

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5,
AS AMENDED (THE ACT)
AND
IN THE MATTER OF
ICAP SEF (US) LLC
ORDER
(Section 147 of the Act)

WHEREAS ICAP SEF (US) LLC (**Applicant**) has filed an application dated April 4, 2016 (**Application**) with the Ontario Securities Commission (**Commission**) requesting an order pursuant to section 147 of the Act exempting the Applicant from the requirement to be recognized as an exchange under subsection 21(1) of the Act (**Exchange Relief**);

AND WHEREAS on October 1, 2013, the Commission issued an interim order under section 147 of the Act exempting the Applicant on an interim basis from the requirement in subsection 21(1) of the Act to be recognized as an exchange (**Interim Order**), terminating on the earlier of (i) October 2, 2014 and (ii) the effective date of a subsequent order exempting the Applicant from the requirement to be recognized as an exchange (**Subsequent Order**);

AND WHEREAS on September 30, 2014, the Commission issued an order (**Variation Order**) under Section 144 of the Act varying the Interim Order so that it terminates on the earlier of (i) the 180th day following the date on which the Applicant is granted permanent registration as a swap execution facility (**SEF**) by the United States Commodity Futures Trading Commission (**CFTC**) and (ii) the effective date of a Subsequent Order;

AND WHEREAS the CFTC granted the Applicant permanent registration as a SEF on January 22, 2016;

AND WHEREAS the Interim Order, as varied by the Variation Order, will therefore terminate upon the issuance of this order;

AND WHEREAS the Applicant has represented to the Commission that:

- 1.1 The Applicant is a limited liability company organized under the laws of the State of Delaware in the United States (U.S.) and is a wholly owned subsidiary of ICAP Broking Holdings North America LLC. The ultimate parent company of the Applicant is ICAP plc, a company listed on the London Stock Exchange;
- 1.2 The Applicant is a marketplace for trading swaps that are regulated by the CFTC. The Applicant is a multi-asset SEF offering trading in interest rate swaps, credit indices, non-deliverable forward FX, commodities and equity derivatives. Participants can trade swaps via central limit order book, pre-arranged crosses, and block trades;
- 1.3 In the United States, the Applicant operates under the jurisdiction of the CFTC and has obtained registration with the CFTC to operate a SEF;

- 1.4 The Applicant is obliged under CFTC rules to have requirements governing the conduct of participants, to monitor compliance with those requirements and to discipline participants, including by means other than exclusion from the marketplace;
- 1.5 The Applicant has retained the National Futures Association to be a regulatory services provider;
- 1.6 Because the Applicant regulates the conduct of its participants, it is considered by the Commission to be an exchange;
- 1.7 Because the Applicant has participants located in Ontario, it is considered by the Commission to be carrying on business as an exchange in Ontario and is required to be recognized as such or exempted from recognition pursuant to section 21 of the Act;
- 1.8 The Applicant provides connectivity to the following clearing houses: the Chicago Mercantile Exchange Inc., ICE Clear Europe Limited, ICE Clear Credit Inc., LCH.Clearnet LLC and LCH.Clearnet Ltd.;
- 1.9 The Applicant has no physical presence in Ontario and does not otherwise carry on business in Ontario except as described above and permitted by the Interim Order; and
- 1.10 The Applicant satisfies all the SEF Criteria as described in Appendix 1 to Schedule "A";

AND WHEREAS the products traded on the Applicant are not commodity futures contracts as defined in the *Commodity Futures Act* (Ontario) and the Applicant is not considered to be carrying on business as a commodity futures exchange in Ontario;

AND WHEREAS the Commission will monitor developments in international and domestic capital markets and the Applicant's activities on an ongoing basis to determine whether it is appropriate for the Exchange Relief to continue to be granted subject to the terms and conditions set out in Schedule "A" to this order;

AND WHEREAS the Applicant has acknowledged to the Commission that the scope of the Exchange Relief and the terms and conditions imposed by the Commission set out in Schedule "A" to this order may change as a result of the Commission's monitoring of developments in international and domestic capital markets or the Applicant's activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives or securities;

AND WHEREAS based on the Application, together with the representations made by and acknowledgements of the Applicant to the Commission, the Commission has determined that Applicant satisfies the criteria set out in Appendix 1 to Schedule "A" and that the granting of the Exchange Relief would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that, pursuant to section 147 of the Act, the Applicant is exempt from recognition as an exchange under subsection 21(1) of the Act,

PROVIDED THAT the Applicant complies with the terms and conditions contained in Schedule "A."

SCHEDULE "A"
TERMS AND CONDITIONS

Meeting Criteria for Exemption

1. The Applicant will continue to meet the criteria for exemption included in Appendix 1 to this Schedule.

Regulation and Oversight of the Applicant

2. The Applicant will maintain its registration as a swap execution facility (**SEF**) with the Commodity Futures Trading Commission (**CFTC**) and will continue to be subject to the regulatory oversight of the CFTC.
3. The Applicant will continue to comply with the ongoing requirements applicable to it as a SEF registered with the CFTC.
4. The Applicant will promptly notify the Commission if its registration as a SEF has been revoked, suspended, or amended by the CFTC, or the basis on which its registration as a SEF has been granted has significantly changed.
5. The Applicant must do everything within its control, which includes cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

Access

6. The Applicant will not provide direct access to a participant in Ontario (**Ontario User**) unless the Ontario User is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, and qualifies as an "eligible contract participant" under the United States Commodity Exchange Act, as amended (**CEA**).
7. For each Ontario User provided direct access to its SEF, the Applicant will require, as part of its application documentation or continued access to the SEF, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.
8. The Applicant may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, provided the Applicant notifies such Ontario User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote on the Applicant.
9. The Applicant will require Ontario Users to notify the Applicant if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice

from the Ontario User and subject to applicable laws, the Applicant will promptly restrict the Ontario User's access to the Applicant if the Ontario User is no longer appropriately registered or exempt from those requirements.

10. The Applicant must make available to Ontario Users appropriate training for each person who has access to trade on the Applicant's facilities.

Trading by Ontario Users

11. The Applicant will not provide access to an Ontario User to trading in products other than swaps, as defined in section 1a(47) of the CEA (and for greater certainty, excluding security-based swaps), without prior Commission approval.

Submission to Jurisdiction and Agent for Service

12. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Applicant in Ontario, the Applicant will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
13. The Applicant will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the Applicant's activities in Ontario.

Disclosure

14. The Applicant will provide to its Ontario Users disclosure that states that:
 - (a) rights and remedies against the Applicant may only be governed by the laws of the U.S., rather than the laws of Ontario and may be required to be pursued in the U.S. rather than in Ontario; and
 - (b) the rules applicable to trading on the Applicant may be governed by the laws of the U.S., rather than the laws of Ontario.

Prompt Reporting

15. The Applicant will notify staff of the Commission promptly of:
 - (a) any material change to its business or operations or the information provided in the Application, including, but not limited to:
 - (i) changes to the regulatory oversight by the CFTC;
 - (ii) the corporate governance structure of the Applicant;
 - (iii) the access model, including eligibility criteria, for Ontario Users;

- (iv) systems and technology; and
 - (v) the clearing and settlement arrangements for the Applicant;
- (b) any change in the Applicant's regulations or the laws, rules and regulations in the U.S. relevant to swaps where such change may materially affect its ability to meet the criteria set out in Appendix 1 to this Schedule;
 - (c) any condition or change in circumstances whereby the Applicant is unable or anticipates it will not be able to continue to meet the SEF Core Principles established in section 5h of the CEA and Part 37 of the CFTC's regulations or any other applicable requirements of the CEA or CFTC regulations;
 - (d) any known investigations of, or any disciplinary action against the Applicant by the CFTC or any other regulatory authority to which it is subject;
 - (e) any matter known to the Applicant that may materially and adversely affect its financial or operational viability, including, but not limited to, any declaration of an emergency pursuant to the Applicant's rules;
 - (f) any default, insolvency, or bankruptcy of a participant of the Applicant known to the Applicant or its representatives that may have a material, adverse impact upon the Applicant; and
 - (g) any material systems outage, malfunction or delay.
16. The Applicant will promptly provide staff of the Commission with notice of any made available to trade determination that it files with the CFTC under the regulations pertaining to self-certification and/or approval.
17. The Applicant will promptly provide staff of the Commission with the following information to the extent it is required to provide to or file such information with the CFTC:
- (a) details of any material legal proceeding instituted against the Applicant;
 - (b) notification that the Applicant has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant or has a proceeding for any such petition instituted against it; and
 - (c) the appointment of a receiver or the making of any voluntary arrangement with creditors.
18. The Applicant will promptly file with staff of the Commission copies of any Rule Enforcement Review report regarding the Applicant once issued as final by the CFTC.

Quarterly Reporting

19. The Applicant will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a quarterly basis (within 30 days of the end of each calendar quarter), and at any time promptly upon the request of staff of the Commission:

- (a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by the Applicant, other persons or companies located in Ontario trading as customers of participants (**Other Ontario Participants**);
- (b) the legal entity identifier assigned to each Ontario User, and, to the extent known by the Applicant, to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;
- (c) a list of all Ontario Users against whom disciplinary action has been taken in the last quarter by the Applicant or its RSP acting on its behalf, or, to the best of the Applicant's knowledge, by the CFTC with respect to such Ontario Users' activities on the Applicant and the aggregate number of disciplinary actions taken against all participants in the last quarter by the Applicant or its RSP acting on its behalf;
- (d) a list of all active investigations during the quarter by the Applicant or its RSP acting on its behalf relating to Ontario Users and the aggregate number of active investigations during the quarter relating to all participants undertaken by the Applicant;
- (e) a list of all Ontario applicants for status as a participant who were denied such status or access to the Applicant during the quarter, together with the reasons for each such denial;
- (f) copies of all amendments to the Applicant's Form SEF filed with the CFTC during the quarter, including, but not limited to, any amendments to the Applicant's trading rules;
- (g) a list of all additions, deletions, or changes to the products available for trading since the prior quarter;
- (h) for each product,
 - (i) the total trading volume and value originating from Ontario Users, and, to the extent known by the Applicant, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and
 - (ii) the proportion of worldwide trading volume and value on the Applicant conducted by Ontario Users, and, to the extent known by the Applicant, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;provided in the required format; and
- (i) a list outlining each incident of a systems failure, malfunction or delay (including systems failures, malfunctions or delays reported under section 15(g) of this Schedule) that occurred at any time during the quarter for any system relating to trading activity, including trading, routing or data, specifically identifying the date, duration and reason, to the extent known or ascertainable by the Applicant, for the failure, malfunction or delay, and noting any corrective action taken.

Annual Reporting

20. The Applicant will file with the Commission any annual report or annual financial statements (audited or unaudited) of the Applicant provided to or filed with the CFTC promptly after filing with the CFTC.
21. The Applicant will arrange to have any annual "Service Organization Controls 1" report prepared for the Applicant filed with the Commission promptly after the report is issued as final by its independent auditor.

Information Sharing

22. The Applicant will provide and cause its RSP to provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

APPENDIX 1

CRITERIA FOR EXEMPTION OF A FOREIGN EXCHANGE TRADING OTC DERIVATIVES FROM RECOGNITION AS AN EXCHANGE

PART 1 REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange

The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (Foreign Regulator).

1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

- (a) effective oversight of the exchange,
- (b) that business and regulatory decisions are in keeping with its public interest mandate,
- (c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:
 - (i) appropriate representation of independent directors, and
 - (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,
- (d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest for all officers, directors and employees, and
- (e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person and past conduct of each officer or director affords reasonable grounds for belief that the officer or director will perform his or her duties with integrity.

PART 3 REGULATION OF PRODUCTS

3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are submitted to the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange that may include, but are not limited to, daily trading limits, price limits, position limits, and internal controls.

PART 4 ACCESS

4.1 Fair Access

- (a) The exchange has established appropriate written standards for access to its services including requirements to ensure
 - (i) participants are appropriately registered as applicable under Ontario securities laws, or exempted from these requirements,
 - (ii) the competence, integrity and authority of systems users, and
 - (iii) systems users are adequately supervised.
- (b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.
- (c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.
- (d) The exchange does not
 - (i) permit unreasonable discrimination among participants, or
 - (ii) impose any burden on competition that is not reasonably necessary and appropriate.
- (e) The exchange keeps records of each grant and each denial or limitation of access, including reasons for granting, denying or limiting access.

PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 6 RULEMAKING

6.1 Purpose of Rules

- (a) The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants and do not permit unreasonable discrimination among participants or impose any burden on competition that is not reasonably necessary or appropriate.
- (b) The Rules are not contrary to the public interest and are designed to
 - (i) ensure compliance with applicable legislation,
 - (ii) prevent fraudulent and manipulative acts and practices,
 - (iii) promote just and equitable principles of trade,
 - (iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,
 - (v) provide a framework for disciplinary and enforcement actions, and
 - (vi) ensure a fair and orderly market.

PART 7 DUE PROCESS

7.1 Due Process

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

- (a) parties are given an opportunity to be heard or make representations, and
- (b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 8 CLEARING AND SETTLEMENT

8.1 Clearing Arrangements

The exchange has or requires its participants to have appropriate arrangements for the clearing and settlement of transactions for which clearing is mandatory through a clearing house.¹

¹ For the purposes of these criteria, "clearing house" also means a "clearing agency".

8.2 Risk Management of Clearing House

The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

- (a) order entry,
- (b) order routing,
- (c) execution,
- (d) trade reporting,
- (e) trade comparison,
- (f) data feeds,
- (g) market surveillance,
- (h) trade clearing, and
- (i) financial reporting.

9.2 System Capability/Scalability

Without limiting the generality of section 9.1, for each of its systems supporting order entry, order routing, execution, data feeds, trade reporting and trade comparison, the exchange:

- (a) makes reasonable current and future capacity estimates;
- (b) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
- (c) reviews the vulnerability of those systems and data centre computer operations to internal and external threats, including physical hazards and natural disasters;
- (d) ensures that safeguards that protect a system against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause improper disclosures, modification, destruction or denial of service are subject to an independent and ongoing audit which should include the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans;
- (e) ensures that the configuration of the system has been reviewed to identify potential points of failure, lack of back-up and redundant capabilities;

- (f) maintains reasonable procedures to review and keep current the development and testing methodology of those systems; and
- (g) maintains reasonable back-up, contingency and business continuity plans, disaster recovery plans and internal controls.

9.3 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and respond to market disruptions and disorderly trading.

PART 10 FINANCIAL VIABILITY

10.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 11 TRADING PRACTICES

11.1 Trading Practices

Trading practices are fair, properly supervised and not contrary to the public interest.

11.2 Orders

Rules pertaining to order size and limits are fair and equitable to all market participants and the system for accepting and distinguishing between and executing different types of orders is fair, equitable and transparent.

11.3 Transparency

The exchange has adequate arrangements to record and publish accurate and timely information as required by applicable law or the Foreign Regulator. This information is also provided to all participants on an equitable basis.

PART 12 COMPLIANCE, SURVEILLANCE AND ENFORCEMENT

12.1 Jurisdiction

The exchange or the Foreign Regulator has the jurisdiction to perform member and market regulation, including the ability to set rules, conduct compliance reviews and perform surveillance and enforcement.

12.2 Member and Market Regulation

The exchange or the Foreign Regulator maintains appropriate systems, resources and procedures for evaluating compliance with exchange and legislative requirements and for disciplining participants.

12.3 Availability of Information to Regulators

The exchange has mechanisms in place to ensure that the information necessary to conduct adequate surveillance of the system for supervisory or enforcement purposes is available to the relevant regulatory authorities, including the Commission, on a timely basis.

PART 13 RECORD KEEPING

13.1 Record Keeping

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

PART 14 OUTSOURCING

14.1 Outsourcing

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

PART 15 FEES

15.1 Fees

- (a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.
- (b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 16 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

16.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

16.2 Oversight Arrangements

Satisfactory information sharing and oversight agreements exist between the Commission and the Foreign Regulator.

PART 17 IOSCO PRINCIPLES

17.1 IOSCO Principles

To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the "Principles for the Regulation and Supervision of Commodity Derivatives Markets" (2011).