

SUBMISSION COVER SHEET

Registered Entity Identifier Code (optional)

Date: May 7, 2018

IMPORTANT: CHECK BOX IF CONFIDENTIAL TREATMENT IS REQUESTED.

ORGANIZATION

ICE NGX Canada Inc.

FILING AS A:

DCM

SEF

DCO

SDR

ECM/SPDC

TYPE OF FILING

• **Rules and Rule Amendments**

- Certification under § 40.6 (a) or § 41.24 (a)
- "Non-Material Agricultural Rule Change" under § 40.4 (b)(5)
- Notification under § 40.6 (d)
- Request for Approval under § 40.4 (a) or § 40.5 (a)
- Advance Notice of SIDCO Rule Change under § 40.10 (a)

• **Products**

- Certification under § 39.5(b), § 40.2 (a), or § 41.23 (a)
- Swap Class Certification under § 40.2 (d)
- Request for Approval under § 40.3 (a)
- Novel Derivative Product Notification under § 40.12 (a)

RULE NUMBERS

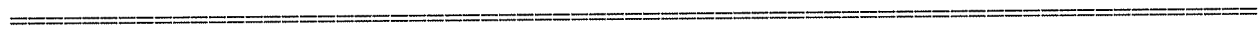
40.6(a)

DESCRIPTION

Attached is a rule amendment submission pursuant to Commission Rule 40.6(a).

ICE NGX Canada Inc.
Rule Amendment Submission #2018-01
May 7, 2018

1. The text of the rule changes to the ICE NGX Canada Inc. (“NGX DCO”) Contracting Party Agreement (“CPA”), NGX DCO’s Rulebook, is attached. Additions are underlined and deletions are stricken through. These rule changes have been approved by NGX DCO. Capitalized terms, unless otherwise defined herein shall possess the meaning(s) ascribed in the CPA.
2. The proposed effective date is ten business days after receipt by the Commodity Futures Trading Commission (“CFTC” or “Commission”) of this submission.
3. Attached, please find a certification that: (1) these rules comply with the Commodity Exchange Act and the Commission’s regulations thereunder; and (2) concurrent with this submission, NGX DCO posted on its website: (i) a notice of pending certification of the rule submissions with the Commission; and (ii) a copy of this submission.
4. A concise explanation and analysis of the operation, purpose, and effect of the amended rules appear below.
5. There were no opposing views expressed regarding these amended rules.



CONCISE EXPLANATION AND ANALYSIS OF THE OPERATION, PURPOSE, AND
EFFECT OF THE CERTIFIED RULE AND ITS COMPLIANCE WITH APPLICABLE
PROVISIONS OF THE ACT, INCLUDING CORE PRINCIPLES AND THE COMMISSION’S
REGULATIONS THEREUNDER

Pursuant to Commission Rule 40.6(a)(7)(vi), the following is a concise explanation and analysis of the operation, purpose, and effect of the amended rules.

Clarification that the U.S. Federal Deposit Insurance Corporation Improvement Act of 1991 Applies to NGX DCO

The U.S. Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”) applies to registered derivative clearing organizations, including NGX DCO. FDICIA explicitly preempts any contrary provisions of state or federal law, including any stay which may otherwise apply under the U.S. Bankruptcy Code. Specifically, FDICIA protects the enforceability by a clearing organization member (which includes the clearing organization itself) of its rights to termination, liquidation, acceleration, and netting under a “netting contract.” FDICIA generally provides that clearing organization members can enforce obligations and entitlements under those contracts according to their terms. Further, FDICIA limits the obligation to make payment to the net obligation arising under the netting contract and to receive payment to the net

entitlement arising under the netting contract.¹ Thus, under FDICIA, the rules of a DCO constitute a master netting agreement which applies and is enforceable regardless of any contrary provision of the U.S. Bankruptcy Code.

The CPA provides that it is governed by and construed in accordance with the laws in force in the Province of Alberta and with the federal laws of Canada.² Nevertheless, the CPA also expresses its understanding that NGX DCO is, and intends to be, subject to the netting protections of FDICIA, expressly stating, inter alia, that NGX DCO is a “clearing organization,” that the CPA is a “netting contract”, and that each Contracting Party and NGX DCO “members,” as defined by FDICIA.³ NGX DCO is amending Section 1.4(a) of the CPA to make that understanding explicit and to remove any doubt the CPA is also governed, as applicable, by and construed in accordance with FDICIA.

The purpose and effect of this amendment is to clarify the CPA as currently drafted and does not make any substantive change thereto.

Amendment of the definition of “Approved Financial Institution”

NGX DCO is making a second, unrelated amendment to the CPA. NGX DCO is amending the definition of “Approved Financial Institution” in section 1.2(e) of the CPA. As amended, NGX recognizes as an Approved Financial Institution any bank that has a credit rating of at least the lower of: (i) “A” from Standard & Poor’s Rating Services, or (ii) “A2” from Moody’s Investors Service, Inc. The effect of the amendment will be to enable NGX to accept a letter of credit from a contracting party as issued from any bank approved by NGX with the lower of the applicable credit rankings. This change, although providing NGX greater flexibility in qualifying a bank based upon a lower ranking as between Standard & Poors Rating Services and Moody’s Investors Service, will not have an impact on NGX’s current practice.

¹ See, 12 U.S.C. § 404(b), (c).

² CPA Section 1.4(a).

³ See, CPA Section 5.14(a)(i), (iv), (vii).

ATTACHMENT A—RULE AMENDMENTS

Additions are underscored, deletions are stricken.

Section 1.2: Definitions

e. "Approved Financial Institution" means any bank approved by Exchange with long-term, unsecured, unsubordinated debt (not supported by third party credit enhancement) with the lower of at least one credit rating of: at least (i) "A" from Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or (ii) "A2" from Moody's Investors Service, Inc., or their respective successors;

* * * * *

Section 1.4 Miscellaneous

- a. This Agreement shall be governed by and construed in accordance with the laws in force in the Province of Alberta and the federal laws of Canada applicable therein and as applicable thereto, including without limitation in respect of its relationship to other U.S. laws, governed by and in accordance with the U.S. Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA"). Reference to such laws shall not, by the application of conflicts of law rules, or otherwise, require the application of any laws other than the laws of the Province of Alberta and the federal laws of Canada and FIDICIA, each as applicable. Each of the Contracting Party and Exchange hereby attorns to the non-exclusive jurisdiction of the courts of the Province of Alberta. Each of the Contracting Party and Exchange hereby agrees that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or any Physically Settled Futures Transaction.

* * *

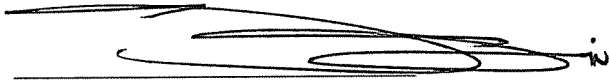
- e. Each of the Contracting Party and Exchange intend and agree that each and every Transaction cleared by and subject to the rules of NGX acting as a registered Derivatives Clearing Organization be subject to the netting provisions of section 5.13 and 5.14 of the Agreement.

* * * * *

CERTIFICATIONS PURSUANT TO SECTION 5c OF THE COMMODITY EXCHANGE
ACT, 7 U.S.C. §7A-2 AND COMMODITY FUTURES TRADING COMMISSION RULE 40.6,
17 C.F.R. §40.6

I hereby certify that:

- (1) the amended Rules above comply with the Commodity Exchange Act, and the Commodity Futures Trading Commission's regulations thereunder; and
- (2) concurrent with this submission, ICE NGX Canada Inc. posted on its website:
 - (a) a notice of pending certification of the above Rules with the Commission; and
 - (b) a copy of this submission.



By: Stephen Lappin
Title: President and COO
Date: May 7, 2018