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March 20, 2013

The Futures and Options Association
2nd Floor
36-38 Botolph Lane
London EC3R 8DE

Dear Sirs/Mesdames:

Re: Netting Analyser Library: CCP Opinion in relation to ICE Clear Canada Inc.

You have asked us to give an opinion in respect of the laws of Manitoba¹ and the federal laws of Canada applicable in Manitoba ("this jurisdiction") as to the effect of certain netting and set-off provisions and collateral arrangements in relation to ICE Clear Canada Inc. (the "Clearing House") as between the Clearing House and its clearing members (each a "Member").

We understand that your requirement is for the enforceability and validity of such netting and set-off provisions and collateral arrangements to be substantiated by a written and reasoned opinion letter.

References herein to "this opinion" are to the opinion given in Section 3.

1. TERMS OF REFERENCE

- 1.1 Except where otherwise defined herein, terms defined in the Rules of the Clearing House have the same meaning in this opinion letter.
- 1.2 The opinions given in Section 3 are in respect of a Member's powers under the Clearing House Documentation as at the date of this opinion. We express no opinion as any provisions of the Rules of the Clearing House other than those on which we expressly opine. We have only reviewed the Clearing House Documentation as of the date of this opinion and we assume that no other documents (except, where applicable, Equivalent Clearing Agreements) are relevant to the matters on which we opine and this opinion does not apply in respect of any other such documents (other than Equivalent Clearing Agreements to the extent they are not

TORONTO

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OTTAWA

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¹ The head office of ICE Clear Canada Inc. is in Winnipeg, Manitoba and the Manitoba Securities Commission is its principal regulator.

inconsistent in any material way with the current Clearing House Documentation).

- 1.3 Where Contracts are governed by laws other than the laws of this jurisdiction, the opinions contained in Section 3 are given in respect of only those Contracts which are capable, under their governing laws, of being terminated and liquidated in accordance with the provisions of the Netting Provision.
- 1.4 The opinions given in Section 3.8 are given only in relation to Non-cash Collateral comprising securities credited to an account.

1.5 **Definitions**

In this opinion, unless otherwise indicated:

- (a) "**Model Form Clearing Agreement**" means the clearing membership agreement entered into between each Member and the Clearing House in the form of the Clearing House's standard member Form 3 C-2010 Application/Agreement for Participant Clearing Status attached hereto at Annex 1;
- (b) "**Assessment Liability**" means a liability of a Member to pay an amount to the Clearing House (including a contribution to the assets or capital of the Clearing House, or to any default or similar fund maintained by the Clearing House); but excluding:
 - (i) any obligations to provide margin or collateral to the Clearing House, where calculated at any time by reference to Contracts open at that time;
 - (ii) membership fees, fines and charges;
 - (iii) reimbursement of costs incurred directly or indirectly on behalf of or for the Member or its own clients;
 - (iv) indemnification for any taxation liabilities;
 - (v) payment or delivery obligations under Contracts; or
 - (vi) any payment of damages awarded by a court or regulator for breach of contract, in respect of any tortious liability or for breach of statutory duty.

- (c) "**Clearing House Documentation**" means the Model Form Clearing Agreement, Rules and Operation Manual;
- (d) "**Client Account**" has the meaning given to it in Section A-102 of the Rules;
- (e) "**Contract**" means an Exchange Transaction which is registered at the Clearing House;
- (f) "**Equivalent Clearing Agreement**" means any agreement or other document entered into by or on behalf of a Member pursuant to which such Member agrees to be bound by the Rules as a Member but which contains no other provisions which may be relevant to the matters opined on in this opinion letter;
- (g) "**Exchange Transaction**" means a contract entered into over the ICE Futures Canada exchange;
- (h) "**Omnibus Client Account**" means the Client Account, as the rules do not provide for individually segregated client accounts;
- (i) "**Netting Provision**" or "**Set-off Provision**" means a rule providing for netting or set-off with respect to Contracts or account balances in the event of the insolvency or default of the Clearing House;
- (j) "**House Account**" has the meaning given to in in Section 1-102 of the Rules, which is the account required to be established for proprietary Exchange Transactions of a Clearing Participant;
- (k) "**Party**" means the Clearing House or the relevant Member;
- (l) "**Non-cash Collateral**" means the non-cash collateral provided to the Clearing House as margin under the Rules;
- (m) references to the word "**enforceable**" and cognate terms are used to refer to the ability of a Party to exercise its contractual rights in accordance with their terms and without risk of successful challenge. We do not opine on the availability of any judicial remedy;
- (n) "**Rules**" means the rules of the Clearing House in force as at the date of this opinion; and

(o) references to a "section" or to a "paragraph" are (except where the context otherwise requires) to a section or paragraph of this opinion (as the case may be).

2. ASSUMPTIONS

We assume the following:

- 2.1 That, except with regards to the provisions discussed and opined on in this opinion letter, the Clearing House Documentation and Contracts are legally binding and enforceable against both Parties under their governing laws.
- 2.2 That each Party has the capacity, power and authority under all applicable law(s) to enter into the Clearing House Documentation and Contracts; to perform its obligations under the Clearing House Documentation and Contracts; and that each Party has taken all necessary steps to execute and deliver and perform the Clearing House Documentation and Contracts.
- 2.3 That each Party has obtained, complied with the terms of and maintained all authorisations, approvals, licences and consents required to enable it lawfully to enter into and perform its obligations under the Clearing House Documentation and Contracts and to ensure the legality, validity, enforceability or admissibility in evidence of the Clearing House Documentation in this jurisdiction.
- 2.4 That both Parties have properly executed the Model Form Clearing Agreement, in substantially identical form to that attached at Annex 1.
- 2.5 That the Clearing House Documentation has been entered into prior to the commencement of any insolvency procedure under the laws of any jurisdiction in respect of either Party.
- 2.6 That each Party acts in accordance with the powers conferred by the Clearing House Documentation and Contracts; and that (save in relation to any non-performance leading to the taking of action by the Members under the Netting Provision), each Party performs its obligations under the Clearing House Documentation and each Contract in accordance with their respective terms.

- 2.7 That, apart from any circulars, notifications and equivalent measures published by the Clearing House in accordance with the Clearing House Documentation, there are not any other agreements, instruments or arrangements between the Parties which modify or supersede the terms of the Model Form Clearing Agreement.
- 2.8 That the Member is at all relevant times solvent and not subject to insolvency proceedings under the laws of any jurisdiction.
- 2.9 That the obligations assumed under the Clearing House Documentation and Contracts are mutual between the Parties, in the sense that the Parties are each personally and solely liable as regards obligations owing by it and is solely entitled to the benefit of obligations owed to it.
- 2.10 That no provision of the Agreement that is necessary for the giving of our opinions and advice in this opinion letter has been altered in any material respect. In our view, an alteration contemplated in the definition of "Equivalent Agreement" above would not constitute a material alteration for this purpose. We express no view whether an alteration not contemplated in the definition of Equivalent Agreement would or would not constitute a material alteration of the Agreement.

3. OPINION

On the basis of the foregoing terms of reference and assumptions and subject to the qualifications set out in Section 4 below, we are of the following opinions.

3.1 Insolvency Proceedings

The only bankruptcy, composition, rehabilitation or other insolvency or reorganisation procedures to which the Clearing House could be subject under the laws of this jurisdiction, and which are relevant for the purposes of this opinion, are:

- 3.1.1 Proceedings under the *Bankruptcy and Insolvency Act* (Canada) (**BIA**) for either (i) liquidation (**BIA Bankruptcy**) or (ii) reorganization/ arrangement with creditors under Part III, Division I (**BIA Proposals**);
- 3.1.2 Proceedings under the *Winding-up and Restructuring Act* (Canada) (**WURA**) for either (i) liquidation or (ii) reorganization/ arrangement with creditors (**WURA Proceedings**);
- 3.1.3 Proceedings under the *Companies' Creditors Arrangement Act* (Canada) (**CCAA**) for reorganization/ arrangement of claims of creditors of corporations (**CCAA Plan of Arrangement**);

- 3.1.4 Court administered receivership proceedings for liquidation of the Party under the national receivership provisions of the BIA (Receivership);
- 3.1.5 Corporate plans of arrangement involving insolvent entities and providing for the reorganization/arrangement of claims of creditors (Corporate Plans of Arrangement).

These procedures are together called "Insolvency Proceedings".

The legislation applicable to Insolvency Proceedings is the BIA, the WURA, the CCAA and the Manitoba *Business Corporations Act*.

3.2 Special provisions of law

The Clearing House does not clear OTC derivatives transactions. The following special provisions of law apply to Contracts by virtue of the fact that the Contracts are, or relate to, exchange-traded derivative products and are cleared through a central counterparty:

- 3.2.1 the *Payment Clearing and Settlement Act (Canada)* ("PCSA"); and
- 3.2.2 the provisions of the BIA and the CCAA pertaining to eligible financial contracts ("EFCs").

PCSA

The Clearing House is a "securities and derivatives clearing house" within the meaning of such term under subsection 13.1(3) of the PCSA. This status provides the Clearing House with protections from the effect of insolvency laws with respect to its contractual right under the Rules to terminate EFCs, net exposures between EFCs and exercise rights against collateral which it holds, including in the event of an insolvency of a clearing member. The Contracts are EFCs on the basis that they are "a derivatives agreement, whether settled by payment or delivery, that ... trades on a futures or options exchange or board or other regulated market"². The Model Form Clearing Agreement is also an EFC on the basis that it is "an agreement to ... clear or settle securities, futures, options or derivatives transaction".³ The Netting Provision of the Rules itself would also be an EFC. In this regard, we note that the Model Form Clearing Agreement incorporates the Rules by reference and in doing so

² Subsection 2(a)(i) of the Eligible Financial Contract Regulations under the BIA and CCAA.

³ Subsection 2(b)(ii) of the Eligible Financial Contract Regulations under the BIA and CCAA

gives contractual effect to the Rules as between the Clearing House and each of its Members. Section 13.1, however, does not provide any enhanced protection to the Members.

BIA and CCAA

In certain Canadian Insolvency Proceedings to which the Clearing House could be subject (e.g., CCAA Plan of Arrangement and BIA Proposals) there are automatic or court ordered stays that prevent the exercise of termination rights and delay or otherwise interfere with rights of set-off, but statutory exemptions for EFCs are available in such proceedings if those EFCs provide for termination and netting rights. The Contracts are EFCs on the basis that they are "a derivatives agreement, whether settled by payment or delivery, that ... trades on a futures or options exchange or board or other regulated market"⁴. The Model Form Clearing Agreement is also an EFC on the basis that it is "an agreement to ... clear or settle securities, futures, options or derivatives transaction".⁵ However, as there is no termination right or Netting Provision exercisable by the Member on a default of the Clearing House, the protections are irrelevant.

3.3 Recognition of choice of law

The choice of law provisions of Section 18 of the Clearing House Member Agreement would be recognised under the laws of Manitoba, even if the Member is not incorporated, domiciled or established in Manitoba.

3.4 Netting and Set-off: General

- 3.4.1 There is no Netting Provision under the Rules in relation to the Clearing House.
- 3.4.2 There is no Set-off Provision that operates upon an event of default in relation to the Clearing House.
- 3.4.3 Section A-105(j) and Section A-107 of the Rules provide that the Rules, Operations Manual and each Clearing Participant application/agreement shall be interpreted to ensure that the Clearing House and the Clearing Participant is accorded the rights and powers of a party to an eligible financial contract pursuant to the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangement Act*, the *Winding-up and Restructuring Act* and the

⁴ Subsection 2(a)(i) of the Eligible Financial Contract Regulations under the BIA and CCAA.

⁵ Subsection 2(b)(ii) of the Eligible Financial Contract Regulations under the BIA and CCAA

Canada Deposit Insurance Corporation Act or any similar legislation. These Acts do not create rights in a party, but merely provide for the enforcement of rights that exist by contract or the rules of a clearing organization. These particular sections of the Rules are not effective to create such rights. Therefore, since there are no Netting Provisions or Set-off Provisions that confer rights on the Clearing Participant, the Clearing Participant does not have any termination, set-off or netting rights with respect to Contracts. It does have a right to terminate the Model Form of Clearing Agreement upon certain events with respect to the Clearing House, but it is not clear what effect this has on outstanding Contracts and does not itself trigger any netting or set-off rights for the Clearing Participant.

3.5 Netting and Set-Off: House Accounts and Client Accounts

Not relevant given that there is no Netting or Set-off Provision exercisable by the Member.

3.6 Netting and Set-Off: Cross-Product Netting

3.6.1 Not relevant as there is no Netting Provision exercisable by the Member.

3.7 Cash Collateral

3.7.1 Payments made by a Member to the Clearing House as cash margin constitute an absolute transfer of cash, so that, in the event of Insolvency Proceedings relating to the Clearing House, such cash would be treated as the property of the Clearing House available to its creditors generally (Rule A-709a.).

Rule A-709a. provides the following with respect to Cash margin:

Cash - Clearing Participants may deposit cash to cover Margin requirements in such manner as is specified by the Corporation. These funds shall not be commingled with funds of the Corporation or used by the Corporation as working capital. Funds so deposited will be deposited to the credit of the Corporation in such financial institutions as the Board may select.

3.7.2 However, the amount of cash so provided would constitute a debt owed by the Clearing House to the Member as principal.

3.8 Non-cash Collateral

3.8.1 Any securities provided to the Clearing House as cover for margin and constituting Non-cash Collateral (other than Letters of Credit and Banker's Acceptances) would not be treated as the beneficial property of the Clearing House and would be returnable to the Member, even in the event of Insolvency Proceedings relating to the Clearing House, subject to the Member satisfying its obligations to the Clearing House.

This is because the Manitoba *Securities Transfer Act* (STA) provides that securities held by a securities intermediary (which would include the Clearing House) are not property of the intermediary to the extent required to satisfy the securities entitlements of clients of the intermediary credited to a securities account with the intermediary (which would include the House Account and the Client Account of a Member).

In more detail, the analysis is as follows:

The Clearing House is a "clearing agency" within the meaning of the STA⁶ because it carries on the business of a clearing agency or clearing house within the meaning of the Manitoba *Commodity Futures Act*, it is recognized by the Manitoba Securities Commission as a clearing agency or clearing house and it is a securities and derivatives clearing house for the purposes of section 13.1 of the federal *Payment Clearing and Settlement Act* (PCSA). As such it is also a "securities intermediary" within the meaning of the STA.⁷

The Clearing House accepts Government Securities as non-cash collateral. They can either be deposited with the Clearing House itself and credited to the House Account or Client Account of the Member, or deposited with an Approved Depository (as defined in the Rules) subject to arrangements that permit them to be promptly sold by or upon the order of the Clearing House for the account of the Member without notice and subject to the Member paying the fees associated with the arrangement. Presumably the latter arrangement allows for the account with the Approved Depository to be in the name of the Member, but subject to a control agreement between the Approved Depository, the Member and the Clearing House. In the case of such an arrangement, the non-cash collateral would not form part of the assets of the Clearing House as it would not be the

⁶ Section 1(1).

⁷ Section 1(1).

entitlement holder with respect to the account at the Approved Depository.

With respect to securities deposited with the Clearing House itself, the Clearing House will be the entitlement holder with respect to those securities in the records of the Canadian Depository for Securities Limited (CDS) or other depository or intermediary in which the Clearing House is holding the collateral in its own name. Section 97(1) of the STA provides:

97(1) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset⁸, all interests in that financial asset held by the securities intermediary

- (a) are held by the securities intermediary for the entitlement holders;
- (b) are not the property of the securities intermediary; and
- (c) are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 105. [emphasis added]

The interest which an entitlement holder has against the Clearing House is a proportionate property interest with all other entitlement holders that have deposited the same security so that if there is a deficiency, the holders will share the loss proportionately:

97(2) An entitlement holder's property interest with respect to a particular financial asset under subsection (1) is a proportionate property interest in all interests in that financial asset held by the securities intermediary, without regard to

- (a) the time that the entitlement holder acquired the security entitlement; or
- (b) the time that the securities intermediary acquired the interest in that financial asset.

We note that the Clearing House has a right to pledge, repledge, hypothecate or transfer a security deposited as Margin for its own

⁸ This refers to the particular security issue.

obligations (Section A-701). The rules provide that the Clearing House shall be deemed to continue to hold all Margin Deposit regardless of whether it has exercised these rights. However, if it has exercised such rights there is a possibility of a deficiency in such case and the deeming will not provide any practical level of protection if the property has been transferred to a purchaser who took its interest for value, who obtained possession or control and who did not act in collusion with the Clearing House in violating any obligations of the securities intermediary under the STA.

Further, claims of secured creditors of a clearing agency have priority over the interests of entitlement holders if there is a deficiency.

105(3) If a clearing agency does not have sufficient financial assets to satisfy both the clearing agency's obligations to entitlement holders who have security entitlements with respect to a financial asset and the clearing agency's obligation to a creditor of the clearing agency who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

The Member cannot enforce rights directly against CDS but an Insolvency Representative of the Clearing House would be required to recognize the interest of the Member.

Even in cases where there is no deficiency, there may be a delay in an Insolvency Proceeding in obtaining the actual return of the property.

3.9 Members' Assessment Liabilities

A Member's Assessment Liability is as follows.

The Clearing Fund Deposit Rule is Rule A-6. The Clearing House maintains a Base Clearing Fund for all Classes of Options on Futures and Futures it clears. The Base Clearing Fund is based on the largest Uncovered Risk on any single Clearing Participant's total positions during the last 260 Trading Days adjusted for the largest position size during the last 60 Trading Days (taking into account increases or decreases in open interest) or the largest Uncovered Risk on any single Clearing Participant's total position during the last 60 Trading Days, whichever is greater. The Member's contribution is the greater of (a) \$250,000 for FCMs and \$500,000 for General Members and (b) the amount determined by multiplying its Risk Ratio by the Base Clearing Fund. The Risk Ratio is based on its margin requirements:

The ratio of a Clearing Participant's average Original Margin requirements for all accounts to the average of the sum of the Original Margin requirements for all accounts of all Clearing Participants, where the averages are calculated over the twenty (20) Trading Days immediately preceding the Trading Day of a Base Clearing Fund calculation. In the event that a Clearing Participant has been registered for less than twenty (20) Trading Days, then its Risk Ratio will be calculated based on its average Original Margin during the Trading Days it has been registered.

The Base Clearing Fund is calculated at least monthly.

Deposits to the Clearing Fund may be in Cash or Canadian federal or provincial Government Securities. Cash is deposited by way of an absolute transfer to a financial institution account of the Clearing Agency (Rule A-605a and Section 9 of the Operations Manual). Government securities may be deposited to the account of the Clearing Agency at CDS or held through an Approved Depository or directly by the Clearing Agency and all interest or gain received or accrued on them belongs to the Member (Rule A-605b. and Section 9 of the Operations Manual).

If amounts are paid out of the Clearing Fund deposit of a Member, the Member must promptly make good the deficiency if any.

Actions For Failure to Contribute

Various actions can be taken against a Non-Conforming Participant, which would include any Member that failed to make any payment or delivery required by the Rules (Section A-209(c)). The general actions that can be taken are set out in Section A-401.

Section A-401 Actions Against a Non-Conforming Participant

- a. In addition to a measure made available to the Corporation under the Rules and/or the Application/Agreement for Clearing Participant status to remedy a specific or general default of a Clearing Participant, or wherever a Clearing Participant has been determined to be a Non-Conforming Participant, the Corporation may take any one of the actions prescribed by the Rules in respect of such Clearing Participant including, but not limited to:
 - (i) prohibiting and/or imposing limitations on the acceptance and/or clearance of Transactions by such Clearing Participant;

(ii) requiring such Clearing Participant to reduce or close out existing Transactions in such Clearing Participant's accounts with the Corporation;

(iii) requiring such Clearing Participant to transfer any account maintained by such Clearing Participant with the Corporation, any position maintained in any such account, or any account carried by such Clearing Participant, to another Clearing Participant;

(iv) applying the Margin Deposit (including, without limitation, Margin and Clearing Fund) of the Non-Conforming Participant;

(v) sanctioning, reprimanding, fining or imposing a penalty on the Clearing Participant;

(vi) prevent or restrict the Clearing Participant's right to withdraw any excess in Margin Deposits; and

(vii) suspending the Non-Conforming Participant

b. The actions contemplated by the Rules in respect of Non-Conforming Participants may be taken in any sequence the Corporation deems appropriate.

Financial Resources Available to ICE Clear Canada upon Default

In the event that a Clearing Participant has been declared a Non-Conforming Clearing Participant or has been suspended, the Clearing House must make all commercially reasonable efforts to eliminate or otherwise limit the loss to the Clearing House associated with the default process. However, in the event that the management of the default process generates losses to the Clearing House, the Clearing House will apply, in specified order, a series of financial remedies to ensure its ongoing viability and financial solvency. The order in which funds would be utilized in the event of a default is as follows (Rule A-606):

1. Margin Deposits of the Defaulting Clearing Participant.

Only the Margin Deposits of the defaulting Clearing Participant are utilized in a default. On no account will the Margin Deposits of

non-defaulting Clearing Participants be utilized to cover losses due to the default of another Clearing Participant.

2. Clearing Fund Deposits of the Defaulting Clearing Participant
3. The Clearing Fund Deposits of the non-defaulting Clearing Participants

The Clearing House would next apply the monies deposited to the Clearing Fund, by all of the other (non-defaulting) Clearing Participants on a pro-rata basis.

As required by the Rules, all Clearing Participants are required to contribute to a Clearing Fund that provides for additional protection. The amount that each Clearing Participant contributes to the Clearing Fund is an amount determined by the size of the Clearing House's exposures and the amount the Clearing Participant's overall positions contribute to these exposures.

4. Additional payments by non-defaulting Clearing Participants

In the unlikely event that steps 1 to 3 above did not cover the losses associated with a default, the Rules provide that the Clearing House can request that the remaining (non-defaulting) Clearing Participants replenish their contributions to the Clearing Fund.

In the event that the Clearing House was able to recover any losses from the defaulting Clearing Participant it would reimburse any contributions to the Clearing Fund made by the non-defaulting Clearing Participants.

The Clearing House may pledge, repledge or transfer any property deposited to the Clearing Fund as security in connection with its own obligations incurred in order to (a) obtain liquidity or credit for the purpose of assisting the Clearing House to honour its obligations on a timely basis further to the designation by the Clearing House of a Clearing Participant as being a Non-Confirming Clearing Participant, or (b) to fund a payment obligation of the Clearing House which arises pursuant to a failed delivery by any Clearing Participant. The property of the Non-Conforming Clearing Participant or Clearing Participant that failed to deliver is pledged before pledging the property pledged by other Clearing Participants.

If the resources of the Clearing Fund are insufficient to cover the losses of a defaulting Clearing Participant the Clearing House may require additional payments from the Clearing Participant.

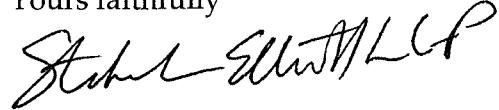
4. QUALIFICATIONS

The opinions in this opinion letter are subject to the following qualifications: None.

There are no other material issues relevant to the issues addressed in this opinion which we wish to draw to your attention.

This opinion is given for the sole benefit of the Futures and Options Association and such of its members (excluding associate members) as subscribe to the Futures and Options Association's opinions library (and whose terms of subscription give them access to this opinion). This opinion may not be relied upon by any other person unless we otherwise specifically agree with that person in writing, although we consent to it being shown to such Futures and Options Association members' affiliates (being members of such persons' groups, as defined by the UK Financial Services and Markets Act 2000) and to any competent authority supervising such member firms and their affiliates in connection with their compliance with their obligations under prudential regulation.

Yours faithfully



Stikeman Elliott LLP

Form 3-C2010 ICE Clear Canada, Inc. Application Package

**ICE Clear Canada, Inc.
Clearing Participant Application Instructions**

Enclosed is an Application/Agreement and related documents which must be completed by an entity seeking to become a Clearing Participant of ICE Clear Canada, the designated clearinghouse for ICE Futures Canada. All Clearing Participants must meet ICE Clear Canada's operational criteria and requirements with respect to the contracts sought to be cleared. Please note that the By-Laws, Rules and Operations Manual of ICE Clear Canada are incorporated by reference in the application/agreement and you should ensure that you have a copy of the current documents prior to executing the application/agreement. You may contact the Corporate Secretary at the number below, to obtain copies.

Note that all Clearing Participants must be registered as a Direct Access Trading Participant with ICE Futures Canada.

In order to clear futures and options contracts traded on ICE Futures Canada, applicants for Clearing Participant status must first receive written notice of approval by ICE Clear Canada, Inc.

The following is a list of documents that must be furnished by applicants for Clearing Participant status. An original plus one copy of all documents and the application/agreement form should be sent to the attention of:

Attn: Corporate Secretary
ICE Clear Canada, Inc.
850A Pembina Highway
Winnipeg, Manitoba
R3M 2M7
(204) 925-5009

A. Forms to be Completed:

1. ICE Clear Canada, Inc. Application/Agreement form and all attached Schedules.
2. Certified Copy of a Resolution of the Board of Directors (Corporations only) or Opinion of Counsel template (LLC's only).

B. Documents to be Provided by Applicant:

1. Certificate of Incorporation, by-laws and all amendments thereto (if applicant is a corporation) certified by the secretary of the corporation.
2. Articles of Organization and Operating Agreement and all amendments thereto (if applicant is a limited liability company) certified by a member of the limited liability company.

Form 3-C2010 ICE Clear Canada, Inc. Application Package

3. Most recent audited financial statements and most recent monthly financial statements certified by the Chief Financial Officer of the company.

General Information

1. In order to be registered as a Clearing Participant, a company must first be registered as a Direct Access Trading Participant with ICE Futures Canada, Inc.
2. Although all Clearing Participants must be Canadian entities, they can have all required back office operations conducted by affiliated or associated companies in the United States or the United Kingdom. The Canadian entity remains responsible for all work conducted by the third party affiliated or associated company.
3. The annual fees for registration as a Clearing Participant are: \$5,000 per annum for A Clearing Participant registering in the category of Futures Commission Merchant and \$2,500 per annum for a Clearing Participant registering in the category of General. These fees are payable annually, in advance. At the time of registration, the Clearing participant will be billed the pro-rata amount owing to the end of the year.
4. Clearing Participants are required to provide deposits for both margin and Clearing Fund purposes. The following is a brief overview of the acceptable forms of acceptable collateral. Please refer to the Rules and Operations Manual for complete details.

The following margin types are acceptable to ICE Clear Canada:

- a) Cash
- b) Bankers' Acceptances ("BA's")
- c) Bank Letter of Credit¹
- d) Government of Canada Treasury Bills and Bonds (excluding Canada Savings Bonds)
- e) Provincial Government Bonds;

Provided that: Letters of Credit may be used to satisfy not more than 50% (fifty percent) of a Clearing Participant's total Margin payment obligations (including daily margin, Intra-Day Margin and Position Risk Margin). In addition, no more than ten million dollars (\$10,000,000) may be deposited in the form of Letters of Credit. Only Government guaranteed Securities as may be specified by the Corporation which are freely negotiable will be accepted. Canadian Treasury Bills are valued at 95% of face value and Canadian and provincial bonds are valued at 90% of fair value. Provincial Government securities must mature within one year of the date of their deposit. Government bonds will be marked to market on a weekly basis (or such other basis as the Corporation may, in its sole discretion, deem appropriate) and the haircuts noted above will be applied to that marked to market value. If no market value is available for a government security the Corporation will determine the value of same. Bankers' Acceptances are valued at 85% of face value.

The following Clearing Fund deposits are acceptable to ICE Clear Canada;

¹ The form of Letter of Credit that is acceptable to the clearing house is attached to the end of the application package.

Form 3-C2010 ICE Clear Canada, Inc. Application Package

Deposits to the Clearing Fund shall be in cash, Bankers Acceptances or in such Government Securities, which are freely negotiable and shall mature within one year (See Rule A-604 for details). Government Securities will be valued on the same basis as they are for Margins.

The following list of Government Securities with less than 1 year to maturity are acceptable:

- Government of Canada Treasury Bills and Bonds (excluding Canada Savings Bonds)
- Provincial Government Bonds

Deposits to the Clearing Fund are made in the same manner and are subject to the same haircuts as margin deposits.

Each Clearing Participant initially deposits \$250,000 (FCM) or \$500,000 (General) to the Clearing Fund. Thereafter the contribution to the Clearing Fund is the greater of the \$250,000 or \$500,000 and a calculation based on the margin payable, which is set out in Rule A/602 as follows:

Section A-602 Clearing Fund Deposits required by Clearing Participant

Each Clearing Participant is liable to the Corporation for, and shall make and maintain, the following deposits to the Clearing Fund in the manner set out in the Rules. Each Clearing Participant shall provide funds in an amount at least equal to the greater of:

- (1) \$500,000 for Clearing Participants registered in the category of General and \$250,000 for Clearing Participants registered in the category of Futures Commission Merchant;
or
- (2) an amount equal to 35% of the Clearing Participant's required daily margin calculated as follows:
 - a) On the first Trading Day of each week a calculation will be done based on each Clearing Participant's required margin for the last trading day of the prior week. Notice of the required payment will be sent to each Clearing Participant by the Corporation. Clearing Participants are required to submit the funds no later than the close of business the next Trading Day.
 - b) Each day in the week thereafter, a calculation will be done, based on the Clearing Participant's required margin for the previous Trading Day. If the amount of the calculation results in a Clearing Participant being liable for an amount in excess of (Cdn) \$50,000, the Clearing Participant will be provided with notice of same and must make the required payment no later than the end of the same Trading Day.

Question/Concerns

Please contact either:

Linda Vincent
Corporate Secretary
(204) 925-5009
Linda.Vincent@theice.com

Sheryl Silverberg
Participant Administrator
(204) 925-5002
Sheryl.Silverberg@theice.com

**ICE CLEAR CANADA, INC.
APPLICATION / AGREEMENT FOR CLEARING PARTICIPANT STATUS**

To: ICE Clear Canada, Inc.
850A Pembina Highway
Winnipeg, Manitoba
R3M 2M7

The undersigned, (type full legal name & full mailing address)

(the "Clearing Participant")

applies for Clearing Participant Status with ICE Clear Canada, Inc. (the "Clearinghouse" or the "Corporation") and acknowledges that, upon acceptance by the Clearinghouse, this application/agreement shall constitute a binding agreement between the Clearinghouse and the Clearing Participant upon the terms and subject to the conditions set forth herein. This Agreement must have a completed Schedule "A" and Schedule "B", and a Corporate Resolution attached. Unless stated otherwise, this Agreement becomes effective at the Effective Time.

Agreement

1. Definitions

1.1 All capitalized terms used and not defined herein shall have the respective meanings ascribed thereto in the Rules of the Clearinghouse, as the Rules may from time to time be amended. In this application, the following terms will mean:

"Act" means *The Commodity Futures Act (Manitoba)*.

By-Laws shall mean the by-laws of ICE Clear Canada, Inc. as they may be amended from time to time.

"Clearing Participant Agreement" shall mean the agreement which results from the acceptance by the Clearinghouse of this application.

"Clearing System" - includes all facilities and systems provided by the Clearinghouse to permit clearing, including, but not limited to, trade entry and matching systems, give up and average pricing systems, ICEBLOCK system, banking and settlement systems, the ice.com website, position maintenance systems and the MochaSoft terminal applications;

"Commission or MSC" means The Manitoba Securities Commission.

“Confidential Information” has the meaning given in Clause 22.

“Customer” means a customer of a Direct Access Trading Participant who is duly authorized by such Direct Access Trading Participant to conduct trades (via a Responsible Individual) or permissioned by a Direct Access Trading Participant to have view-only access.

“Direct Access Interface” means software that has been approved and conformed as required under a Direct Access Interface Agreement;

“Direct Access Trading Participant” shall have the meaning set out in the Exchange Rules.

“Exchange” shall mean ICE Futures Canada, Inc.

“Exchange Contracts” means the contracts listed by the Exchange on the Trading System.

“Exchange Rules” shall mean the Rules of the Exchange, as may be amended from time to time.

“Intellectual Property Rights” means ICE’s and/or the Exchange’s patents (including all renewals, extensions or divisions thereof), copyright, trade marks, know how, design rights, registered designs, domain names, database rights and confidential information including any and all similar rights in any jurisdictions.

“Market Data” means the real time market prices of the Exchange Contracts.

“Money” shall mean a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada or by a foreign government as part of its currency.

“Person” shall include an individual, a corporation, a partnership, a co-operative, a trust and an unincorporated organization or association.

“Purposes” means the trading of the Exchange Contract(s) supported by the Platform and the Platform Software.

“Regulatory Authority” means the MSC or any successor or other body in the Province of Manitoba, Canada, or in the United States or overseas, which has authority to regulate the business, operation and trading activities of the Exchange, any participant of the Exchange (whether registered or not), any user of the Trading System, a Clearing Participant, Customer or Responsible Individual.

“Rules” or Clearinghouse Rules” shall mean the Rules and the Operations Manual of ICE Clear Canada, as may from time to time be amended, changed, supplemented or replaced in whole or in part.

“STA” – means *The Securities Transfer Act (Manitoba)* C.C.S.M. c. S60.

“Trading Participant” shall have the meaning set out in the Exchange Rules.

“Trading System” – includes all facilities and services provided by the exchange to permit trading, including, but not limited to, data, entry services, the ICE Platform, and all other computer-based trading systems and programs and price quotations and other market information services and applies to the provision, use performance, maintenance or malfunction of the ICE Platform.

“User Interface” means the software conformed as appropriate and used to connect to the API.

2. **Agreement of Clearing Participant to be Bound by the Clearinghouse Rules and the Exchange Rules**

- 2.1 The Applicant agrees that the Corporation's By-laws, Rules and Operations Manual, and the Exchange Rules are hereby incorporated in this Agreement by reference, and shall form part of this Agreement as though they were reproduced herein in their entirety. These documents are also incorporated by reference in each contract or transaction that the Clearing Participant conducts and/or clears or is required to conduct and/or clear, pursuant to all Clearing Authorization and Guaranty forms it has executed, or will execute.
- 2.2 The Clearing Participant acknowledges receipt from the Clearinghouse of a copy of the Corporation's By-laws, Rules and Operations Manual and the Exchange Rules, as in effect at the time of submission to the Clearinghouse of this application, and agrees to be bound by the provisions thereof. The Clearinghouse agrees that it will provide the Clearing Participant from time to time, with notice of amendments, changes or supplements to the By-laws, Rules and Operations Manual, and the Exchange Rules, via the Exchange website, provided however, that the failure of the Clearinghouse to provide the Clearing Participant with notice of any such amendments, changes or supplements shall not relieve the Clearing Participant of its obligation to comply with the said Rules as so amended, changed or supplemented.
- 2.3 In providing its services, the Clearinghouse is subject to certain domestic and foreign laws, rules, regulations and treaties, and to agreements entered into, instruments and declarations made and acts done by the Clearinghouse. The Clearing Participant must comply therewith, as applicable, upon being informed by the Clearinghouse of the provisions thereof.

3. **Category of Registration**

As provided by the Clearinghouse rules, the Applicant applies to become a Clearing Participant in one of the following categories:

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- Canadian Futures Commission Merchant
- General

4. **Clearing of Exchange Transactions Through the Facilities of the Clearinghouse**

4.1 All Clearing System Transactions (including EFRs, EFPs, and Negotiated Option Strategy transactions) as set out in Exchange Rule 8C.01 are to be processed through the clearing facilities designated, or the ICE BLOCK facility, or such other facility as may be determined, from time to time. All exchange transactions are to be processed through the ICE Platform via an approved Direct Access Interface.

5. **Access to the Trading Platform and Clearing Authorization and Guaranty Forms**

5.1 Access to the Trading System is authorized by, and obtained through, the Direct Access Trading Participant agreements with the Exchange. Every Clearing Participant must be a registered Direct Access Trading Participant with the Exchange in order to obtain and maintain Clearing Participant status. Failure to maintain Direct Access Trading Participant status with the Exchange will result in termination of this Agreement. For greater clarity, nothing in this Agreement permits access to the Trading System, or provides any right to interface with the Trading System for the Purposes.

5.2 Clearing Participants may only execute Clearing Authorization and Guaranty forms for entities registered as Direct Access Trading Participants with the Exchange.

6. **Counterpart Substitution**

6.1 Where the Clearinghouse Rules provide for counterpart substitution, then upon the Clearinghouse recording its acceptance of an Exchange Transaction, such transaction and the obligation and right between Clearing Participants or with the Clearinghouse arising thereunder, are replaced through novation by two new contracts whereby:

- (a) the Clearinghouse is substituted as, and assumes the position of, seller to the buyer and buyer to the seller in the relevant transaction on the long and short sides; and
- (b) upon this substitution, each Clearing Participant is deemed to have bought the contract from or sold the contract to the Clearinghouse, as the case may be, and the Clearinghouse and each Clearing Participant have all the rights and all the liabilities of their respective contract with respect to such transaction.

6.2 These new contracts are subject to this Agreement and otherwise to the same terms as the original Exchange Transaction, Exercise Notice or Tender Notice replaced by them.

6.3 In any case of default of any Clearing Participant, the Corporation as a substituted counterpart does not have any obligation other than to make or receive any payment, credit or delivery to or from any Clearing Participant for any amount of funds, Series of Options, Series of Futures, Delivery Certificates or Underlying Interest. This obligation of the Corporation is strictly limited to those financial resources reasonably and immediately available to it pursuant to the Clearinghouse Rules. The Corporation is expressly discharged from any obligation beyond such resources, any net amount of funds or quantity of Series or Options, Series of Futures, Delivery Certificates, or Underlying Interest payable by or receivable from a Clearing Participant shall be charged back to any Clearing Participant.

This substitution by novation is effective in law for all purposes.

7. **Clearinghouse Security Interests**

7.1 To guarantee the due payment and performance of all financial and other obligations under this Agreement, and the Rules and Operations Manual the Clearing Participant grants to the Corporation a security interest (the Corporation's Security Interest) in, and pledges, charges, and assigns to the Corporation, its Collateral, and all dividends, interests, amounts due on maturity, principal repayment and all other entitlements and proceeds arising with respect to the Collateral. The pledged Collateral may be held in a securities account in the name of the Corporation or an agent of the Corporation. The granting of the Corporation's Security Interest secures the due payment of all amounts due, from time to time to the Corporation from the Clearing Participant, and the performance of all obligations of the Clearing Participant to the Corporation under this Agreement, and the Rules and Operations Manual.

7.2 The Clearing Participant represents and warrants to the Corporation that it has full authority and power to grant the Corporation Security Interest, including any exemption or authorization that may be required pursuant to any statute or regulation binding on it. The granting of the Corporation's Security Interest by the Clearing Participant shall survive the suspension, termination, or withdrawal of it from Clearing Participant status.

7.3 The Clearing Participant shall execute and deliver to the Corporation such financing statements and other documents as the Corporation may request for the purpose of confirming or perfecting this pledge, hypothecate and the Corporation's Security Interest.

7.4 The Clearing Participant will assure that the Collateral and such other assets that are furnished or deposited by it to or with the Corporation or through an Approved Depository, in pledge, hypothecate or as additional security interest:

- a. are the sole legal and beneficial property of the Clearing Participant. The Clearing Participant shall ensure that no party other than the Corporation or an authorized agent of the Corporation shall have control (as that term is defined in the STA)

over the Collateral. The Clearing Participant agrees that it shall not furnish or deposit securities or other assets to or with the Corporation in pledge, hypothecate or as security interest otherwise than in conformity to this Agreement; and

- b are negotiable and meet the rules of good delivery, and the Clearing Participant shall indemnify and save harmless the Corporation against any claim, action, demand, loss or expense which may be made against or suffered or incurred by the Corporation in the event that any securities deposited by it are not negotiable and do not meet the rules of good delivery.

7.5 Upon the suspension, termination or withdrawal of a Clearing Participant, or upon the default of a Clearing Participant to make any payment or deposit of funds required, the Corporation may call in and realize the Corporation's Security Interest, for such price and upon such terms as the Corporation deems best, without notice or other prior indication to the Clearing Participant.

8. Payment of fees and other charges, books and records

- 8.1 The Clearing Participant, forthwith upon the acceptance by the Clearinghouse of this application, shall establish arrangements satisfactory to the Clearinghouse for the conduct of business with the Clearinghouse.
- 8.2 The Clearing Participant shall pay to the Clearinghouse the fees provided for in the Clearinghouse Rules for clearing, participant status, and other services rendered to the Clearing Participant and such fines as may be imposed in accordance with the Clearinghouse Rules.
- 8.3 Upon the acceptance by the Clearinghouse of this application, the Clearing Participant shall make such payments to or in respect of the Clearing Fund as may be required from time to time pursuant to the Clearinghouse Rules (including any initial deposit required as a condition to the acceptance by the Clearinghouse of this application), and shall maintain any minimum capital requirements required to be maintained by the Clearing Participant pursuant to the Clearinghouse Rules.
- 8.4 The Clearing Participant's books and records specified in the Clearinghouse Rules shall at all times be open for the inspection by the duly authorized representatives of the Clearinghouse or its agents, and Clearing Participant shall furnish on request all such information in its possession in respect of the Clearing Participant's business and transactions as the Clearinghouse may require. The right of the Clearinghouse to inspect such books and records of the Clearing Participant and to require information concerning the Clearing Participant's business shall continue for seven (7) years following the termination of the Clearing Participant's status as a Clearing Participant of the Clearinghouse but shall be limited to the books, records and business dealings of the Clearing Participant maintained or entered into while the Clearing Participant was a Clearing Participant of the Clearinghouse.

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- 8.5 The Clearing Participant shall establish a separate bank account for each currency in which Exchange Transactions that it enters into are settled, prior to trading in that currency.
- 8.6 The Clearing Participant hereby authorizes the Clearinghouse to withdraw funds from a bank account to be established and designated by the Clearing Participant pursuant to the Clearinghouse Rules to satisfy settlement of premiums, margin, clearing fund payments and clearing fees in accordance with the Clearinghouse Rules.

9. **Additional Representations and Warranties of the Clearing Participant**

The Clearing Participant represents and warrants to the Clearinghouse as follows, and acknowledges that the Clearinghouse is relying upon such representations and warranties and all other representations and warranties of the Clearing Participant contained herein in connection with this application:

- (a) the Clearing Participant has all necessary power and authority to enter into this Agreement, and neither the execution nor delivery of this Agreement, nor any act to be performed pursuant thereto by the Clearinghouse or by or on behalf of the Clearing Participant, will violate the Clearing Participant's constating documents or by-laws or any other agreements to which the Clearing Participant is a party or by which the Clearing Participant's property is bound or any provision of law applicable to the Clearing Participant;
- (b) the Clearing Participant has operations department staff capable of meeting all the requirements of the Clearinghouse Rules, and the Exchange Rules, as applicable.

10. **Authorized Signatories – Clearing Stamps**

For the purposes of this Clearing Participant Agreement and the Clearinghouse Rules, the Clearinghouse shall be entitled to rely and act upon written instructions signed or purporting to be signed on behalf of the Clearing Participant by any one of its authorized signatories named on any list of authorized signatories furnished by the Clearing Participant to the Clearinghouse at any time or from time to time or stamped with a stamp in a form designated by the Clearing Participant as being an authorized form of stamp. The Clearinghouse shall be under no obligation to ensure the genuineness or validity of any signature purporting to be that of an authorized signatory of the Clearing Participant or any stamp purporting to be an authorized stamp, and the Clearinghouse shall have no responsibility in the event that any such signature or stamp is forged or unauthorized or in the event that the written instructions signed or purporting to be signed or stamped on behalf of the Clearing Participant are otherwise invalid or ineffective.

11. **Authorized Person and Contact Persons**

- (a) Each Clearing Participant must appoint one or more Responsible Representative(s) who have the authority to decide matters of policy and to bind the Clearing Participant with respect to all matters. These individuals

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must be available at all times and must provide full contact details, including home, mobile, cottage and cell numbers as applicable.

NOTE: COMPLETE SCHEDULE "A":

(b) Each Clearing Participant must appoint two or more operational contacts.

NOTE: COMPLETE SCHEDULE "B":

12. Assignment

12.1 The Applicant may not assign this Agreement without the prior written consent of the Exchange.

12.2 The Clearinghouse may assign or transfer its rights, obligations and duties under this Agreement, without prior notice and in its absolute discretion, to any entity:

- (a) controlling, controlled by, or under common control with the Clearinghouse; or
- (b) which succeeds to all or substantially all of the assets and business of the Clearinghouse .

The Clearinghouse may otherwise assign or transfer its rights, obligations and duties under this Agreement following no less than one (1) month prior written notice to the Applicant of its intention to do so.

13 Liability

13.1 The Clearinghouse does not provide any guarantees with respect to the Clearing System or the Trading System or any part thereof. Further, the Clearinghouse does not guarantee the sequence, timeliness, accuracy or completeness of any of the Exchange's Market Data or guarantee the accuracy, responsiveness or completeness of the Platform, the Platform Software or the Related Documentation.

13.2 THE APPLICANT ACKNOWLEDGES THAT THE CLEARING SYSTEM, THE PLATFORM, PLATFORM SOFTWARE, RELATED DOCUMENTATION, ACCESS TO ANY INTERFACE AND ANY OF THE CLEARING OR EXCHANGE SERVICES OR FACILITIES USED TO SUPPORT THEM, ARE PROVIDED "AS IS". EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, ICE CLEAR CANADA, INC., INTERCONTINENTALEXCHANGE, INC., AND THE RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, AND LICENSORS OF THE EXCHANGE AND INTERCONTINENTALEXCHANGE (THE "DISCLAIMING PARTIES"), MAKE NO, AND HEREBY DISCLAIM ALL, WARRANTIES, CONDITIONS, UNDERTAKINGS, TERMS OR REPRESENTATIONS, EXPRESSED OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE, IN RELATION TO THE CLEARING SYSTEM, PLATFORM, PLATFORM SOFTWARE, RELATED DOCUMENTATION

AND ACCESS TO ANY INTERFACE OR ANY PARTS OR PARTS OF THE SAME. THE DISCLAIMING PARTIES SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT (EXCEPT AS OTHERWISE PROVIDED HEREIN). THE DISCLAIMING PARTIES FURTHER DISCLAIM ALL WARRANTIES, IMPLIED OR OTHERWISE, RELATING TO ANY THIRD PARTY MATERIALS (EXCEPT AS OTHERWISE PROVIDED HEREIN). NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THE EXCHANGE SHALL CREATE A WARRANTY AND THE USER MAY NOT RELY UPON SUCH INFORMATION OR ADVICE EXCEPT TO THE EXTENT SPECIFIED IN THIS AGREEMENT.

13.3 NONE OF THE DISCLAIMING PARTIES SHALL BE LIABLE IN ANY WAY TO THE APPLICANT OR TO ANY OTHER PERSON OR ENTITY FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES, LOSS OF PROFITS, GOODWILL, LOSS OF USE OR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF THEY WERE FORESEEN, FORESEEABLE, KNOWN OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO :

- (a) ANY FAULTS WITH THE CLEARING SYSTEMS OR THE TRADING SYSTEM, HOWEVER THOSE FAULTS MAY ARISE;
- (b) THE SUSPENSION, TERMINATION OR INABILITY TO ACCESS OR USE THE CLEARING SYSTEM OR THE TRADING SYSTEM OR ANY INACCURACIES OR OMISSIONS IN ANY INFORMATION PROVIDED, HOWEVER SUCH SUSPENSION, TERMINATION, INABILITY TO ACCESS, INACCURACY OR OMISSION MAY ARISE;
- (c) ANY FAILURE OR DELAY SUFFERED BY THE APPLICANT OR AN EMPLOYEE AND/OR CUSTOMER OF AN APPLICANT RELATING TO ACCESS TO THE CLEARING SYSTEM OR THE TRADING SYSTEM;
- (d) ANY OTHER CAUSE IN CONNECTION WITH THE FURNISHING, PERFORMANCE, MAINTENANCE OR USE OF OR INABILITY TO USE ALL OR ANY PART OF THE CLEARING SYSTEM OR THE TRADING SYSTEM; OR
- (e) ANY INJURIOUS ACT, DEFAULT, OR OMISSION UNLESS SUCH ACT, DEFAULT OR OMISSION WAS THE RESULT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF THE DISCLAIMING PARTY OR PARTIES SOUGHT TO BE HELD LIABLE THEREFOR.

13.4 In no circumstances shall either the Clearinghouse or ICE, nor any of its or their officers, directors, employees, agents, or licensors be liable to the other party or any other person or entity for any indirect; incidental; consequential damages or punitive damages; or damages for loss of

profits or goodwill, even if it has been advised of the possibility of these damages and even if the damages are due to the other party's error, omission or negligence.

- 13.5 Subject in all cases to the foregoing, the maximum aggregate liability of the Clearinghouse to the Applicant or its customers, on an aggregate basis, for any and all claims made in relation to this Agreement in any calendar year shall be ten thousand dollars (\$10,000), however that liability arises, including (without limitation) breach of contract, tort, misrepresentation or breach of statutory duty.
- 13.6 Each Party shall notify the other of any claim arising under or in connection with this Agreement within one (1) calendar month of the date on which it becomes aware of the specific act, fact, circumstance or event which gave rise to the claim. Neither party shall have any liability to the other for any such claim notified after such one (1) month period.

14. **The Applicant's Indemnification**

The Applicant agrees to indemnify, protect and hold harmless the Disclaiming Parties for any and all losses, damages, expenses and costs, including reasonable legal fees, arising from a claim, suit or other proceeding made or instituted by any person or entity arising from:

- (a) unauthorized access to, or use of the Clearing System or the Trading System; or
- (b) unauthorized access to or use of the Applicant's interfaces with the Clearing System and/or the Trading System, that causes damage to the Clearing System, the Trading System or any other participant.

15. **Waiver**

The failure of a party hereto to exercise or enforce any right conferred upon it by this Agreement shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

16. **Remedies Not Exclusive**

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy including without limitation any remedy or rights under the Exchange Rules or the Clearinghouse Rules, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.

17. **Survival**

Notwithstanding a suspension, termination, withdrawal, arbitration or other proceedings, the Clearing Participant remains bound by this Agreement as to all

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matters and Exchange Transactions occurring while a Clearing Participant and thereafter occurring with or through the Clearinghouse.

18. **Jurisdiction and Governing Laws**

- (a) With respect to any suit, action or proceeding relating to this Agreement, the Clearing participant irrevocably:
 - (i) submits to the jurisdiction of the Court of Queen's Bench Manitoba, in the City of Winnipeg, Province of Manitoba;
 - (ii) waives any objection that it may have to the laying of venue of any suit, action or proceeding brought in any such Court, and any claim that such suit, action or proceeding has been brought in an inconvenient forum and further waive the right to object that such Court does not have any jurisdiction over such party;
 - (iii) waives with respect to itself and its revenues and assets, irrespective of their use or intended use, all immunity on the grounds of sovereignty or other similar grounds from suit, relief by way of injunction, order for specific performance or for recovery of property, attachment of its assets whether before or after judgment, and execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any suit, action or proceeding in the courts of any jurisdiction; and
 - (iv) waives the right to claim any such immunity.
- (b) In consideration of the uniform application of all rights and obligations of the Clearinghouse and the Clearing Participant arising pursuant to this Agreement, and for the processing of all services by the Clearinghouse from a single location servicing a computer network, all such rights and obligations and this Agreement are governed and construed exclusively in accordance with the laws of the Province of Manitoba and of Canada applicable therein, as if all parties were residents of and the Clearing Agreement obligations were performed in Manitoba, without regard to applicable conflict of laws doctrine or provisions.

19. **Term and Termination**

- 19.1 This Agreement shall take effect when signed by both parties and shall be for a period of one (1) calendar year and shall be renewed automatically upon the expiry of that period and each calendar year thereafter unless terminated in accordance with this Agreement.
- 19.2 A party shall have the right to terminate this Agreement forthwith by giving written notice to the other party if the other party makes any arrangement or composition with its creditors or if a bankruptcy petition is presented or if a receiving order is made against it or if, being a company, an order is made or a resolution is passed for the winding-up of the other party or an

order is made for the appointment of an administrator to manage the other party's affairs, business and property, or if a receiver is appointed in respect of any of the other party's assets or undertaking, or if circumstances arise which entitle the Court or a creditor to appoint an administrative receiver, receiver or manager or which entitle the Court to make a winding-up order, or if the other party takes or suffers any similar or analogous action in consequence of debt in any part of the world.

19.3 The Clearinghouse may terminate this Agreement at any time upon the occurrence of any of the events specified in subsections (i) through (vii) of this clause 19.3. Such action shall in all events be without liability to the Clearinghouse as a consequence thereof. The Clearinghouse's right to take such action pursuant to subsections (i) and (ii) shall take effect ten (10) days from notice by the Exchange that the event listed in such subsection has occurred, unless the Applicant cures such breach within such notice period. The Clearinghouse's right to take such action pursuant to subsections (iii) through (viii) shall be immediate and without prior notice by the Clearinghouse. Pursuant to this clause 19.3, the Clearinghouse may terminate this Agreement if:

- (i) any fees or other amounts due to the Clearinghouse hereunder or otherwise pursuant to the Clearinghouse Rules are past due;
- (ii) the Applicant breaches any material obligation of this Agreement;
- (iii) such termination is required by applicable law or regulation or Court order;
- (iv) such termination is provided by the Exchange Rules or the Clearinghouse Rules;
- (v) the Applicant's status as a Direct Access Trading Participant with the Exchange is terminated.

19.4 The Applicant may terminate this Agreement on giving thirty (30) days' written notice to the Clearinghouse.

20. **Consequences of Termination**

Any termination of this Agreement shall be without prejudice to the accrued rights of the parties as at the date of such termination, and to the continuation in force of all provisions of this Agreement expressed to survive such termination, including, but not limited to, Clauses 7, 8, 9, 13 and 14.

21. **Amendments**

21.1 The Clearinghouse may in its sole discretion amend any provision of this Agreement by notice to the Applicant, where failure to do so will or would be likely to give rise to a breach of the rules and regulations of an applicable Regulatory Authority by the Clearinghouse. The Applicant expressly acknowledges and agrees that this provision is a condition of

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the Agreement and is necessary to ensure that regulatory compliance is maintained by the Clearinghouse at all times.

21.2 The Clearinghouse may further amend the provisions of this Agreement by notice sent in accordance with this Agreement, to the listed recipient, who shall be referred to as the "Notice Recipient". The amendment to this Agreement contained within the notice sent to the Notice Recipient shall be effective one (1) month subsequent to receipt of the notice by the Notice Recipient ("the Amendment Effective Date"), unless the Notice Recipient raises a substantive objection to the amendment before the Amendment Effective Date. If a substantive objection is raised by the Notice Recipient prior to the Amendment Effective Date, then the Clearinghouse shall have the discretion to suspend the Applicant's clearing rights from the Amendment Effective Date until such time that the Applicant has confirmed its acceptance of the relevant amendment in writing to the Clearinghouse. In the event that the Applicant has not signified its acceptance of the amendment in writing to the Clearinghouse by the date two (2) months subsequent to the Amendment Effective Date, then the Clearinghouse reserves the right to terminate this Agreement on two (2) week's notice to the Applicant.

22. **Invalid Provision**

Any prohibited, unenforceable or invalid provision in this Agreement is ineffective and deemed severed from this Agreement without affecting the enforceability of the remaining provisions thereof.

23. **Interpretation**

In case of any inconsistency in this Agreement between its provisions and those of the Clearinghouse Rules, the Agreement prevails, and between the Clearinghouse Rules and the Operations Manual, the Rules prevail.

24. **KCBT as Agent of**

The Clearing Participant acknowledges that the Clearinghouse and the Exchange have entered into a services agreement whereby Kansas City Board of Trade Clearing Corporation (KCBT) provides certain back office clearing and related services for the Clearinghouse. Any requests made of the Clearing Participant by KCBT shall be dealt with and responded to by the Clearing Participant as if such request(s) had been made by the Clearinghouse.

25. **Notices**

All notices or communications to be delivered under or with respect to this Agreement shall be delivered to all parties as set out herein, and be in writing and either be:

- (a) hand delivered or forwarded by registered mail to the last known address of the Applicant; or
- (b) sent via electronic mail,

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In the event of any notice being required to be sent to a party under the terms of this Agreement, then such notice shall be addressed as follows:

If to ICE Clear Canada, Inc.:

Name: Sheryl Silverberg
Address: 850A Pembina Highway, Winnipeg, Manitoba R3M 2M7
Telephone: (204) 925-5002
Fax No.: (204) 925-5014
E-mail: sheryl.silverberg@theice.com

If to the Clearing Participant: **(NOTE: IF THIS IS NOT COMPLETED – SERVICE MAY BE AFFECTED ON ANY ONE OF THE RESPONSIBLE INDIVIDUALS APPOINTED).**

Name: _____
Address: _____
Telephone: _____
Fax No.: _____
E-mail: _____

Notices shall be deemed to have been served at 9 am in Winnipeg, Manitoba on the Business Day following the date of sending where the notice is sent by hand or electronic mail, or 9 am in Winnipeg, Manitoba on the third Business Day following the date of sending where the notice is sent by registered mail.

26. **Remedies Not Exclusive**

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy including without limitation any remedy or rights under the Clearinghouse Rules, except as expressly provided in this Agreement, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise.

27 **Regulatory Requirements**

It shall not be the responsibility of the Clearinghouse to inform Applicants or their employees or Customers of regulatory requirements including without limitation, all regulatory, audit trail, record keeping and record retention requirements to which they may be subject (in any jurisdiction) and no such inference or interpretation shall be drawn from the terms and conditions of this Agreement. The Applicant shall assume all responsibility for keeping itself fully informed of all such the Clearinghouse Rules, requirements, policies and laws.

28. **Force Majeure**

Other than an obligation of payment under the terms of this Agreement and without prejudice to the Clearinghouse's rights under the terms of the Clearinghouse Rules, a party is not liable for any failure or delay in performing any obligation under this Agreement that is due to causes beyond its reasonable control, such as natural catastrophes, war, acts of terrorism, armed conflict, labor strikes or disputes, transportation unavailability, stoppages or slowdowns, provided that the affected party gives prompt notice to the other of the nature of the event and its estimated duration and resumes performance as soon as possible after the event.

29. **Further Assurance**

The parties shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of this Agreement into full force and effect.

THE BALANCE OF THIS PAGE LEFT INTENTIONALLY BLANK.

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30. **Counterparts**

This Agreement may be executed in counterparts by the Parties, each of which when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument. A complete set of counterparts shall be lodged with each Party.

31. The Clearing Participant acknowledges receipt of a copy of this Clearing Participant Application/Agreement.

Dated as of this _____ day of _____, 20 ____.

(Type full correct legal name of Clearing Participant)

Per _____
(Authorized Signatory)

(Print Name and Title of Authorized Signatory)

This application/agreement was accepted by the Board of Directors of ICE Clear Canada, Inc. pursuant to Rule A-206, at a board meeting held _____.

ICE CLEAR CANADA, INC.

Per: _____
Corporate Secretary

**Schedule A to the
Application for Clearing Participant Status**

**Designation of
Responsible Representatives and Signing Officers**

(To be updated by the Clearing Participant as required.)

Initial Filing Update Filing Date: _____

To: ICE Clear Canada, Inc.
850A Pembina Highway
Winnipeg, Manitoba R3M 2M7
Attention: Sheryl Silverberg fax # (204) 925-5014

(the "Clearing Participant" hereby designates each of the individuals named below as Responsible Representatives and Signing Officers authorized to act on behalf of the Clearing Participant for all purposes and certify that such individuals hold the office set opposite his or her name and that the specimen signature set opposite his or her name is his or her genuine signature. Each Responsible Representative has completed Schedule "A" and will keep the information on the schedule updated:

Responsible Representatives

1.	Name	Title	Specimen Signature
	Work #	Fax #	Cell #
	Other #'s Cottage	Blackberry	Home
	Email	Main Switchboard #	
2.	Name	Title	Specimen Signature
	Work #	Fax #	Cell #
	Other #'s Cottage	Blackberry	Home
	Email	Main Switchboard #	
3.	_____	_____	_____

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Name	Title	Specimen Signature
------	-------	--------------------

Work #	Fax #	Cell #
--------	-------	--------

Other #s Cottage	Blackberry	Home
------------------	------------	------

Email	Main Switchboard #
-------	--------------------

4.

Name	Title	Specimen Signature
------	-------	--------------------

Work #	Fax #	Cell #
--------	-------	--------

Other #s Cottage	Blackberry	Home
------------------	------------	------

Email	Main Switchboard #
-------	--------------------

The Clearinghouse shall be entitled to rely upon this designation of Responsible Representatives and signing officers until any changes are notified to the Clearinghouse, in writing, in accordance with the Rules.

Schedule B
Application for Clearing Participant Status

Designation of Operational Contacts

(To be updated by the Clearing Participant as required.)

Initial Filing Update Filing Date: _____

To: ICE Clear Canada, Inc.
850A Pembina Highway
Winnipeg, Manitoba R3M 2M7

Attention: Sheryl Silverberg – fax # (204) 925-5014

(the "Clearing Participant" hereby designates each of the individuals named below as Operational Contacts authorized to act on behalf of the Clearing participant for all purposes relative to clearing and the operations of the Clearinghouse. Each Responsible Representative will keep the information on this schedule current and updated:

(A) Operational Contacts:

1.

Name	Title	Specimen Signature
Work #	Fax #	Cell #
Other #'s (eg Cottage)	Blackberry	Home
Email	Main Switchboard #	

2.

Name	Title	Specimen Signature
Work #	Fax #	Cell #
Other #'s (eg Cottage)	Blackberry	Home
Email	Main Switchboard #	

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3.

Name	Title	Specimen Signature
Work #	Fax #	Cell #
Other #s (eg Cottage)	Blackberry	Home
Email	Main Switchboard #	

4.

Name	Title	Specimen Signature
Work #	Fax #	Cell #
Other #s (eg Cottage)	Blackberry	Home
Email	Main Switchboard #	

The Clearinghouse shall be entitled to rely upon this designation of Operational Contacts until any changes are notified to the Clearinghouse, in writing, in accordance with the Rules.

**Certified Copy of a Resolution of the Clearing Participant's
Board of Directors**

Re: Clearing Participant status with ICE Clear Canada, Inc. (the Clearinghouse)

It has been resolved that;

The Corporation be and is hereby authorized to apply to become a Clearing Participant with the Clearinghouse and to complete the Application/Agreement and forms prescribed by the Clearinghouse;

Any one director or officer of the Corporation shall be and is hereby authorized to execute for, in the name of, and on behalf of the Corporation, the Application/Agreement required by the Clearinghouse and is authorized to execute such other agreements, documents or instruments as are necessary for the purposes of the Corporation becoming a Clearing Participant with the Clearinghouse;

Upon acceptance, execution and delivery of the Application/Agreement by the Clearinghouse, same will constitute a binding and enforceable agreement of the Corporation pursuant to its terms and conditions.

The undersigned, _____, being the _____ ("Title") of _____ (the "Corporation") hereby certifies that the foregoing is a true and correct copy of the resolution passed by the Board of Directors of the Corporation at a meeting duly called and held on _____, 20 _____ at which a quorum was present and acting throughout, and that such resolution remains in full force and effect, unchanged.

Dated the _____ day of _____, 20 _____.

(Signature)

(Name – Please Print)

(Title)

**OPINION OF COUNSEL
for
Clearing Participant Applicant if a Limited Liability Company**

{To be furnished on law firm's letterhead}

**Attention: Corporate Secretary
ICE Clear Canada, Inc.
850A Pembina Highway
Winnipeg, Manitoba
R3M 2M7**

Sirs:

This opinion is addressed to you in connection with the request of _____ {name of firm} (the "Applicant") to become registered as a Clearing Participant of ICE Clear Canada, Inc. with respect to contracts that are cleared by ICE Clear Canada, Inc. For purposes of rendering this opinion to ICE Clear Canada, Inc. we have reviewed such laws and regulations and examined such documents and records that we have deemed necessary. Based upon, and subject to the foregoing, it is our opinion that:

- (1) The Applicant is a Limited Liability Company, duly organized and validly existing under the laws of the State/Province of:
- (2) The Application/Agreement for Clearing Participant Status ("the Agreement") has been duly authorized, executed and delivered by the Applicant.
- (3) The Agreement has been duly executed and delivered by the Applicant and constitutes a valid and binding agreement of the Applicant.

This opinion is rendered to ICE Clear Canada, Inc. solely for its benefit and may not be relied upon by any other person for any purpose without our prior written consent.

Yours truly,

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LETTER OF CREDIT FOR ICE Clear Canada, Inc.

Letter of Credit No.: (Number)

Applicant:
(Name of Company)
(Address)

Beneficiary:
ICE Clear Canada, Inc.
850A Pembina Highway
Winnipeg, Manitoba
R3M 2M7

Amount: CAD \$X.00
(X and 00/100 Canadian Dollars)

Date of Expiry: (Date)

At the request of our customer, the above-mentioned applicant ("Applicant"), we, (name of bank) ("Bank"), (address) ("Branch Address"), hereby issue in your favour our irrevocable standby letter of credit for an amount up to but not exceeding CAD \$X.00 (X and 00/100 Canadian Dollars).

This standby letter of credit is issued pursuant to the requirements of ICE Clear Canada, Inc. in respect of Margin Deposits owed by the Applicant pursuant to the Rules and Operations Manual of ICE Clear Canada, Inc.

Payment under this standby letter of credit shall be made on or before the above-noted expiry date ("Expiry Date") upon your presenting at our counters at the Branch Address, the following documents:

1. The original of this standby letter of credit.
2. Your written demand for payment. The said demand shall refer to this standby letter of credit no. (number), shall state the amount being demanded and shall certify that the said amount is due and payable to you by the Applicant.

Upon receipt by the Bank, at the Branch Address, of the said demand and the other document referred to above on or before the Expiry Date, we shall, within two hours, advise you of our intent to honour or dishonour the obligation to pay the amount stated in this said demand and make payment before 3:00 p.m. CT the business day following demand for payment, without enquiring whether you have a right to such amount, and without recognizing any claim of the Applicant, provided that such amount does not exceed the amount of this standby letter of credit.

(Optional) It is a condition of this letter of credit that it shall be deemed to be automatically extended without amendment for one year from the present or future expiration date hereof, unless at least thirty (30) days prior to any such date we shall notify you in writing by registered mail or courier that we elect not to consider this letter of credit renewed for any such additional period.

This undertaking is issued subject to the International Standby Practices Rules ISP 1998 and engages us in accordance with the terms thereof, except where the provisions of this undertaking are inconsistent therewith, in which event the provisions of this undertaking shall prevail.

(Where appropriate) Upon written confirmation from ICE Clear Canada, Inc. to the Bank that this letter of credit is acceptable, this Letter of Credit will replace and cancel Letter of Credit No. (number).

Any reference herein to an underlying commercial contract is strictly for identification purposes only.

FOR (NAME OF BANK)

Authorized Signature

Authorized Signature