

IN THE MATTER OF THE *SECURITIES ACT* (“the Act”)
R.S.N.L 1990, CHAPTER S-13

AND

IN THE MATTER OF ICE TRADE VAULT, LLC

RECOGNITION ORDER
(Section 25.2)

Background

1. ICE Trade Vault LLC (the Applicant) intends to carry on business as a trade repository in Newfoundland and Labrador (the Local Jurisdiction) in accordance with Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* (MI 96-101).
2. The Applicant has filed an application with the Superintendent of Securities (the Superintendent) seeking recognition as a quotation and trade reporting system pursuant to section 25.2 of the *Securities Act* (Newfoundland and Labrador) (the Act).
3. Under the *Memorandum of Understanding respecting the Oversight of Clearing Agencies, Trade Repositories and Matching Service Utilities* dated December 3, 2015 among various Canadian securities regulatory authorities, the Ontario Securities Commission (the OSC) has been selected as the lead authority for the Applicant.
4. Under the *Memorandum of Understanding regarding Cooperation and the Exchange of Information related to the Supervision of Cross-border Covered Entities* dated March 25, 2014, the United States (US) Commodity Futures Trading Commission (the CFTC), the Superintendent and other Canadian securities regulatory authorities have agreed to share information regarding cross-border covered entities including the Applicant.

Interpretation

5. Terms defined in the Act, National Instrument 14-101 *Definitions*, Multilateral Instrument 91-101 *Derivatives: Product Determination* or in MI 96-101 have the same meaning in this order unless otherwise defined herein.

Representations


6. This decision is based on the following representations made by the Applicant to the Superintendent:

- (a) the Applicant is a limited liability company organized under the provisions of The Delaware Limited Liability Company Act and situated in the US;
- (b) the Applicant is an indirect and wholly-owned subsidiary of Intercontinental Exchange, Inc. (ICE), a public company governed by the laws of the State of Delaware;
- (c) the Applicant is provisionally registered with the CFTC as a swap data repository (SDR) and is in good standing as a SDR; and
- (d) the Applicant is designated as a trade repository by the OSC pursuant to a September 19, 2014 order (the OSC Designation Order) and is in good standing in Ontario as a trade repository.

Decisions

- 7. Based on the representations of the Applicant set forth in paragraph 6 above, the Superintendent is satisfied that the recognition of the Applicant will not be prejudicial to the public interest.
- 8. The Superintendent recognizes the Applicant as a quotation and trade reporting system under section 25.2 of the *Act*, for the purpose of Acting as a trade repository in accordance with MI 96-101, effective July 28, 2016, on the terms and conditions in Schedule A and Schedule C that are attached to and a part of this order.
- 9. The Superintendent exempts the Applicant from certain requirements, as set out in Schedule B and Schedule D that are attached to and a part of this order,

Dated at St. John's, in Newfoundland and Labrador, this 15th day of March, 2019.



Renee Dyer
Superintendent of Securities

Schedule A General Terms and Conditions

Regulation by the CFTC and the OSC

1. The Applicant will maintain its registration as a SDR with the CFTC and will remain subject to regulatory oversight by the CFTC.
2. The Applicant will maintain, in good standing, its designation as a trade repository by the OSC and will remain subject to regulatory oversight by the OSC.

Local Services

3. The Applicant will provide services to its participants that are local counterparties in the Local Jurisdiction (Local Participants) on the same terms and conditions, including fees, as it provides to comparable participants in other jurisdictions in Canada, where the Applicant is recognized or designated as a trade repository.
4. The Applicant will offer a trade repository solution that enables Local Participants to fulfill their reporting obligation under MI 96-101.
5. The Applicant will offer the services required in paragraphs 3 and 4 between the hours of 8:00 a.m. to 8:00 p.m., Eastern Time Monday through Friday except when closed for maintenance.
6. The Applicant will accept derivatives data in relation to specified derivatives that are required to be reported in the Local Jurisdiction, in the following asset classes: interest rate, commodity, credit and foreign exchange.

Reporting Requirements

7. The Applicant will, promptly on request by the Superintendent, provide the Superintendent, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information, any information that:
 - (a) is reported to the Applicant under MI 96-101;
 - (b) is in the custody or control of the Applicant; and
 - (c) relates to Local Participants, the operations of the Applicant as a recognized trade repository in the Local Jurisdiction or compliance with this order.
8. The Applicant will promptly notify the Superintendent, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information, of any of the following:

- (a) a material change or proposed material change to its status as a SDR in the US or the regulatory oversight of the CFTC;
 - (b) a material change or proposed material change to its status as a trade repository in Ontario or the regulatory oversight of the OSC;
 - (c) a material change to the control or ownership of its ultimate parent, ICE;
 - (d) a material change to the representations in this order;
 - (e) a Local Participant has been sanctioned by the Applicant or has had its access terminated by the Applicant;
 - (f) a Local Participant has been denied access to the Applicant's services as a trade repository after the exhaustion of the Applicant's appeal process; and
 - (g) the Applicant has notified the OSC of any event, circumstance or situation under the part of the OSC Designation Order entitled "Reporting Requirements".
9. The Applicant will provide a list of current Local Participants to the Superintendent, in a manner and form acceptable to the Superintendent and subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information, at such times as are prescribed for the provision of corresponding information to the OSC under the OSC Designation Order.

Data Reporting and Dissemination

10. The Applicant will fulfil its obligations under section 37 of MI 96-101 by providing the relevant data and information, in a manner and at the times acceptable to the Superintendent subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information, to the Superintendent and, if directed to do so in writing by the Superintendent, to another Canadian securities regulatory authority.

MI 96-101

11. The Applicant will, subject to the exemptions in Schedule B, comply with the applicable requirements set out in MI 96-101.

Schedule B General Exemption

Background

1. The Applicant has filed an application with the Superintendent for recognition as a quotation and trade reporting system (QTRS) pursuant to section 25.2 of the *Act* to allow it to operate as a trade repository under MI 96-101.
2. The Applicant has also applied to the Superintendent for an order under section 43 of MI 96-101 exempting the Applicant from subsections 3(1), 4(1), 5(1), 39(1) and 39(2) of MI 96-101, which requires the Applicant to:
 - (a) file an amendment to Form 96-101F1 *Application for Recognition – Trade Repository Information Statement* (Form 96-101F1), in the manner set out in Form 96-101F1, no later than 45 days before implementing a significant change pursuant to subsection 3(1) of MI 96-101;
 - (b) file audited financial statements for its most recently completed financial year with the Superintendent as part of its application for recognition pursuant to subsection 4(1) of MI 96-101;
 - (c) file annual audited financial statements with the Superintendent no later than the 90th day after the end of its financial year pursuant to subsection 5(1) of MI 96-101;
 - (d) make publicly available aggregate data by price pursuant to subsection 39(1) of MI 96-101; and
 - (e) make publicly available aggregate data broken down by geographic location pursuant to subsection 39(2) of MI 96-101.(the Exemption Sought).
3. The Applicant does not have audited financial statements for its most recently completed financial year and the Applicant has provided the Superintendent its unaudited financial statements and audited financial statements of its ultimate parent, Intercontinental Exchange Inc., for the most recent financial year.
4. The Applicant is not required to file annual audited financial statements with the CFTC.
5. The CFTC requires the Applicant to file a proposed change of information, including an amendment that the Applicant is required to file to Form 96-101F1 with the Superintendent, no later than ten business days before the intended effective date of the proposed change.

6. The CFTC does not currently impose a requirement to make publicly available aggregate data by price that is comparable to subsection 39(1) of MI 96-101.
7. The CFTC does not currently impose a requirement to make publicly available aggregate data broken-down by geographic location that is comparable to subsection 39(2) of MI 96-101.

Representations

8. The OSC Designation Order includes terms and conditions under the heading “Change of Information” similar to the relief being sought from subsection 3(1) of MI 96-101 and the Application complies with the filing requirements under the OSC Designation Order.
9. The Applicant files annual unaudited financial statements with the CFTC and maintains liquid net assets equal to a minimum of six months of operating expenses pursuant to CFTC requirements.
10. The OSC Designation Order includes relief for the Applicant from the requirements that are similar to subsections 4(1) and 5(1) of MI 96-101 and the Applicant complies with the exempted relief requirements under the OSC Designation Order.
11. In the event that the CFTC does impose a requirement to make publicly available aggregate data by price that is comparable to subsection 39(1) of MI 96-101 or a requirement to make publicly available aggregate data broken-down by geographic location that is comparable to subsection 39(2) of MI 96-101, the Applicant will comply with such requirement or requirements, as the case may be, within a reasonable period of time.

Decision

12. The Superintendent, considering that it would not be prejudicial to the public interest to do so, orders that the Exemption Sought is granted provided that:
 - (a) the Applicant remains registered as a SDR and subject to the regulatory oversight and requirements of the CFTC;
 - (b) the Applicant files with the Superintendent an amendment to the information provided in Form 96-101F1 under subsection 3(1) of MI 96-101 concurrently with the filing with the CFTC. If a significant change to a matter set out in Form 96-101F1 is not subject to filing with the CFTC, the Applicant will comply with the filing requirement as set out in subsection 3(1) of MI 96-101;
 - (c) the Applicant files with the Superintendent, concurrently with filing with the CFTC and no later than the 90th day after the end of its financial year:

- i. annual unaudited financial statements of the Applicant prepared in accordance with US GAAP as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107), and
 - ii. annual audited financial statements of its ultimate parent, Intercontinental Exchange Inc., prepared in accordance with US GAAP and audited in accordance with US AICPA GAAS or US PCAOB GAAS as these terms are defined in NI 52-107. The audit report that accompanies these financial statements must express as an unqualified opinion;
- (d) the Applicant's proposed new or amended rules, policies and procedures are subject to the prior approval by the CFTC.

Schedule C

Newfoundland and Labrador - Specific Terms and Conditions

Compliance with MI 96-101

1. The Applicant will provide services as a trade repository for specified derivatives in accordance with the MI 96-101, but will not operate a trading platform for securities or derivatives in Newfoundland and Labrador.

Schedule D

Newfoundland and Labrador - Specific Exemption

Background

1. The Applicant is seeking recognition as a quotation and trade reporting system (QTRS) and is therefore subject to all requirements applicable to QTRSs under the *Act*.
2. The Applicant is seeking recognition as a QTRS in Newfoundland and Labrador solely for the purpose of providing services as a trade repository under MI 96-101, and does not intend to operate as a marketplace as defined in National Instrument 21-101 *Marketplace Operation* (NI 21-101) and therefore seeks an exemption from all requirements applicable to QTRSs or marketplaces in NI 21-101, National Instrument 23-101 *Trading Rules* and National Instrument 23-103 *Electronic Trading and Direct Access to Marketplaces*. (the Newfoundland and Labrador exemption sought).

Representations

3. The Applicant will offer persons in Newfoundland and Labrador services to allow those persons to report trades in specified derivatives.
4. The Applicant will not conduct business as a marketplace in Newfoundland and Labrador.

Decision

5. Considering that it is not prejudicial to the public interest, the Superintendent orders that the Newfoundland and Labrador exemption sought is granted provided that the Applicant does not conduct business as a marketplace in Newfoundland and Labrador.