



February 23, 2024

**VIA CFTC PORTAL**

Christopher J. Kirkpatrick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st St., N.W.  
Washington, D.C. 20581

**Re: Amendment to ICE NGX Canada Inc. Rules - Submission Pursuant to Section 5c(c)(1) of the Commodity Exchange Act and CFTC Regulation § 40.6(a): Changes relating to the Deposit Agreement**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended, (“Act”) and Commodity Futures Trading Commission (“Commission”) Regulation 40.6(a), ICE NGX Canada Inc. (“ICE NGX”) is submitting this self-certification relating to changes (the “Amendments”) to the ICE NGX Contracting Party Agreement (“CPA”). The CPA functions as the rulebook for ICE NGX’s exchange and clearinghouse operations and is a “rule” as that term is defined under Commission Regulation 40.1(i).

**1. Overview**

Effective March 15, 2024 ICE NGX is amending and restating the Deposit Agreement entered into between ICE NGX, Royal Trust Corporation of Canada (the “Escrow Agent” as defined in the CPA) and Royal Bank of Canada (“Exchange’s Principal Banker” as defined in the CPA).

The changes to the Deposit Agreement will

- clarify and update the provisions relating to drawing on the USD 200 million Exchange Letter of Credit (as defined in the CPA) that functions as ICE NGX’s default fund; and
- facilitate ICE NGX’s anticipated deposit of a Revocation Warranty Fund Letter of Credit, as further described below, with the Escrow Agent as part of ICE NGX’s intended launch of physically settled Alberta Environmental Products on March 11, 2024 (subject to regulatory approval).

The Amendments implement these changes to the Deposit Agreement in ICE NGX’s rulebook.

ICE NGX intends to implement the Amendments on March 15, 2024 or on such later date as ICE NGX may designate. Contracting Parties will receive a copy of the amended and restated Deposit Agreement on or shortly after its effective date.

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The text of the amended CPA provisions is attached as the Appendix to this letter. Note: All capitalized terms not otherwise defined herein have the meaning given to them in the CPA.

## **2. Details of Rule Changes**

The CPA governs the relationship between Contracting Parties and ICE NGX, and sets out certain rights and obligations of Contracting Parties and ICE NGX in respect of making a claim on Exchange Letter of Credit. The Deposit Agreement governs the holding, in escrow, of the Exchange Letter of Credit by the Escrow Agent, and repeats the rights and obligations of Contracting Parties and ICE NGX in respect of making a claim on Exchange Letter of Credit in order to establish the legal framework for the Escrow Agent.

Along with the Escrow Agent and Exchange's Principal Banker, ICE NGX intends to amend and restate the Deposit Agreement in order to update, clarify and streamline the provisions relating to a claim on the Deposit Agreement. The Amendments harmonize the relevant CPA provisions with the corresponding provisions in the Deposit Agreement as intended to be revised, in order to improve transparency and reduce the potential for divergence in interpretation.

The amended and restated Deposit Agreement will also govern the holding, in escrow, of an additional letter of credit (the Revocation Warranty Fund Letter of Credit) by the Escrow Agent, intended to fund, in whole or in part, the Revocation Warranty Fund. As described in submissions to the Commission dated February 15, 2024 and in a notice published by ICE NGX on February 21<sup>st</sup>,<sup>1</sup> ICE NGX intends, subject to successful completion of the self-certification process, to launch trading and clearing of physically settled contracts for Alberta emission performance credits ("EPCs") and emission offsets ("Offsets"). ICE NGX intends to establish a Revocation Warranty Fund that would compensate buyers in the unlikely event an EPC or Offset is revoked by the Alberta government and the seller of the EPC or Offset fails to satisfy its Revocation Obligations. The Amendments introduce the concept of the Revocation Warranty Fund and Revocation Warranty Fund Letter of Credit into the ICE NGX rulebook.

Finally, the Amendments make certain clarifying changes to the procedures upon an Unremedied Exchange Default.

## **3. Compliance with Core Principles**

ICE NGX reviewed the Amendments and determined that they comply with the rules and regulations of the Commission. In this regard, ICE NGX reviewed the derivatives clearing organization ("DCO") core principles (each a "Core Principle") and determined that the Amendments are potentially relevant to the following Core Principles and applicable regulations of the Commission thereunder.

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<sup>1</sup> ICE NGX to Launch Alberta Environmental Products, published February 21, 2024, available on the Notices page of the ICE NGX website: [www.ice.com/ngx/notices](http://www.ice.com/ngx/notices).

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Compliance (Core Principle A): The Amendments are consistent with Core Principle A - Compliance and Commission Regulation 39.10, as the Amendments clarify and enhance ICE NGX's policies and procedures for complying with Commission regulations and internal policies.

Risk Management (Core Principle D): The Amendments are consistent with Core Principle D - Risk Management and Commission Regulation § 39.13(f) generally as the Amendments update, clarify and streamline provisions of the CPA that form part of ICE NGX's risk control mechanisms reasonably designed to ensure, in the case of a Contracting Party default, that ICE NGX's operations would not be disrupted and non-defaulting participants would not be exposed to losses they cannot anticipate or control.

Default Rules and Procedures (Core Principle G): The Amendments are consistent with Core Principle E - Default Rules and Procedures and Commission Regulation § 39.16(a) and (c) generally, as the Amendments update, clarify and streamline provisions of the CPA that form part of the rules that set forth ICE NGX's default procedures.

#### **4. Certifications**

ICE NGX certifies that the proposed Amendments discussed in this submission comply with the Commodity Exchange Act, including the Core Principles and the Regulations of the Commission thereunder. ICE NGX is not aware of opposing views expressed regarding the Amendments. ICE NGX further certifies that, concurrent with this filing, a copy of this submission was posted to ICE NGX's website.

Yours truly,

*"as signed by"*

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By: Martin McGregor  
Title: General Counsel & CCO  
Date: February 23, 2024



## APPENDIX

### AMENDMENTS TO THE ICE NGX CONTRACTING PARTY AGREEMENT

#### TERMS AND CONDITIONS

*[Note: Insertions are underlined, deletions are struck through.]*

#### ARTICLE 1 - DEFINITIONS AND INTERPRETATION

##### 1.2 Definitions

“Deposit Agreement” means the agreement made effective ~~December 15, 2022~~ March 15, 2024 between Exchange, ~~and~~ the Escrow Agent and Exchange’s Principal Banker, as amended or restated from time to time;

“Escrow Agent” means the trustee under the Deposit Agreement;

“Exchange Default” means the failure by Exchange to perform any of its Obligations in respect of any Transaction with the Contracting Party that is not an Unremedied Exchange Default;

“Exchange Letter of Credit” means the letter(s) of credit provided for the benefit of Contracting Parties who have entered into Transactions, ~~which has been~~ and deposited with the Escrow Agent pursuant to the provisions of the Deposit Agreement for the purpose of providing liquidity in the case of a default by one or more Contracting Parties;

“Direction to Pay” has the meaning ascribed to it in the Deposit Agreement;

“Direction to Pay Same-Day” has the meaning ascribed to it in the Deposit Agreement;

“Undertaking” means the undertakings of the Escrow Agent to the Contracting Parties in respect of certain matters relating to the Revocation Warranty Fund Letter of Credit, if any, and the Exchange Letter of Credit, as more particularly set forth in Appendix “C” to the Deposit Agreement;

“Revocation Warranty Fund” means an amount of funds maintained by Exchange for the benefit of each Contracting Party that is a Buyer under a Transaction for Alberta Environmental Products, in the case of a failure by one or more Warranting Sellers to perform their Revocation Obligations under such Transactions, as more particularly described in Schedule “H”;

“Revocation Warranty Fund Letter of Credit” means the letter(s) of credit, if any, deposited with the Escrow Agent pursuant to the provisions of the Deposit Agreement for the purpose of funding, in whole or in part, the Revocation Warranty Fund;

“Unremedied Exchange Default” means: ~~(i) an Exchange Failure to Pay in respect of a Contracting Party that has not been remedied by payment to the Contracting Party by Exchange or the Escrow Agent, as the case may be, pursuant to this Agreement and/or the Deposit Agreement, as applicable, within thirty (30) days from receipt by Exchange of notice from the Contracting Party of the Exchange Failure to Pay;~~ or (ii) ~~an Exchange Failure to Pay resulting from an Exchange Failure to Take or Exchange Failure to Deliver that has not been remedied by payment to the Contracting Party by Exchange or the Escrow Agent, as the case may be, pursuant to this Agreement and the Deposit Agreement,~~ and that is not otherwise:

~~(i)~~ the subject matter of an Exchange Notice Not to Pay, as defined in the Deposit Agreement; or

~~(ii)~~ the subject matter of Mediation or Arbitration between Exchange and the Contracting Party; ~~or~~

~~(iii) the result or effect of a Force Majeure event,~~

~~and that remains unpaid on the thirtieth (30th) day following the date of the Exchange Failure to Pay;~~

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## ARTICLE 5 - RECOURSE AND LIABILITY

### 5.2 Failure to Pay

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b. By Exchange – In the event of a Failure to Pay by Exchange that is ~~(i)~~ not rectified by Exchange within three (3) Business Days of the receipt of a notice of Failure to Pay by Exchange and (ii) not satisfied by payment from the Escrow Agent in respect of a Direction to Pay pursuant to, and as defined in, the Deposit Agreement, Exchange will pay to the Seller an amount equal to:

(i) the Failure Amount; plus

(ii) interest from the date of the occurrence of the Failure to Pay at the Default Rate to and including the date of payment to the Seller of all such amounts. The Seller will deliver to Exchange a separate ~~Invoice~~ invoice in respect of the Failure to Pay itemizing separately the amounts payable under (i) and (ii).

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## 5.12 Deposit Agreement

- a. Failure to Pay by Contracting Party –
- (i) In the event of a Failure to Pay by a Contracting Party, Exchange may immediately file with the Escrow Agent a Direction to Pay ~~Within-Same-Day~~ pursuant to, and as defined in, the Deposit Agreement, for the sole purpose of satisfying one or more Invoices owing by Exchange to one or more Contracting Parties that would otherwise be subject to a Failure to Pay by Exchange.
  - (ii) Upon verification of the Direction to Pay ~~Within-Same-Day~~, the Escrow Agent will forthwith provide sufficient proceeds from the Exchange Letter of Credit to Exchange ~~to~~, and Exchange will forthwith use such proceeds solely to satisfy the Invoice(s) that would otherwise be subject to a Failure to Pay by Exchange.
  - (iii) Exchange will promptly disclose, through notice posted to Exchange’s website, that a Direction to Pay ~~Within-Same-Day~~ was processed by the Escrow Agent.
- b. Failure to Pay by Exchange – In the event of a Failure to Pay by Exchange ~~that which~~ is not rectified by Exchange within three (3) Business Days from receipt by Exchange of a notice of an Exchange Failure to Pay ~~by Exchange~~, Exchange shall immediately file with the Escrow Agent a Direction to Pay pursuant to, and as defined in, the Deposit Agreement and shall notify the Contracting Party Payee(s) (as defined in the Deposit Agreement) ~~of such that the~~ Direction to Pay having has been filed.
- c. Contracting Party’s Demand – In the event of a Failure to Pay by Exchange that is not rectified by Exchange within (5) Business Days from receipt by Exchange of a notice of Exchange Failure to Pay, each ~~The~~ Contracting Party that is the subject of the Exchange Failure to Pay may ~~will be entitled in the event of an Exchange Failure to Pay resulting from a Failure to Take, Failure to Deliver or Exchange Default to~~ file with the Escrow Agent the a Contracting Party’s Demand pursuant to, and as defined in, the Deposit Agreement ~~after the expiry of five (5) Business Days from the occurrence of such event~~.
- d. Exchange Notice Not To Pay – In the event that the Contracting Party files with the Escrow Agent the a Contracting Party’s Demand, Exchange ~~will be entitled to may~~ file with the Escrow Agent the a Notice Not To Pay pursuant to, and as defined in, the Deposit Agreement, ~~in the event certifying~~ that:
- (i) Exchange has already filed with the Escrow Agent a Direction to Pay in respect of the Exchange Failure to Pay;
  - (ii) five (5) Business Days have not elapsed from receipt by Exchange of the notice of Exchange Failure to Pay which forms the basis for the Contracting Party’s Demand ~~the occurrence of the Exchange Default, as the case may be;~~

- (ii) either the Contracting Party or Exchange has initiated Mediation in respect of a dispute, controversy, difference or question ~~in respect of~~ relating to the Exchange Failure to Pay ~~Default, as the case may be~~, and
    - (A) twenty (20) days have not expired from the date of initiation of such Mediation; or
    - (B) the resolution of the Mediation has resulted in the amount owing to the Contracting Party being lower than the amount specified in the Contracting Party's Demand;
  - (iii) either the Contracting Party or Exchange has initiated Arbitration in respect of a dispute, controversy, difference or question ~~in respect of~~ relating to the Exchange Failure to Pay ~~Default, as the case may be~~, and
    - (A) the Arbitrator or the Arbitral Tribunal, as the case may be, has not issued a decision in respect of such matter; or
    - (B) the decision of the Arbitrator or Arbitral Tribunal, as the case may be, has resulted in the amount owing to the Contracting Party being lower than the amount specified in the Contracting Party's Demand; or
  - (iv) the amount owing to the Contracting Party in respect of the Contracting Party's Demand has been satisfied.
- e. Contracting Party May Re-File – In the event that Exchange files with the Escrow Agent the Notice Not To Pay, the Contracting Party ~~is entitled to may~~ refile ~~with the Escrow Agent~~ the Contracting Party's Demand with the Escrow Agent, with:
- (i) a statement indicating ~~the passage of that~~ five (5) Business Days have elapsed from receipt by Exchange of the notice of Exchange Failure to Pay which forms the basis for the Contracting Party's Demand;
  - (ii) if Mediation ~~is agreed to~~ has been initiated, a statement from the mediator ~~as to the passage of~~ twenty (20) days have elapsed from the date of initiation of the Mediation or a joint direction from the Contracting Party and Exchange as to the resolution of the Mediation; or
  - (iii) if Arbitration ~~is agreed to~~ has been initiated, a statement from the Arbitrator or the Arbitral Tribunal, as the case may be, as to the decision in respect of the matter.
- f. Escrow Agent Undertaking – Exchange ~~hereby agrees to will~~ provide the Escrow Agent with the Contracting Party's name and will provide the Contracting Party with an executed copy of the Escrow Agent's Undertaking to the Contracting Party in respect of the Deposit Agreement.

- g. Deposit Agreement Prevails – In the event of any conflict between the provisions of this Agreement and the Deposit Agreement, the rights of Exchange and the Contracting Party under this Agreement will be deemed to be amended and interpreted in accordance with the provisions of the Deposit Agreement.

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#### 5.14 ~~Remedies~~ Procedures Upon an Unremedied Exchange Default or Exchange Bankruptcy Event of Default

- a. Early Termination – In the event that there occurs and is continuing an Unremedied Exchange Default or Exchange Bankruptcy Event of Default, the Contracting Party, in addition to any remedies it may have at law or in equity or otherwise under this Agreement or under any Transaction, may give notice in writing to Exchange of termination of this Agreement, on no less than five (5) days' notice to Exchange (the date of such notice being the "Early Termination Notice Date"), designate designating a day no earlier than five (5) days following the Early Termination Notice Date and no later than sixty (60) days after becoming aware of such Unremedied Exchange Default or Exchange Bankruptcy Event of Default, as an early termination date (the "Early Termination Date"). On the Early Termination Date, all of the Contracting Party's outstanding Transactions (collectively the "Terminated Transactions") shall be terminated.
- b. ~~Remedies~~ Procedures Upon Early Termination – If the Terminated Transactions are terminated by the Contracting Party pursuant to this Section 5.14~~3~~, Exchange shall in good faith calculate in a commercially reasonable manner: (i) an amount equal to the present value on the Early Termination Date (using the Default Rate as the discount rate) of the economic benefit to it, if any, resulting from the termination of the Terminated Transactions (the "Gains"); and (ii) an amount equal to the present value on the Early Termination Date (using the Default Rate as the discount rate) of the economic loss to it, if any, resulting from the termination of the Terminated Transactions (the "Losses"). Gains and Losses shall be determined, for each Terminated Transaction, by reference to relevant market information which shall consist of the arithmetic average (the "Calculation") of market quotations ("Prices") provided by the five (5) Contracting Parties who:
- (i) with respect to Terminated Transactions that are Physically Settled Gas Futures Transactions, Options contemplating the delivery of gas or Options or for which the notional quantity is gas (collectively, "Gas Products"), have traded the highest overall volume of Gas Products listed on the ICE NGX Trading System;
  - (ii) with respect to Terminated Transactions that are Physically Settled Power Futures Transactions, have traded the highest overall volume of Physically Settled Power Futures Products listed on the ICE NGX Trading System;
  - (iii) Reserved; or



- (iv) with respect to Terminated Transactions that are transactions in Financially Settled Futures Products for which the notional quantity is financial power (collectively, “Financial Power Products”), have traded the highest overall volume of Financial Power Products listed on the ICE NGX Trading System,

over the immediately prior consecutive twelve (12) month period (the “Highest Volume”) and the terms and conditions under which the Contracting Party would reasonably be able to enter into a replacement agreement with a third party on the same material terms and conditions as set out in the Terminated Transaction (a “Replacement Transaction”). If Prices are not forthcoming from any such five (5) Contracting Parties, Exchange shall obtain Prices from the Contracting Party with the next Highest Volume until five Prices have been obtained for the Calculation, and in circumstances where five such Prices are not forthcoming, Exchange shall perform the Calculation on such lesser number of Prices that can be obtained using the above method. Notwithstanding the foregoing, nothing in this Agreement shall require or be deemed to require the Contracting Party to enter into a Replacement Transaction.

c. Net Termination Payment – As soon as practicable following the Early Termination Date and in no event later than five (5) days following the Early Termination Date, Exchange shall aggregate, Set-Off ~~and net~~ all Gains and Losses along with all other Obligations owed by Exchange to the Contracting Party under the Agreement (“Receivables”) and all payables owed by the Contracting Party to Exchange under the Agreement (“Payables”) to reduce all such amounts to a single net amount (the “Net Termination Payment”) and notify the Contracting Party in writing of the Net Termination Payment owed to or owing by the Contracting Party (the “Early Termination Notice”). (For clarity, the Set-Off and netting of all Gains and Losses along with all other Obligations owed by Exchange to the Contracting Party under this Agreement shall be deemed to be equivalent to a single master netting agreement.) To the extent that the Contracting Party is owed a Net Termination Payment by Exchange, Exchange shall pay the Net Termination Payment to the Contracting Party as soon as practicable, making commercially reasonable efforts to pay such Net Termination Payment within ten (10) Business Days of receipt by the Contracting Party of the Early Termination Notice regarding such calculation. To the extent that the Contracting Party owes a Net Termination Payment to Exchange, the Contracting Party shall pay the Net Termination Payment to Exchange within two (2) Business Days of receipt of the Early Termination Notice. In the event that Exchange has not provided ~~a~~ an Early Termination Notice to the Contracting Party within the five (5) day period set forth above, the Contracting Party shall have the right to calculate its Gains or Losses, as the case may be, for the Terminated Transactions, by determining a Price for each such Terminated Transaction, such Price being a good faith commercially reasonable representation of market value, which value may be disputed in good faith.

d. Currency of Net Termination Payment – Any and all payments under this Section 5.14~~3~~ shall be made ~~in freely available Canadian currency~~ by wire payment in Canadian dollars or U.S. dollars as determined by Exchange. For greater certainty, any correspondent or intermediary bank fees relating to payments under this Section 5.14~~3~~ are the responsibility of the Contracting Party. Any amount which is not paid when due under this Section 5.14~~3~~



shall bear interest (both before and after judgment) at the Default Rate, as from the due date of payment until the date of payment, compounded monthly.

- ee. Section 14 Termination Rights Prevail – A Contracting Party’s rights under this Section 5.14~~3~~ supersede its right to voluntarily terminate this Agreement in accordance with Section 9.1 the terms set out herein. For greater certainty, an affected Contracting Party ~~cannot~~ may not exercise its voluntary right under Section 9.1 to terminate this Agreement if an ~~Exchange Failure to Deliver, Exchange Failure to Take, Exchange Failure to Pay or Exchange Default~~ has occurred which, with the giving of notice or the lapse of time or both, would constitute an Unremedied Exchange Default or Exchange Bankruptcy Event of Default.
- ef. Exchange’s Right to Cause Early Termination of all Agreements and Transactions – The Contracting Party acknowledges that Exchange has entered into Contracting Party Agreements with other Contracting Parties and, pursuant thereto, Exchange is, from time to time, party to Transactions with such other Contracting Parties. The Contracting Party acknowledges and agrees that, in the event it or one or more other Contracting Parties designates an Early Termination Date (the “Triggering Early Termination Date”) pursuant to this Agreement or one or more of the other Contracting Party Agreements, Exchange shall immediately become entitled, in its sole discretion, to designate an Early Termination Date under any one or more of this Agreement and the other Contracting Party Agreements. If Exchange does so, Exchange may designate an Early Termination Date for any or all such terminations which is the same day or is a day later than the Triggering Early Termination Date, in Exchange’s sole discretion. In the event that Exchange does designate one or more Early Termination Dates following the Triggering Early Termination Date, all the other provisions of this Section 5.14~~3~~ shall apply thereto mutatis mutandis.

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## ARTICLE 9 - MISCELLANEOUS

### 9.1 Term

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- b. Termination – In addition, and without limitation, to any other rights of termination granted under this Agreement subject only to Section 5.14, either the Contracting Party or Exchange may give notice of termination to the other at any time and this Agreement will be terminated as of the effective date in such notice on the condition that such date is no earlier than one Business Day following receipt or deemed receipt of such notice or, where there is no effective date, then at the end of the period ending eight weeks after receipt of such notice (the “Termination Date”), provided that:
  - (i) this Agreement will continue to be in effect until each of the Contracting Party and Exchange has performed all of its Obligations under all of its Transactions and this Agreement and, for clarity, until any outstanding Invoices of the Contracting Party

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are deemed paid and settled, as determined in the sole discretion of Exchange;  
and

- (ii) the Contracting Party will not be entitled to enter into any Transactions after the Termination Date.