

ALBERTA SECURITIES COMMISSION

ORDER

Citation: Re ICE NGX Canada Inc., 2021 ABASC 118

Date: 20210723

ICE NGX Canada Inc.

Background

1. ICE NGX Canada Inc. (the **Filer**) has applied to the Alberta Securities Commission (the **Commission**) for an order under section 6.1 of National Instrument 24-102 *Clearing Agency Requirements* (**NI 24-102**) exempting the Filer from the requirements as outlined in paragraph 1(a) below (together, the **Exemption Sought**), given that the Filer has engaged certain parties to prepare, and those parties have prepared the Internal Audit report and the ICE SOC 2 report (together the **2020 reports**), as described in paragraphs 8 and 9 in this order, and the Filer has provided the 2020 reports to its board of directors and the Commission, in accordance with the timing requirements of subsection 4.7(2) of NI 24-102:
 - (a) in respect of calendar year 2020, and in accordance with the current requirements of NI 24-102:
 - (i) the requirement under paragraph 4.7(1)(a) of NI 24-102 to engage a qualified external auditor to conduct an independent systems review (**ISR**) and prepare a report, in accordance with established audit standards and best industry practices, that assesses the Filer's compliance with paragraphs 4.6(a) and 4.6.1(2)(a) and section 4.9 of NI 24-102; and
 - (ii) the requirement under subsection 4.7(2) to provide, within the prescribed times, the report resulting from the review conducted under paragraph 4.7(1)(a) to its board of directors or audit committee and the Commission.

Interpretation

2. Terms defined in the *Securities Act* (Alberta), National Instrument 14-101 *Definitions* and NI 24-102 have the same meaning if used in this order unless otherwise defined.

Representations

3. This order is based on the following representations by the Filer to the Commission:
 - (a) The Filer is an indirectly held, wholly owned subsidiary of Intercontinental Exchange, Inc. (**ICE**), is incorporated under the laws of Canada and is based in Calgary, Alberta;

- (b) The Filer is in the business of operating an exchange and a clearing agency, acting as central clearing counterparty (**CCP**) for North American energy trading products;
 - (c) The Filer is:
 - (i) in Alberta, recognized by the Commission as an exchange and a clearing agency;
 - (ii) in the United States, registered with the Commodity Futures Trading Commission as a Foreign Board of Trade and a Derivatives Clearing Organization;
 - (iii) in Ontario, exempted by the Ontario Securities Commission from registration as a commodity futures exchange under the *Commodity Futures Act* (Ontario), and from recognition as an exchange under the *Securities Act* (Ontario);
 - (iv) in the European Union, recognized by the European Securities and Markets Authority as a third-country CCP; and
 - (v) in the United Kingdom (**UK**), entered into the Bank of England's Temporary Recognition Regime for non-UK CCPs;
 - (d) The Filer has been granted exemptive relief by the applicable securities regulatory authority in certain other jurisdictions in Canada, permitting the Filer to carry on its business in the respective jurisdictions, and the Filer is in material compliance with any terms and conditions of such exemptive relief;
 - (e) Subject to the matter that this order relates to, the Filer is not materially in default of securities legislation.
4. Prior to amendments to NI 24-102 and related changes to the Companion Policy to NI 24-102 (**24-102CP**) that came into effect on June 19, 2020 (collectively, the **Amendments**):
- (a) subsection 4.7(1) of NI 24-102 required a recognized clearing agency to annually engage a qualified party to conduct an ISR and vulnerability assessment and prepare a report, in accordance with established audit standards and best industry practices to ensure that the clearing agency was in compliance with paragraph 4.6(a) and section 4.9 of NI 24-102, as those requirements were prior to the Amendments; and
 - (b) subsection 4.7(2) of NI 24-102 required the clearing agency to provide, within the prescribed times, the report resulting from the review conducted under subsection 4.7(1) to its board of directors or audit committee and the Commission.

5. Prior to the Amendments, the Filer satisfied the requirements, as they were then:
 - (a) under subsection 4.7(1) of NI 24-102 by engaging a qualified party, as described under subsection 4.7(1) of 24-102CP, to conduct an ISR and prepare a report that satisfied the requirements of subsection 4.7(1) of NI 24-102; and
 - (b) under subsection 4.7(2) of NI 24-102 by providing, within the prescribed times, the report resulting from the review conducted under subsection 4.7(1) to its board of directors and the Commission.
6. As a result of the Amendments, effective June 19, 2020:
 - (a) paragraph 4.7(1)(a) requires a recognized clearing agency, on a reasonably frequent basis and, in any event, at least annually, to engage a qualified external auditor to conduct an ISR and prepare a report, in accordance with established audit standards and best industry practices, that assesses the clearing agency's compliance with paragraphs 4.6(a) and 4.6.1(2)(a) and section 4.9 of NI 24-102; and
 - (b) subsection 4.7(2) requires the recognized clearing agency to provide, within the prescribed times, the report resulting from the review conducted under paragraph 4.7(1)(a) to its board of directors or audit committee and the Commission.
7. Audit plans for ICE and the Filer were already established for 2020 and in progress by the time the Amendments came into effect. As a result, the Filer is unable to reasonably satisfy the current requirements under paragraph 4.7(1)(a) and subsection 4.7(2) of NI 24-102 for 2020, specifically to engage a qualified external auditor to conduct the ISR and prepare the required report to be delivered in accordance with the requirements of subsection 4.7(2).
8. For 2020, the Filer engaged a qualified party, as described under subsection 4.7(1) of 24-102CP, to conduct the ISR and prepare the required report, (the **Internal Audit report**) as required under subsection 4.7(1) of NI 24-102, as each of NI 24-102 and 24-102CP was prior to the Amendments.
9. As a result of further integration of the Filer's systems and operations with ICE, certain of the Filer's controls relevant to the ISR and related report were tested as part of the ICE 2020 Systems and Organization Controls 2 report (the **ICE SOC 2 report**), which was prepared by a qualified external auditor.
10. The Filer believes that the combined scope of the ISR conducted by the qualified party engaged by the Filer for 2020 and the ICE SOC 2 report prepared by a qualified external auditor satisfies the scope of the ISR required for 2020 under subsection 4.7(1) of NI 24-102, both prior to and after the Amendments.
11. The Filer provided both the Internal Audit report and the ICE SOC 2 report to its board of directors and to the Commission, in accordance with the timing requirements currently prescribed in subsection 4.7(2) of NI 24-102.

12. The Filer also provided to staff of the Commission a mapping of the ICE SOC 2 report to the ISR requirement under subsection 4.7(1) of NI 24-102 and the related ISR reports provided by the Filer to the Commission for previous years.

Decision

13. The undersigned, being satisfied that it would not be prejudicial to the public interest to do so, orders under section 6.1 of NI 24-102 that the Exemption Sought is granted.

“Signed by”

Lynn Tsutsumi, CA
Director, Market Regulation