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# ICE Futures Europe (IFEU) review 2021

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# Executive summary

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## IEFU and the purpose of this report

ICE Futures Europe (**IFEU**) is a licensed market operator under the Financial Markets Conduct Act 2013 (**FMC Act**), 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 2019 to 31 December 2020 (**the review period**) and is our third review of IFEU since it became licensed on 1 December 2014.

IFEU is a Recognised Investment Exchange (**RIE**) in the UK and the UK's Financial Conduct Authority (**FCA**) is IFEU's primary regulator. As a result of this recognition, IFEU must comply with the Financial Services and Markets Act 2000 (**FSM Act**) and satisfy the requirements set out in the Financial Services and Markets Act 2000 (Recognition for Investment Exchanges and Clearing Houses) Regulations 2001 (**FSM Regulations**) and associated FCA rules.

IFEU has over 400 members, however, it did not have any members registered in New Zealand during the review period.

Our review therefore focused on whether the FCA was satisfied with IFEU's compliance during the review period and whether there is reason to believe that IFEU is unable to comply with its market operator obligations in New Zealand. See the [Appendix](#) for details of our review methodology.

## 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 market.
- 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 market.
- 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 based our conclusions largely on the FCA's oversight of IFEU, and the self-assessment report issued by IFEU under section 337 of the FMC Act.

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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

See the '[Findings](#)' section of this report for more details, and the '[Glossary](#)' for a summary of defined terms.

## About IFEU

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

IFEU was established in 1980 and is a wholly owned subsidiary of Intercontinental Exchange Inc. (**Intercontinental Exchange**), which is listed on the New York Stock Exchange. Clearing and settlement services are provided for all of IFEU's contracts by ICE Clear Europe, another subsidiary of Intercontinental Exchange.

### IFEU's licence and conditions

As a licensed market operator in New Zealand, IFEU must comply with the FMC Act and the Financial Markets Conduct Regulations 2014 (**FMC Regs**).

IFEU is recognised as an investment exchange and an auction platform in the UK, as well as being a benchmark administrator under the FSM Act. As a UK RIE, IFEU must comply with the FSM Act and FSM Regs, including its Recognition Requirements, as well as FCA rules.

The conditions of [IFEU's licence in New Zealand](#) 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 provide the FMA with information about members making derivatives offers in New Zealand. IFEU must also notify the FMA if it intends to materially change the rules for the Derivatives Market.

### Requirements under the FMC and FSM Acts

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
- resourcing.

Equivalent requirements are set out in the UK's Recognition Requirements for RIEs. More information on these [Recognition Requirements](#) is available on the [FCA website](#).

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

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

The findings below reflect the risk-based approach taken to reviewing IFEU's compliance with its FMC Act obligations and are focused on the disclosure and conflicts of interest requirements. These are the most relevant obligations since IFEU does not have any New Zealand-based participants.

# Findings

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Our review focused on whether the FCA was satisfied with IFEU's compliance during the review period.<sup>4</sup>

## The FCA's oversight of IFEU

The FCA has released guidance on how it regulates RIEs under the FSM Act. This includes ensuring there is robust and appropriate oversight of markets, with intensive supervision and continued engagement with RIEs and broader market participants.

The FCA, like many regulators, employs a risk-based approach to supervision which includes event-driven and thematic supervision.

For the current review period, the FCA reported to us that IFEU retains its status as an RIE in the UK and 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.

During the review period, the FCA did not publish any reviews of IFEU's compliance with its obligations and IFEU was not subject to censure, criticism or disciplinary proceedings by the FCA.

## Disclosure requirements

Under the FMC Act, market operators must notify the market of disclosures regarding relevant interests made by:

- listed issuers;
- substantial holders of listed issuers; and
- directors and senior managers of listed issuers.

While IFEU lists single stock futures and options on the Derivatives Market, it does not have direct oversight of the listed issuers and instead relies on the rules of the relevant stock exchange for these particular disclosures.

Paragraph 4(2)(c) of the UK's Recognition Requirements require IFEU to 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". The FCA have noted it is not aware of anything that would lead it to consider IFEU is not meeting the Recognition Requirements.

It is our view that the UK Recognition Requirements regarding disclosure is a satisfactory equivalent to the FMC Act obligation for products quoted on the Derivatives Market.

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

## Conflicts of interest

The FMC Act requires market operators to have adequate arrangements for handling conflicts between its commercial interests and the obligations to ensure its markets operate in a fair, orderly and transparent way.

The Recognition Requirements have an equivalent obligation at paragraph 4(2)(ea) whereby RIEs must ensure that appropriate arrangements are made to identify conflicts of interest internally and manage such conflicts to avoid adverse consequences for any markets operated by the exchange.

IFEU reviews potential conflicts of interest in accordance with the FSM Regs and the UK Companies Act 2006. Applications for membership are processed by its Authorisation, Rules and Conduct Committee, a panel of independent industry professionals who review and approve (or reject) applications following appropriate due diligence completed by the Membership, Compliance and Legal teams.

## IFEU's self-assessment

As required by the FMC Act, IFEU has provided the FMA with a self-assessment report on how it met its obligations under section 314 of the FMC Act for the period 1 January 2019 to 31 December 2020.

IFEU explained how it complied with each of its FMC Act obligations and referred to the equivalent UK Recognition Requirements where appropriate. IFEU also provided annual reports covering the review period to support its compliance with the resourcing requirements of the FMC Act.

We were satisfied that IFEU had adequate arrangements in place 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 demonstrated it has adequate arrangements in place to meet its FMC Act obligations, as set out in its self-assessment report; and
- the FCA has confirmed 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' mean:

- The general obligations contained in section 314 of the FMC Act, being:
  - 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 market 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

Foreign regulated market operators may be licensed under the FMC Act if they meet certain conditions.

A key condition is that the home jurisdiction responsible for regulating and supervising the market operator provides a comparable level of investor protection and market integrity as promoted by the FMC Act.<sup>6</sup> This

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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.

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allows us to rely on the overseas regulator to assess and monitor the capability and compliance of the market operator.

The UK's Recognition Requirements for RIEs include requirements that are very similar to IFEU's obligations under the FMC Act and the FCA monitors IFEU's compliance with these 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,
- whether there is reason to believe that IFEU is unable to meet its market operator obligations in New Zealand, and
- what activity, if any, IFEU had in New Zealand.

## Information reviewed

A key component of our review was requesting information from the FCA on IFEU's compliance with the Recognition Requirements, and whether IFEU was of good standing in its home jurisdiction.

The FCA confirmed that IFEU has retained its status as an RIE and was not aware of anything that would lead it to consider that IFEU does not meet the Recognition Requirements.

We also looked at the following:

- IFEU's self-assessment report and accompanying annual reports;
  - information on the Intercontinental Exchange's website about how IFEU approaches its obligations and interprets its obligation to operate fair, orderly and transparent markets; and
  - additional information on the FCA's website, specifically reported actions by the Enforcement Division.
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# Glossary

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Term	Explanation
Market rules	All of the rules governing IFEU's licensed market
Member or participant	A member in the licensed market who has been accredited and approved by IFEU
Notification rules	Rules made under section 293 of the FSM Act covering notification by IFEU to the FCA
Self-assessment report	A report from a licensed market operator on compliance with its obligations, required under section 337 of the FMC Act

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