

## SUBMISSION COVER SHEET

**IMPORTANT:** Check box if Confidential Treatment is requested

Registered Entity Identifier Code (optional): \_\_\_\_\_

Organization: \_\_\_\_\_

Filing as a:        **DCM**        **SEF**        **DCO**        **SDR**    Please note - only ONE choice allowed.

Filing Date (mm/dd/yy): \_\_\_\_\_ Filing Description:

**SPECIFY FILING TYPE**                      Please note only ONE choice allowed per Submission.

**Organization Rules and Rule Amendments**

Certification	§ 40.6(a)
Approval	§ 40.5(a)
Notification	§ 40.6(d)
Advance Notice of SIDCO Rule Change	§ 40.10(a)
SIDCO Emergency Rule Change	§ 40.10(h)

Rule Numbers: \_\_\_\_\_

**New Product**                                      Please note only ONE product per Submission.

Certification	§ 40.2(a)
Certification Security Futures	§ 41.23(a)
Certification Swap Class	§ 40.2(d)
Approval	§ 40.3(a)
Approval Security Futures	§ 41.23(b)
Novel Derivative Product Notification	§ 40.12(a)
Swap Submission	§ 39.5

Official Product Name: \_\_\_\_\_

**Product Terms and Conditions (product related Rules and Rule Amendments)**

Certification	§ 40.6(a)
Certification Made Available to Trade Determination	§ 40.6(a)
Certification Security Futures	§ 41.24(a)
Delisting (No Open Interest)	§ 40.6(a)
Approval	§ 40.5(a)
Approval Made Available to Trade Determination	§ 40.5(a)
Approval Security Futures	§ 41.24(b)
Approval Amendments to enumerated agricultural products	§ 40.4(a), § 40.5(a)
“Non-Material Agricultural Rule Change”	§ 40.4(b)(5)
Notification	§ 40.6(d)

Official Name(s) of Product(s) Affected: \_\_\_\_\_

Rule Numbers: \_\_\_\_\_

**ICE NGX CANADA INC.  
Rule Amendment Submission  
December 12, 2018**

1. The text of the amended provisions to the ICE NGX Canada Inc. ("ICE NGX") Contracting Party Agreement ("CPA") is appended as Attachment A. The CPA is part of ICE NGX's rulebook. Additions to the text are underlined and deletions are struck through.
2. The date of intended implementation for these amendments is twelve business days after the date of this submission.
3. Attached, please find a certification that: (a) these rule amendments comply with the Commodity Exchange Act (the "Act"), and the Commission's regulations thereunder; and (b) concurrent with this submission, ICE NGX posted on its website: (i) a notice of pending certification of the amendments with the Commission; and (ii) a copy of this submission.
4. A concise explanation and analysis of the operation, purpose, and effect of the amendments appears below.
5. There were no opposing views expressed regarding these amendments.
6. Confidential treatment is not requested.

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**CONCISE EXPLANATION AND ANALYSIS OF THE OPERATION, PURPOSE, AND  
EFFECT OF THE RULE AMENDMENT 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 amendments to the ICE NGX CPA.

ICE NGX is amending the CPA to reflect ICE NGX's planned changes to its data services and subscription fees, effective January 1, 2019. These changes to the data services and subscription fees were previously communicated to Contracting Parties via notice dated October 19, 2018.

As you will recall, Schedule "A" to the CPA sets out the subscription fees and transaction fees that ICE NGX charges its Contracting Parties. The changes to Schedule "A" establish a revised fee structure for accessing ICE NGX Data Products. The revised fee structure features reduced monthly data subscription fees for Contracting Parties and Contracting Party Affiliates to access ICE NGX Data Products, and introduces a monthly per-Authorized User subscription fee.

The amendments comply with DCO Core Principle L – Public Information, as the amendments ensure that ICE NGX remains transparent regarding the Contracting Parties' subscription fees and applicable fees for accessing ICE NGX Data Products.

No opposing views were expressed in relation to the amendments. The amendments to the CPA are set out in Attachment A; additions are underlined and deletions are struck through.

**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 provisions of the Contracting Party Agreement 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 these rules with the Commission; and (b) a copy of this submission.



By: Steve Lappin  
Title: President  
Date: December 12, 2018

## ATTACHMENT A

*[Note: insertions are underscored; deletions are struck through]*

### AMENDMENTS TO THE TERMS AND CONDITIONS OF THE ICE NGX CONTRACTING PARTY AGREEMENT

#### 1.2 Definitions

- h. "Authorized Users" means the employees of the Contracting Party who have been identified as Authorized Users to the Exchange and who have access to and can use the ICE NGX Data Products as set forth in this Agreement;
- iiii. "ICE NGX Data Products" means any and all data or information that is not Trade Data but is used in relation to the ICE NGX Clearing Systems, the ICE Trading Platform and/or the ICE NGX Trading System, including, but not limited to data or information, resulting from or derived from usage of the Trade Data in relation to the ICE NGX Clearing Systems, the ICE Trading Platform and/or the ICE NGX Trading System;
- ooooooo. "Services" means the services that Exchange provides to the Contracting Party in connection with this Agreement, including access to and use of the ICE NGX Data Products but excluding, for greater clarity, Exchange's obligations to deliver, take or pay for gas, Physical Power or oil as required under any Transaction and Exchange's obligations to pay any amount under any Financially Settled Futures Transaction or Option Transaction;
- wwwwwww. "Trade Data" means any and all data and/or information submitted by the Contracting Party to the ICE NGX Clearing Systems, the ICE Trading Platform and/or the ICE NGX Trading System (including, but not limited to bids and offers for Transactions and all information related to Transactions entered into by Contracting Party through the ICE NGX Clearing Systems, the ICE Trading Platform and/or the ICE NGX Trading System);

*[Note: The numbering of subsequent paragraphs in section 1.2 will be updated to reflect the insertion of "Authorized Users", "ICE NGX Data Products" and "Trade Data".]*

#### 3.2 Agreements of the Contracting Party

- a. Data - The Contracting Party acknowledges and agrees that the Trade Data shall be the non-exclusive property of the Exchange or its affiliates and the Contracting Party, and that each party shall have the right to use, sell, retransmit or redistribute such Trade Data in accordance with and subject to the provisions of Sections 3.2(f) and 3.4(a). The Contracting Party further acknowledges and agrees that as between the Contracting Party and the Exchange or its affiliates, the ICE NGX Data Products shall be the exclusive property of the Exchange or its affiliates to use as it deems fit, and except as expressly set forth in this Agreement, the Contracting Party shall have no rights to use such ICE NGX Data Products without the Exchange's or its affiliates prior written consent.

- b. Indemnity - The Contracting Party agrees to protect, defend, hold harmless and indemnify the Exchange and/or its affiliates from and against all claims, damages, liabilities, losses and expenses for any use of the ICE NGX Data Products by the Contracting Party, or any use of the Trade Data by the Exchange or its affiliates.
  
- c. The Authorized Users will access and use the ICE NGX Data Products exclusively for the Contracting Party's own internal business activities. The Contracting Party will not permit any of its employees other than Authorized Users to access the ICE NGX Data Products without the express written consent of ICE Data. The Contracting Party will not, and will not permit any of its employees to, copy, modify, reverse engineer, reverse assemble or reverse compile the ICE NGX Data Products. The Contracting Party will not, and will not permit any of its employees to, distribute, rent, sell, retransmit, redistribute, release or license the ICE NGX Data Products, or any part thereof, to any third party. The Contracting Party will not, and will not permit any of its employees to, communicate (orally, in writing, electronically or otherwise), redistribute, or otherwise furnish, or permit to be communicated, redistributed or otherwise furnished, all or any portion of the ICE NGX Data Products, in any format, to any third party or any person other than the Authorized Users. The Contracting Party will not, and will not permit any of its employees to, archive ICE NGX Data Products, use or co-mingle ICE NGX Data Products or permit ICE NGX Data Products to be used or co-mingled in constructing or calculating the value of any other price reference or data, index or indexed products other than for internal purposes only.

*[Note: The numbering of subsequent paragraphs in section 3.2 will be updated to reflect the insertion of paragraphs a., b. and c.]*

### **3.4 Agreements of Exchange**

- a. Confidentiality
  - (i) Exchange hereby agrees to use its commercially reasonable efforts to keep confidential any and all ~~financial or other~~ non-public information received from the Contracting Party from time to time, including pursuant to the Application, and information in respect of any Transaction entered into by the Contracting Party, any and all information about the trading patterns, prices (including market price reference) and accounts that is not ICE NGX Data Products. Nothing in this paragraph shall prevent Exchange from disclosing any information as may be required or allowed pursuant to the terms of this Agreement, to ICE or to any other service provider of Exchange in connection with the performance of any Transaction or as may be required to be disclosed by either Exchange or ICE by law or any regulatory authority, or as may be disclosed in the course of securing, or pursuant to, any order, consent or approval signifying, any Regulatory Approval.

...

- c. Data License – Exchange grants to the Contracting Party a limited, revocable, paid-up, non-transferable and non-exclusive license to use the ICE NGX Data Products for the sole purpose of and in accordance with this Agreement and the usage rights set forth Section 3.2.

- d. Indemnification for Infringement – Exchange agrees to protect, defend, hold harmless and indemnify the Contracting Party from and against any and all claims, damages, liabilities, losses and expenses for any infringement or alleged infringement of a patent, copyright, trade secret or other intellectual property right by the ICE NGX Clearing System or the Contracting Party's use thereof. Exchange will have the sole right to defend, on behalf of the Contracting Party or in its own name, any such action for infringement but Exchange will provide the Contracting Party with reasonable information in respect of such action from time to time. Exchange may settle any action for infringement against the Contracting Party for which its obligation of indemnification of the Contracting Party is effective hereunder without the Contracting Party's written approval and may settle any other such action for infringement with the Contracting Party's written approval, which approval will not be unreasonably withheld. Exchange will have no indemnity obligation for infringement claims: (i) with respect to the ICE NGX Data Products or Trade Data; (ii) resulting from any combination, operation or use of the ICE NGX Clearing System with any programs or equipment not supplied by Exchange, if such infringement would have been avoided but for such use; (iii) resulting from any activity of the Contracting Party which is in breach of this Agreement; or (iv) if the Contracting Party does not give Exchange prompt notice of an infringement claim against it and provide Exchange, at Exchange's cost, with reasonable assistance with the defence of the action.

...

*[Note: The numbering of subsequent paragraphs in section 3.4 will be updated to reflect the insertion of paragraph c.]*

## **5.8 Limitations on Liability**

- a. Electronic System – Except in instances where there has been a finding of wilful or wanton misconduct on the part of Exchange, neither Exchange, its affiliates or service providers, nor the agents, directors, officers, employees and representatives of Exchange, its affiliates or service providers shall be liable to the Contracting Party, for any losses, damages, costs or expenses arising from any failure, defect, or malfunction in, or any fault in delivery, delay, omission, suspension, inaccuracy, termination, entry of data on behalf of either Exchange or Contracting Party or any other cause, in connection with the furnishing, performance, maintenance, use of or inability to access all or part of the ICE Trading Platform, the ICE NGX Trading System or the ICE NGX Clearing System or any Services, including, without limitation, the taking of verbal or instant messaging instructions and/or the entering of any Order into the ICE NGX Trading System or ICE Trading Platform, regardless of whether the claim arises in contract, tort, negligence, strict liability or otherwise. Without limitation to the foregoing, Contracting Party shall assume, and shall release and waive Exchange from, all liability, loss or damage arising or suffered at any time and from time to time in connection with the ICE NGX Data Products and/or any Transactions entered into by or on behalf of the Contracting Party by personnel other than Authorized Representatives.

...

- f. Warranty of Fitness – Other than as expressly provided in Section 5.8(a), Exchange hereby expressly disclaims any warranty, express or implied, in respect of all or any part of the ICE NGX Trading System, or ICE NGX Clearing System, ICE NGX Data Products

or any of the Services, notwithstanding anything contained in this Agreement or any Schedule including, without limitation, any warranty in respect of merchantability or fitness for a particular purpose or use.

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**AMENDMENTS TO SCHEDULE "A" OF THE  
ICE NGX CONTRACTING PARTY AGREEMENT**

**SCHEDULE "A" – FEE SCHEDULE<sup>1</sup>**

**Subscription Fees – Monthly<sup>2</sup>**

Subscription Fee per month – Contracting Party	<u>USD</u>	<del>\$2,500</del> <u>\$1,500</u>
Subscription Fee per month – Contracting Party Affiliate	<u>USD</u>	<del>\$1,000</del> <u>\$750</u>
Subscription Fee per month – Contracting Party, US Phys Products Only <sup>3</sup>	<u>USD</u>	\$1,500
Subscription Fee per month – Contracting Party Affiliate, US Phys Products Only <sup>3</sup>	<u>USD</u>	\$750
<u>Subscription Fee per month – Authorized User from a Contracting Party<sup>4</sup></u>	<u>USD</u>	<u>\$125</u>

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<sup>1</sup> ...

<sup>2</sup> ...

<sup>3</sup> ...

<sup>4</sup> Each Authorized User will be charged the monthly subscription fee.