Hours**

Each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants.

"**6.2. Locked or Crossed Orders**

A marketplace participant shall not intentionally

(a) enter on a marketplace a protected order to buy a security at a price that is the same as or higher than the best protected offer; or

(b) enter on a marketplace a protected order to sell a security at a price that is the same as or lower than the best protected bid.".

**5.** The title of part 6 and section 6.1 of the Regulation are replaced with the following:

"**PART 6 ORDER PROTECTION**

"**6.1. Marketplace Requirements for Order Protection**

(1) A marketplace shall establish, maintain and ensure compliance with written policies and procedures that are reasonably designed

(a) to prevent trade-throughs on that marketplace other than the trade-throughs referred to in section 6.2; and

(b) to ensure that the marketplace, when executing a transaction that results in a trade-through referred to in section 6.2, is doing so in compliance with this Part.

(2) A marketplace shall regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.

(3) At least 45 days before implementation, a marketplace shall file with the securities regulatory authority and, if applicable, its regulation services provider the policies and procedures, and any significant changes to those policies and procedures, established under subsection (1).

"**6.2. List of Trade-throughs**

The following are the trade-throughs referred to in paragraph 6.1(1)(a):

(a) a trade-through that occurs when the marketplace has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;

(b) the execution of a directed-action order;

(c) a trade-through by a marketplace that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;

(d) a trade-though if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through;

(e) a trade-through that results when executing

(i) a non-standard order;

(ii) a calculated-price order; or

(iii) a closing-price order;

(f) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer.

"**6.3. Systems or Equipment Failure, Malfunction or Material Delay**

(1) If a marketplace experiences a failure, malfunction or material delay of its systems, equipment or its ability to disseminate marketplace data, the marketplace shall immediately notify

(a) all other marketplaces;

(b) all regulation services providers;

(c) its marketplace participants; and

(d) any information processor or, if there is no information processor, any information vendor that disseminates its data under Part 7 of Regulation 21-101 respecting Marketplace Operation.

(2) If executing a transaction described in paragraph 6.2(a), and a notification has not been sent under subsection (1), a marketplace that routes an order to another marketplace shall immediately notify

(a) the marketplace that it reasonably concluded is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data;

(b) all regulation services providers;

(c) its marketplace participants; and

(d) any information processor disseminating information under Part 7 of Regulation 21-101 respecting Marketplace Operation.

(3) If a marketplace participant reasonably concludes that a marketplace is experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data, and routes an order to execute against a protected order on another marketplace displaying an inferior price, the marketplace participant must notify the following of the failure, malfunction or material delay

(a) the marketplace that may be experiencing a failure, malfunction or material delay of its systems or equipment or its ability to disseminate marketplace data; and

(b) all regulation services providers.

"**6.4. Marketplace Participant Requirements for Order Protection**

(1) A marketplace participant must not enter a directed-action order unless the marketplace participant has established, and maintains and ensures compliance with, written policies and procedures that are reasonably designed

(a) to prevent trade-throughs other than the trade-throughs listed below:

(i) a trade-through that occurs when the marketplace participant has reasonably concluded that the marketplace displaying the protected order that was traded through was experiencing a failure, malfunction or material delay of its systems or equipment or ability to disseminate marketplace data;

(ii) a trade-through by a marketplace participant that simultaneously routes a directed-action order to execute against the total displayed volume of any protected order that is traded through;

(iii) a trade-through if, immediately before the trade-through, the marketplace displaying the protected order that is traded through displays as its best price a protected order with a price that is equal or inferior to the price of the trade-through transaction;

(iv) a trade-through that results when executing

(A) a non-standard order;

(B) a calculated-price order; or

(C) a closing-price order;

(v) a trade-through that was executed at a time when the best protected bid for the security traded through was higher than the best protected offer; and

(b) to ensure that when executing a trade-through listed in paragraphs (a)(i) to (a)(v), it is doing so in compliance with this Part.

(2) A marketplace participant that enters a directed-action order shall regularly review and monitor the effectiveness of the policies and procedures required under subsection (1) and shall promptly remedy any deficiencies in those policies and procedures.

"**6.5. Locked or Crossed Orders**

A marketplace participant shall not intentionally

(a) enter on a marketplace a protected order to buy a security at a price that is the same as or higher than the best protected offer; or

(b) enter on a marketplace a protected order to sell a security at a price that is the same as or lower than the best protected bid.

"**6.6. Trading Hours**

A marketplace shall set the hours of trading to be observed by marketplace participants.

"**6.7. Anti-Avoidance**

No person shall send an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace.

"**6.8. Application of this Part**

In Québec, this Part does not apply to standardized derivatives.".

**6.** Section 7.2 of the Regulation is amended by replacing paragraph (c) with the following:

"(c) that the recognized exchange will transmit to the regulation services provider the information required by Part 11 of Regulation 21-101 respecting Marketplace Operation and any other information reasonably required to effectively monitor:

(i) the conduct of and trading by marketplace participants on and across marketplaces, and

(ii) the conduct of the recognized exchange, as applicable; and".

**7.** Section 7.4 of the Regulation is amended by replacing paragraph (c) with the following:

"(c) that the recognized quotation and trade reporting system will transmit to the regulation services provider the information required by Part 11 of Regulation 21-101 respecting Marketplace Operation and any other information reasonably required to effectively monitor:

(i) the conduct of and trading by marketplace participants on and across marketplaces, and

(ii) the conduct of the recognized quotation and trade reporting system, as applicable; and".

**8.** Section 7.5 of the Regulation is amended by replacing the words "under this Part" with "under Parts 7 and 8".

**9.** Section 8.3 of the Regulation is amended by replacing paragraph (d) with the following:

"(d) that the ATS will transmit to the regulation services provider the information required by Part 11 of Regulation 21-101 respecting Marketplace Operation and any other information reasonably required to effectively monitor:

(i) the conduct of and trading by marketplace participants on and across marketplaces, and

(ii) the conduct of the ATS; and".

**10.** Section 9.3 of the Regulation is amended by replacing the words "IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets" with the words "IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets".

**11.** The provisions of paragraph (1) and paragraph (2), to the extent that it sets out the definitions of "protected bid", "protected offer" and "protected order", of section 1, and sections 2 to 4 and 6 to 10 of this Regulation come into force on January 28, 2010.

**12.** The provisions of paragraph (2), to the extent that it sets out the definitions of "calculated-price order", "closing-price order", "directed-action order", "non-standard order" and "trade-through", of section 1 and section 5 this Regulation come into force on February 1, 2011.

**AMENDMENTS TO *POLICY STATEMENT TO REGULATION 23-101 RESPECTING TRADING RULES***

**1.** Section 1.1 of *Policy Statement to Regulation 23-101 respecting Trading Rules* is amended by replacing the word "Respecting" with the word "respecting".

**2.** The Policy Statement is amended by inserting, after section 1.1.1, the following:

"**1.1.2. Definition of automated functionality**

Section 1.1 of the Regulation includes a definition of "automated functionality" which is the ability to: (1) act on an incoming order; (2) respond to the sender of an order; and (3) update the order by disseminating information to an information processor or information vendor. Automated functionality allows for an incoming order to execute immediately and automatically up to the displayed size and for any unexecuted portion of such incoming order to be cancelled immediately and automatically without being booked or routed elsewhere. Automated functionality involves no human discretion in determining the action taken with respect to an order after the time the order is received. A marketplace with this functionality should have appropriate systems and policies and procedures relating to the handling of immediate-or-cancel orders.

**1.1.3. Definition of protected order**

(1) A protected order is defined to be a "protected bid or protected offer". A "protected bid" or "protected offer" is an order to buy or sell an exchange-traded security, other than an option, that is displayed on a marketplace that provides automated functionality and about which information is provided to an information processor or an information vendor, as applicable, pursuant to Part 7 of *Regulation 21-101 respecting Marketplace Operation*. The term "displayed on a marketplace" refers to the information about total disclosed volume on a marketplace. Volumes that are not disclosed or that are "reserve" or hidden volumes are not considered to be "displayed on a marketplace". The order must be provided in a way that enables other marketplaces and marketplace participants to readily access the information and integrate it into their systems or order routers.

(2) Subsection 5.1(3) of *Policy Statement to Regulation 21-101 respecting Marketplace Operation* does not consider orders that are not immediately executable or that have special terms as "orders" that are required to be provided to an information processor or information vendor under Part 7 of *Regulation 21-101 respecting Marketplace Operation*. As a result, these orders are not considered to be "protected orders" under the definition in the Regulation and do not receive order protection. However, those executing against these types of orders are required to execute against all better-priced orders first. In addition, when entering a "special terms order" on a marketplace, if it can be executed against existing orders despite the special term, then the order protection obligation applies.".

**3.** The Policy Statement is amended by inserting, after section 1.1.3, the following:

"**1.1.4. Definition of calculated-price order**

The definition of "calculated-price order" refers to any order where the price is not known at the time of order entry and is not based, directly or indirectly, on the quoted price of an exchange-traded security at the time the commitment to executing the order was made. This includes the following orders:

(a) a call market order – where the price of a trade is calculated by the trading system of a marketplace at a time designated by the marketplace;

(b) an opening order – where each marketplace may establish its own formula for the determination of opening prices;

(c) a closing order – where execution occurs at the closing price on a particular marketplace, but at the time of order entry, the price is not known;

(d) a volume-weighted average price order – where the price of a trade is determined by a formula that measures average price on one or more marketplaces; and

(e) a basis order – where the price is based on prices achieved in one or more derivative transactions on a marketplace. To qualify as a basis order, this order must be approved by a regulation services provider or an exchange or quotation and trade reporting system that oversees the conduct of its members or users respectively.

**1.1.5. Definition of directed-action order**

(1) An order marked as a directed-action order informs the receiving marketplace that the marketplace can act immediately to carry out the action specified by either the marketplace or marketplace participant who has sent the order and that the order protection obligation is being met by the sender. Such an order may be marked "DAO" by a marketplace or a marketplace participant. Senders can specify actions by adding markers that instruct a marketplace to:

(a) execute the order and cancel the remainder using an immediate-or-cancel marker,

(b) execute the order and book the remainder,

(c) book the order as a passive order awaiting execution, and

(d) avoid interaction with hidden liquidity using a bypass marker, as defined in IIROC's Universal Market Integrity Rules.

The definition allows for the simultaneous routing of more than one directed-action order in order to execute against any better-priced protected orders. In addition, marketplaces or marketplace participants may send a single directed-action order to execute against the best protected bid or best protected offer. When it receives a directed-action order, a marketplace can carry out the sender's instructions without checking for better-priced orders displayed by the other marketplaces and implementing the marketplace's own policies and procedures to reasonably prevent trade-throughs.

(2) Regardless of whether the entry of a directed-action order is accompanied by the bypass marker, the sender must take out all better-priced visible orders before executing at an inferior price. For example, if a marketplace or marketplace participant combines a directed-action order with a bypass marker to avoid executing against hidden liquidity, the order has order protection obligations regarding the visible liquidity. If a directed-action order interacts with hidden liquidity, the requirement to take out all better-priced visible orders before executing at an inferior price remains.

**1.1.6. Definition of non-standard order**

The definition of "non-standard order" refers to an order for the purchase or sale of a security that is subject to terms or conditions relating to settlement that have not been set by the marketplace on which the security is listed or quoted. A marketplace participant, however, may not add a special settlement term or condition to an order solely for the purpose that the order becomes a non-standard order under the definition.".

**4.** Part 6 of the Policy Statement is replaced with the following:

"**PART 6 TRADING HOURS AND LOCKED OR CROSSED MARKETS**

**6.1. Trading Hours**

(1) Section 6.1 of the Regulation provides that each marketplace shall set requirements in respect of the hours of trading to be observed by marketplace participants. A marketplace may have after hours trading at any prices.

(2) An ATS can trade after hours at prices outside of the closing bid price and ask price of a security set by the marketplace where that security is listed or quoted.

**6.2. Locked and Crossed Markets**

(1) Section 6.2 of the Regulation provides that a marketplace participant shall not intentionally lock or cross a market by entering a protected order to buy a security at a price that is the same as or higher than the best protected offer or entering a protected order to sell a security at a price that is the same as or lower than the best protected bid. The reference to a "protected order" means that when entering a visible, displayed order, a marketplace participant cannot lock or cross a visible, displayed order. It is not intended to prohibit the use of marketable limit orders.

(2) Section 6.2 of the Regulation prohibits a marketplace participant from intentionally locking or crossing a market. This would occur, for example, when a marketplace participant enters a locking or crossing order on a particular marketplace or marketplaces to avoid fees charged by a marketplace or to take advantage of rebates offered by a particular marketplace. There are situations where a locked or crossed market may occur unintentionally. For example:

(a) the locking or crossing order was displayed at a time when the marketplace displaying the locked or crossed order was experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data,

(b) the locking or crossing order was displayed at a time when a protected bid was higher than a protected offer;

(c) the locking or crossing order was posted after all displayed liquidity was executed and a reserve order generated a new visible bid above the displayed offer or offer below the displayed bid.".

**5.** Part 6 of the Policy Statement is replaced with the following:

"**PART 6 ORDER PROTECTION**

**6.1. Marketplace Requirements for Order Protection**

(1) Subsection 6.1(1) of the Regulation requires a marketplace to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs by orders entered on that marketplace. A marketplace may implement this requirement in various ways. For example, the policies and procedures of a marketplace may reasonably prevent trade-throughs via the design of the marketplace's trade execution algorithms (by not allowing a trade-through to occur), or by voluntarily establishing direct linkages to other marketplaces. Marketplaces are not able to avoid their obligations by establishing policies and procedures that instead require marketplace participants to take steps to reasonably prevent trade-throughs.

(2) It is the responsibility of marketplaces to regularly review and monitor the effectiveness of their policies and procedures and take prompt steps to remedy any deficiencies in reasonably preventing trade-throughs and complying with subsection 6.1(2) of

the Regulation. In general, it is expected that marketplaces maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities. Relevant information would include information that describes:

(a) steps taken by the marketplace to evaluate its policies and procedures;

(b) any breaches or deficiencies found; and

(c) the steps taken to resolve the breaches or deficiencies.

(3) As part of the policies and procedures required in subsection 6.1(1) of the Regulation, a marketplace is expected to include a discussion of their automated functionality and how they will handle potential delayed responses as a result of an equipment or systems failure or malfunction experienced by another marketplace. In addition, marketplaces should include a discussion of how they treat a directed-action order when received and how it will be used.

(4) Order protection applies whenever two or more marketplaces with protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.2(e), a marketplace would not be required to take steps to reasonably prevent trade-throughs of orders on another marketplace.

**6.2. Marketplace Participant Requirements for Order Protection**

(1) For a marketplace participant that wants to use a directed-action order, section 6.4 of the Regulation requires a marketplace participant to establish, maintain and ensure compliance with written policies and procedures that are reasonably designed to prevent trade-throughs. In general, it is expected that a marketplace participant that uses a directed-action order would maintain relevant information so that the effectiveness of its policies and procedures can be adequately evaluated by regulatory authorities. Relevant information would include information that describes:

(a) steps taken by the marketplace participant to evaluate its policies and procedures;

(b) any breaches or deficiencies found; and

(c) the steps taken to resolve the breaches or deficiencies.

The policies and procedures should also outline when it is appropriate to use a directed-action order and how it will be used as set out in paragraph 6.4(a) of the Regulation.

(2) Order protection applies whenever two or more marketplaces with protected orders are open for trading. Some marketplaces provide a trading session at a price established by that marketplace during its regular trading hours for marketplace participants who are required to benchmark to a certain closing price. In these circumstances, under paragraph 6.4(a)(iv)(C) of the Regulation, a marketplace participant would not be required to take steps to reasonably prevent trade-throughs of orders between marketplaces.

**6.3. List of Trade-throughs**

Section 6.2 and paragraphs 6.4(a)(i) to (a)(v) of the Regulation set forth a list of "permitted" trade-throughs that are primarily designed to achieve workable order protection and to facilitate certain trading strategies and order types that are useful to investors.

(a) (i) Paragraphs 6.2(a) and 6.4(a)(i) of the Regulation would apply where a marketplace or marketplace participant, as applicable, has reasonably concluded that a marketplace is experiencing a failure, malfunction or material delay of its systems,

equipment or ability to disseminate marketplace data. A material delay occurs when a marketplace repeatedly fails to respond immediately after receipt of an order. This is intended to provide marketplaces and marketplace participants with flexibility when dealing with a marketplace that is experiencing systems problems (either of a temporary nature or a longer term systems issue).

(ii) Under subsection 6.3(1) of the Regulation, a marketplace that is experiencing systems issues is responsible for informing all other marketplaces, its marketplace participants, any information processor, or if there is no information processor, an information vendor disseminating its information under Part 7 of *Regulation 21-101 respecting Marketplace Operation* and regulation services providers when a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data occurs. However, if a marketplace fails repeatedly to provide an immediate response to orders received and no notification has been issued by that marketplace that it is experiencing systems issues, the routing marketplace or a marketplace participant may, pursuant to subsections 6.3(2) and 6.3(3) of the Regulation respectively, reasonably conclude that the marketplace is having systems issues and may therefore rely on paragraph 6.2(a) or 6.4(a)(i) of the Regulation respectively. This reliance must be done in accordance with policies and procedures that outline processes for dealing with potential delays in responses by a marketplace and documenting the basis of its conclusion. If, in response to the notification by the routing marketplace or a marketplace participant, the marketplace confirms that it is not actually experiencing systems issues, the routing marketplace or marketplace participant may no longer rely on paragraph 6.2(a) or paragraph 6.4(a)(i) of the Regulation respectively.

(b) Paragraph 6.2(b) of the Regulation provides an exception from the obligation on marketplaces to use their policies and procedures to reasonably prevent trade-throughs when a directed-action order is received. Specifically, a marketplace that receives a directed-action order may immediately execute or book the order (or its remaining volume) and not implement the marketplace's policies and procedures to reasonably prevent trade-throughs. However, the marketplace will need to describe its treatment of a directed-action order in its policies and procedures. Paragraphs 6.2(c) and 6.4(a)(iii) of the Regulation provide an exception where a marketplace or marketplace participant simultaneously routes directed-action orders to execute against the total displayed volume of any protected order traded through. This accounts for the possibility that orders that are routed simultaneously as directed-action orders are not executed simultaneously causing one or more trade-throughs to occur because an inferior-priced order is executed first.

(c) Paragraphs 6.2(d) and 6.4(a)(ii) of the Regulation provide some relief due to moving or changing markets. Specifically, the exception allows for a trade-through to occur when immediately before executing the order that caused the trade-through, the marketplace on which the execution occurred had the best price but at the moment of execution, the market changes and another marketplace has the best price. The "changing markets" exception allows for the execution of an order on a marketplace, within the best bid or offer on that marketplace but outside the best bid or offer displayed across marketplaces in certain circumstances. This could occur for example:

(i) where orders are entered on a marketplace but by the time they are executed, the best bid or offer displayed across marketplaces changed; and

(ii) where a trade is agreed to off-marketplace and entered on a marketplace within the best bid and best offer across marketplaces, but by the time the order is executed on the marketplace (i.e. printed) the best bid or offer as displayed across marketplaces may have changed, thus causing a trade-through.

(d) The basis for the inclusion of calculated-price orders, non-standard orders and closing-price orders in paragraphs 6.2(e) and 6.4(a)(iv) of the Regulation is that these orders have certain unique characteristics that distinguish them from other orders. The characteristics of the orders relate to price (calculated-price orders and closing-price orders) and non-standard settlement terms (non-standard orders) that are not set by an exchange or a quotation and trade reporting system.

(e) Paragraphs 6.2(f) and 6.4(a)(v) of the Regulation include a transaction that occurred when there is a crossed market in the exchange-traded security. Without this allowance, no marketplace could execute transactions in a crossed market because it would constitute a trade-through. With order protection only applying to displayed orders or parts of orders, hidden or reserve orders may remain in the book after all displayed orders are executed. Consequently, crossed markets may occur. Intentionally crossing the market to take advantage of paragraphs 6.2(f) and 6.4(a)(v) of the Regulation would be a violation of section 6.5 of the Regulation.

**6.4. Locked and Crossed Markets**

(1) Section 6.5 of the Regulation provides that a marketplace participant shall not intentionally lock or cross a market by entering a protected order to buy a security at a price that is the same as or higher than the best protected offer or entering a protected order to sell a security at a price that is the same as or lower than the best protected bid. The reference to a "protected order" means that when entering a visible, displayed order, a marketplace participant cannot lock or cross a visible, displayed order. It is not intended to prohibit the use of marketable limit orders. Paragraphs 6.2(f) and 6.4(a)(v) of the Regulation allow for the resolution of crossed markets that occur unintentionally.

(2) Section 6.5 of the Regulation prohibits a marketplace participant from intentionally locking or crossing a market. This would occur, for example, when a marketplace participant enters a locking or crossing order on a particular marketplace or marketplaces to avoid fees charged by a marketplace or to take advantage of rebates offered by a particular marketplace. There are situations where a locked or crossed market may occur unintentionally. For example:

(a) when a marketplace participant routes multiple directed-action orders that are marked immediate-or-cancel to a variety of marketplaces and because of latency issues, a locked or crossed market results,

(b) the locking or crossing order was displayed at a time when the marketplace displaying the locked or crossed order was experiencing a failure, malfunction or material delay of its systems, equipment or ability to disseminate marketplace data,

(c) the locking or crossing order was displayed at a time when a protected bid was higher than a protected offer;

(d) the locking or crossing order was posted after all displayed liquidity was executed and a reserve order generated a new visible bid above the displayed offer or offer below the displayed bid.

(3) If a marketplace participant using a directed-action order chooses to book the order or the remainder of the order, then it is responsible for ensuring that the booked portion of the directed-action order does not lock or cross the market. The Canadian securities regulatory authorities would consider a directed-action order or remainder of a directed-action order that is booked and that locks or crosses the market to be an intentional locking or crossing of the market and a violation of section 6.5 of the Regulation.

**6.5. Anti-Avoidance Provision**

Section 6.7 of the Regulation prohibits a person from sending an order to an exchange, quotation and trade reporting system or alternative trading system that does not carry on business in Canada in order to avoid executing against better-priced orders on a marketplace in Canada. The intention of this section is to prevent the routing of orders to foreign marketplaces only for the purpose of avoiding the order protection regime in Canada.".

**6.** Section 7.3 of the Policy Statement is amended by replacing the words “IDA Policy No. 5 Code of Conduct for IDA Member Firms Trading in Domestic Debt Markets” with the words “IIROC Rule 2800 Code of Conduct for Corporation Dealer Member Firms Trading in Wholesale Domestic Debt Markets” .

**7.** Section 7.4 of the Policy Statement is amended by inserting, in the French text and after the word “titres”, the words “d’emprunt”.

**8.** The Policy Statement is amended by adding, after section 7.4, the following:

“**7.5. Agreement between a Marketplace and a Regulation Services Provider**

The purpose of subsections 7.2(c) and 7.4(c) of the Regulation is to facilitate the monitoring of trading by marketplace participants on and across multiple marketplaces by a regulation services provider. These sections of the Regulation also facilitate monitoring of the conduct of a recognized exchange and recognized quotation and trade reporting system for particular purposes. This may result in regulation services providers monitoring marketplaces that have retained them and reporting to a recognized exchange, recognized quotation and trade reporting system or securities regulatory authority if a marketplace is not meeting regulatory requirements or the terms of its own rules or policies and procedures. While the scope of this monitoring may change as the market evolves, we expect it to include, at a minimum, monitoring clock synchronization, the inclusion of specific designations, symbols and identifiers, order protection requirements and audit trail requirements.

**7.6. Coordination of Monitoring and Enforcement**

(1) Section 7.5 of the Regulation requires regulation services providers, recognized exchanges and recognized quotation and trade reporting systems to enter into a written agreement whereby they coordinate the enforcement of the requirements set under Parts 7 and 8. This coordination is required in order to achieve cross-marketplace monitoring.

(2) If a recognized exchange or recognized quotation and trade reporting system has not retained a regulation services provider, it is still required to coordinate with any regulation services provider and other exchanges or quotation and trade reporting systems that trade the same securities in order to ensure effective cross-marketplace monitoring.

(3) Currently, only IIROC is the regulation services provider for both exchange-traded securities, other than options and in Québec, other than standardized derivatives, and unlisted debt securities. If more than one regulation services provider regulates marketplaces trading a particular type of security, these regulation services providers must coordinate monitoring and enforcement of the requirements set.”.

**9.** The provisions of sections 1, 2, 4 and 6 to 8 of these amendments take effect on January 28, 2010.

**10.** The provisions of sections 3 and 5 of these amendments take effect on February 1, 2011.

## 7.3. RÉGLEMENTATION DES BOURSES, DES CHAMBRES DE COMPENSATION, DES OAR ET D'AUTRES ENTITÉS RÉGLEMENTÉES

### 7.3.1 Consultation

Aucune information.

### 7.3.2 Publication

**Bourse de Montréal Inc. - Opérations de base sans risque -Modifications aux articles 6005 et 6380 des Règles - Ajout des Procédures relatives à l'exécution d'opérations de base sans risque sur les contrats à terme sur indices S&P/TSX**

Vu la demande complétée le 28 septembre 2009 par Bourse de Montréal Inc. (la « Bourse ») afin d'obtenir l'approbation de l'Autorité des marchés financiers (l' «Autorité») pour des modifications aux articles 6005 et 6380 des Règles et l'ajout des Procédures relatives à l'exécution d'opérations de base sans risque sur les contrats à terme sur indices S&P/TSX visant à autoriser, à titre d'opération hors bourse, la réalisation d'opérations de base sans risque sur contrats à terme sur indices S&P/TSX et à fixer les modalités encadrant de telles opérations (ensemble, les « modifications et procédures »);

Vu la déclaration de la Bourse à l'effet que les modifications et procédures ont été dûment approuvées par le Comité de règles et politiques de la Bourse le 28 avril 2008;

Vu l'article 74 de la Loi sur l'Autorité des marchés financiers, L.R.Q., c. A-33.2 (la « Loi »);

Vu les pouvoirs délégués conformément à l'article 24 de la Loi;

Vu l'analyse effectuée par la Direction de la supervision des OAR et sa recommandation d'approuver les modifications et procédures du fait qu'elles sont susceptibles de favoriser le bon fonctionnement du marché sans porter atteinte à la protection des épargnants;

En conséquence :

L'Autorité approuve les modifications et procédures.

Fait à Montréal, le 18 décembre 2009.

Louis Morisset
Surintendant des marchés de valeurs

Décision n° 2009-OAR-0026

**Organisme canadien de réglementation du commerce des valeurs mobilières Modifications des dispositions sur le traitement des plaintes**

Vu la demande complétée le 30 octobre 2009 par l'Organisme canadien de réglementation du commerce des valeurs mobilières (l' « OCRCVM ») afin d'obtenir l'approbation par l'Autorité des marchés financiers (l' « Autorité ») de modifications aux Règles des courtiers membres de l'OCRCVM à savoir :

- l'ajout d'une nouvelle règle sur le traitement des plaintes de clients;
- l'abrogation de l'article 4 de la Règle 19;
- l'abrogation de l'article 3 de la Règle 3; et

- l’abrogation et le remplacement de la section VIII de la Règle 2500;

(ensemble, les « modifications »);

Vu l’adoption des modifications par le conseil d’administration de l’OCRCVM le 28 janvier 2009;

Vu l’article 74 de la *Loi sur l’Autorité des marchés financiers*, L.R.Q., c. A-33.2 (la « Loi »);

Vu les pouvoirs délégués conformément à l’article 24 de la Loi;

Vu l’analyse effectuée par la Direction de la supervision des OAR et sa recommandation d’approuver les modifications du fait qu’elles contribueront à la protection des investisseurs;

En conséquence :

L’Autorité approuve les modifications.

Fait à Montréal, le 7 décembre 2009.

Louis Morisset
Surintendant des marchés de valeurs

Décision n° 2009-OAR-0025

## 7.4 AUTRES CONSULTATIONS

Aucune information.

## 7.5 AUTRES DÉCISIONS

Aucune information.