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# Ice Futures Europe (IFEU) review 2019

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# Contents

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<b>Executive summary</b>	<b>4</b>
<b>IFEU</b>	<b>5</b>
IFEU's licence	5
Requirements under the FSMA	5
<b>Findings</b>	<b>6</b>
The FCA's oversight of IFEU	6
Disclosure requirements	6
IFEU's self-assessment	6
Conclusion	7
<b>Appendix: How we conducted our review</b>	<b>8</b>
Our role	8
Market operator obligations	8
Approach	8
Information reviewed	9
<b>Glossary</b>	<b>10</b>

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# Executive summary

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## Purpose of this report

Ice Futures Europe (IFEU) is licensed to operate the IFEU derivatives market (the derivatives market) in New Zealand. The FMA is required to report, at least once every two years<sup>1</sup>, on how well IFEU is meeting its obligations as a licensed market operator<sup>2</sup>.

This review covers the period 1 January 2017 to 31 December 2018. This is our second review of IFEU since it became licensed on 1 December 2014.

The UK Financial Conduct Authority (FCA) is IFEU's primary regulator. Our review therefore focused on whether the FCA was satisfied with IFEU's compliance during the review period. See the Appendix for details of how we did our review.

## Conclusion

We are satisfied that, during the review period, IFEU:

- Ensured, to the extent reasonably practicable, that its licensed market was fair, orderly and transparent.
- Had adequate arrangements for notifying disclosures from participants in its markets.
- Had adequate arrangements for handling conflicts between its commercial interests, and the obligation to ensure its market operates in a fair, orderly and transparent manner.
- Had adequate arrangements for monitoring the conduct of participants in its markets.
- Had adequate arrangements for enforcing compliance with market rules.
- Had sufficient resources (including financial, technological and human resources) to operate its licensed market properly.

We have based our conclusions largely on the FCA's oversight of IFEU, and the Compliance Report issued by IFEU under section 337 of the Financial Markets Conduct Act 2013 (FMC Act). The FCA monitors how IFEU complies with the [recognition requirements](#) for UK recognised investment exchanges (RIEs) under the Financial Services and Markets Act 2000 (FSM Act).

This oversight involves active engagement with IFEU, as well as receiving regular reporting. The FCA has advised us that it is not aware of anything that would lead it to consider IFEU as not meeting the recognition requirements of the FSM Act during the review period.

See the 'Findings' section of this report for more details.

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<sup>1</sup> A condition of ICE Futures Europe's licence is a review every two years

<sup>2</sup> A market operator's full obligations are set out in the Appendix

# IFEU

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IFEU operates a derivatives market. Products traded on the market include futures and options on crude oil, interest rates, equity derivatives, natural gas, power, coal, emissions; and commodities such as cocoa, coffee, sugar and wheat.

IFEU was established in 1980, and is a wholly owned indirect subsidiary of Intercontinental Exchange Inc. (Intercontinental Exchange), which is listed on the New York Stock Exchange. Intercontinental Exchange owns a number of markets, as well as clearing and settlement services. This includes ICE Clear Europe, which provides the clearing and settlement services for IFEU.

In 2013, Intercontinental Exchange acquired the London International Financial Futures and Options Exchange (LIFFE) after purchasing its previous owner NYSE Euronext. From September 2014, all LIFFE derivative contracts moved to IFEU.

## IFEU's licence

IFEU was an authorised futures exchange under the Securities Markets Act 1988. It has held a financial product market licence since 1 December 2014, deemed under the transitional provisions of the FMC Act. The conditions of [IFEU's licence](#) were largely carried over from the authorised futures exchange notice.

As a UK RIE, IFEU must also comply with the UK recognition requirements, for which the FCA is its primary regulator.

IFEU's licence conditions require it to inform New Zealand investors that it is primarily regulated under UK law. It must also ensure any of its members making regulated offers<sup>3</sup> of derivatives in New Zealand are licensed under the FMC Act, if required.

Every six months, IFEU must give the FMA information about members making derivatives offers in New Zealand. As at 31 December 2018, none of IFEU's members were registered to offer derivatives here.

IFEU must also notify us if it intends to materially change the rules for the derivatives market. Its process for changing market rules includes consulting exchange participants.

## Requirements under the FSM Act

The FMC Act requires licensed market operators to ensure markets are fair, orderly and transparent. They must also have arrangements to deal with disclosure, conflicts of interest, conduct monitoring, enforcement, and resourcing. The UK recognition requirements under the Financial Services and Markets Act contain equivalent obligations.

For example, under paragraph 4(2)(ea) of the UK recognition requirements, a RIE must ensure that appropriate arrangements are made to:

- identify conflicts between the interests of the exchange, its owners and operators, and the interests of the persons who make use of its facilities or the interests of the financial markets operated by it, and
- manage such conflicts to avoid adverse consequences for the financial markets operated by the exchange, and for those making use of its facilities.

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<sup>3</sup> As defined in the FMC Act

This corresponds to the FMC Act requirement for a market operator to have adequate arrangements for handling conflicts between its commercial interests and the obligation to ensure its markets operate in a fair, orderly and transparent way.

The other FMC Act obligations are also met through a number of the UK recognition requirements.

IFEU must also follow a number of [notification rules](#), made by the FCA under the FSM Act. These require a RIE to notify the FCA of changes in its business, including disciplinary actions, auditors and information technology systems.

## Findings

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Our review focused on whether the FCA was satisfied with IFEU's compliance during the review period, and how it reached that view<sup>4</sup>.

### The FCA's oversight of IFEU

The FCA reported to us that they have applied a well-established supervisory strategy, based on current and emerging risks, surrounding the exchange's operations to oversee and actively monitor IFEU's compliance.

During the review period, the FCA did not publish any reviews of IFEU's compliance with its obligations.

The FCA has confirmed that, based on information known to it, the FCA is not aware of anything that would lead it to consider IFEU is not meeting the recognition requirements as set out in the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (as modified from time to time).

### Disclosure requirements

The FMC Act requires market operators to notify the market of disclosures from listed issuers, substantial holders of listed issuers, and directors and senior managers of listed issuers about their relevant interests. As IFEU does not list single stock futures or equity products on the derivatives market, these particular disclosures do not apply.

However, under paragraph 4(2)(c) of the UK recognition requirements, IFEU must ensure that "appropriate arrangements are made for relevant information to be made available (whether by the exchange or, where appropriate, by issuers of the investments) to persons engaged in dealing in investments on the exchange". IFEU has complied with this regulation.

We view this recognition requirement as a satisfactory equivalent to the FMC Act obligation for products listed on the derivatives market. We are satisfied that by complying with this recognition requirement, IFEU has complied with the intention of the FMC Act's disclosure obligations.

### IFEU's self-assessment

As required by the FMC Act, IFEU has provided us with a self-assessment report on how it met its obligations for the period 1 January 2017 to 31 December 2018. IFEU has explained how it complied with each of its FMC Act obligations,

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<sup>4</sup> Further information on our approach is found in the Appendix

and referred to the equivalent UK recognition requirements where appropriate. We were satisfied that IFEU had adequate arrangements to comply with its FMC Act obligations.

## Conclusion

We are satisfied that IFEU complied with its FMC Act obligations as a licensed market operator during the review period. The reasons are:

- IFEU showed it has adequate arrangements to meet the FMC Act obligations, as set out in its self-assessment report; and
- the FCA has confirmed to us that it has no reason to consider that IFEU did not comply with the UK recognition requirements during the review period.

# Appendix: How we conducted our review

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## Our role

Under the FMC Act, we are required to periodically review and publish our findings on how well a licensed market operator is meeting its obligations.

## Market operator obligations

In the FMC Act, 'market operator obligations' means:

- the general obligations contained in section 314 of the FMC Act:
  - to ensure, to the extent reasonably practicable, that each of the licensed markets is fair, orderly and transparent
  - to have adequate arrangements for notifying disclosures from participants in its markets, and for continuing to make them available
  - to have adequate arrangements for handling conflicts between its commercial interests and the obligation to ensure its markets operate in a fair, orderly and transparent manner
  - to have adequate arrangements for monitoring the conduct of participants in its markets
  - to have adequate arrangements for enforcing compliance with market rules
  - to have sufficient resources (including financial, technological and human resources) to operate its licensed markets properly.
- an obligation to respond to any request from us to make changes to market rules (section 333).
- an obligation to provide us with an annual self-assessment of how it complies with its obligations (section 337).
- an obligation to act on our, or the Minister's<sup>5</sup>, direction if it has failed to meet any of its obligations (sections 340 to 342).
- any condition of a market operator's licence.

## Approach

A market operator, authorised and regulated in an overseas country, may be licensed under the FMC Act if it meets certain conditions.

A key requirement is that the home jurisdiction regulating and supervising the market operator should provide a comparable level of investor protection and market integrity as the FMC Act<sup>6</sup>. This allows us to rely on the overseas

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<sup>5</sup> New Zealand Minister for Commerce and Consumer Affairs

<sup>6</sup> The original authorisation of ICE Futures Europe as a futures exchange was assessed under a similar requirement in the repealed Securities Markets Act 1988. ICE Futures Europe was deemed to have a licence from 1 Dec 2014 as it moved to the FMC Act regime.



regulator to assess and monitor the capability and compliance of the market operator. The UK recognition requirements for RIEs include requirements that are very similar to IFEU's obligations under the FMC Act.

The FCA actively monitors IFEU's compliance with the UK recognition requirements. Under the notification rules, IFEU must also update the FCA on any events or information the FCA needs to carry out its functions as a regulator.

Our approach was, therefore, to focus on:

- whether the FCA was satisfied with IFEU's compliance with the UK recognition requirements during the review period; and
- how it reached that view.

## Information reviewed

A key component of our review was information provided by the FCA about:

- its oversight of IFEU
- any matters or concerns raised with IFEU during the review period
- how IFEU addressed those matters
- the FCA's overall view of IFEU's compliance with its obligations as an RIE.

Our review process included emails with the FCA to discuss these questions.

We also looked at the following:

- IFEU's self-assessment report
- [Intercontinental Exchange's website](#) information about how IFEU approaches its obligations and interprets its obligation to operate fair, orderly and transparent markets
- FCA website, specifically reported actions by the Enforcement Division.

# Glossary

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Derivatives market	Financial product market IFEU is licensed to operate under the FMC Act
FCA	UK Financial Conduct Authority
FMA	Financial Markets Authority
FMC Act	Financial Markets Conduct Act 2013
FSMA	UK Financial Services and Markets Act 2000
Intercontinental Exchange	Intercontinental Exchange Inc., the parent company of IFEU
LIFFE	The London International Financial Futures and Options Exchange
Market rules	All of the rules governing IFEU's licensed market
Notification rules	Rules made under section 293 of the FSMA covering notification by IFEU to the FCA
Participant	A participant in the licensed market who has been accredited and approved by IFEU
Recognised investment exchanges (RIEs)	Exchanges recognised under the FSMA
Review period	The period from 1 January 2017 to 31 December 2018
Self-assessment report	A report from a licensed market operator on compliance with its obligations, required under section 337 of the FMC Act
UK recognition requirements	The recognition requirements for UK RIEs under the FSMA