



**ASIC**

Australian Securities & Investments Commission

**REPORT 346**

# **Market assessment report: ICE Futures Europe**

**ARBN 128 341 293**

May 2013

## **About this report**

This assessment covers the period 9 February 2012 to 7 February 2013 (the assessment period).

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Previous reports on ICE Futures Europe (ICE)

ICE was granted an Australian market licence for an overseas market on 10 February 2010.

Report number	Report date
REP 304	October 2012
REP 248	August 2011

## The assessment

### Key points

ASIC is satisfied that ICE has adequate arrangements for operating its market in accordance with its obligations under s792A(c) of the *Corporations Act 2001* (Corporations Act). We do not have any recommendations to make about these arrangements.

## Scope

- 1 Under s792A(c)<sup>1</sup> a market licensee is required to have adequate arrangements for operating its market, including arrangements for:
  - handling conflicts between its commercial interests and the need to ensure that the market is fair, orderly and transparent; and
  - monitoring and enforcing compliance with the market's operating rules.
- 2 ASIC is required to assess how well a market licensee complies with its obligations under s792A(c) at least once a year: s794C(2). ASIC is permitted to extend the scope of its assessment to review how well a licensee complies with any or all of its obligations under Ch 7.

## Approach to assessment

- 3 ICE is one of a small number of financial markets that are licensed to operate in Australia under the foreign licensing arrangements in the Corporations Act: s795B(2).
- 4 Under the arrangements in s795B(2), a foreign financial market may be permitted to operate in this country if the operation of the market in its home jurisdiction is subject to requirements and supervision that are sufficiently equivalent to those that apply to financial markets in Australia.
- 5 In assessing whether a market's home jurisdiction satisfies this requirement, we focus on whether that jurisdiction achieves sufficiently equivalent investor protection and market integrity outcomes to those achieved for comparable domestic markets.

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<sup>1</sup> In this report, references to legislation (e.g. s792A(c), Ch 7, Pt 5B.2) are references to the Corporations Act, unless otherwise specified.

6 In addition, as a condition of ICE's market licence, Australian-based clients of participants of ICE's market must be first notified that ICE is regulated primarily under the regulatory regime of the United Kingdom.

7 ASIC's current strategic framework focuses on three key priorities or outcomes. These are:

- confident and informed investors and financial consumers;
- fair and efficient financial markets; and
- efficient registration and licensing.

The first two priorities are particularly important for licensed markets.

8 In the context of foreign licensed markets, the importance placed on the regulatory arrangements in the operator's home jurisdiction means that in assessing whether our strategic priorities are being met, our primary focus is on the extent to which ICE continues to satisfy the regulatory requirements of that home regime. We also consider whether there have been any significant changes to that regulatory regime.

9 For that reason, our assessment of these types of markets focuses on a narrower subset of the key measures than we might otherwise use if the market was a comparable domestic licensed market. To determine whether ICE has complied with its obligations to have adequate arrangements for operating its market, we focused on:

- information provided by ICE's home regulator about:
  - the standing of ICE;
  - any disciplinary action taken against ICE; and
  - any reviews or on-site risk assessments of ICE;
- information provided by ICE about whether:
  - there have been any significant changes to the regulatory regime in the home jurisdiction (as required by s792B(4)(b));
  - there have been any complaints by market participants to ICE about the operation of the market; and
  - ICE's arrangements for operating the market changed; and
- whether ASIC has received any complaints about the operation of the market.

## Background

10 ICE is a London-based, wholly owned subsidiary of Intercontinental Exchange, Inc. (ICE Inc.). ICE Inc. is a US-incorporated public company established in 2000, governed by the laws of the State of Delaware and listed

on the New York Stock Exchange. ICE Inc. owns a number of electronic and over-the-counter markets through its subsidiaries.

- 11 ICE was established in 1980. It operates an electronic futures and options exchange and is a leading exchange for crude and refined oil futures contracts, as well as futures based on European emissions, natural gas and coal.
- 12 ICE offers Australian participants direct electronic access to its exchange. Access to the market is by way of membership of ICE or through order-routing arrangements with an ICE member.
- 13 Clearing and settlement arrangements for transactions effected through the market are provided by ICE Clear Europe Limited.
- 14 ICE's annual trading volume for 2012 was 281,649,639 contracts.

### **Regulation of ICE in Australia**

- 15 ICE was registered under Div 2 of Pt 5B.2 as a foreign company in Australia on 6 November 2007.
- 16 ICE was granted an Australian market licence to operate its electronic trading platform on 10 February 2010, under the foreign licensing arrangements in the Corporations Act. A copy of ICE's market licence is available on the ASIC website at [www.asic.gov.au/markets](http://www.asic.gov.au/markets).
- 17 ICE requires all Australian participants to hold (or be exempt from holding) an Australian financial services (AFS) licence, permitting them to trade in the products that can be dealt with on ICE's market.

### **Regulation of ICE in the United Kingdom and other jurisdictions**

- 18 On 1 April 2013, a new system for regulating financial services in the United Kingdom (UK) came into effect. The Financial Services Authority (FSA) which was previously the sole body responsible for financial services regulation in the UK has been replaced by two new regulators: the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). The FCA is responsible for ensuring that relevant markets function well, for the conduct of supervision of financial service firms, as well as the prudential supervision of firms not supervised by the PRA. While the PRA is responsible for promoting the safety and soundness of deposit-taking firms, insurers and systemically important investment firms. The PRA is part of the Bank of England.
- 19 During the assessment period, however, ICE was supervised and regulated in the United Kingdom by the FSA as a Recognised Investment Exchange

(RIE) under the *Financial Services and Markets Act 2000* (UK). ICE continues to be an RIE, but from 1 April 2013 it is supervised and regulated by the FCA. As an RIE, ICE has regulatory responsibility in its own right. It is required to maintain sufficient financial resources, adequate systems and controls, and effective arrangements for monitoring and disciplining its members.

- 20 ICE is also a Recognised Auction Platform (RAP) in the United Kingdom. As an RAP, ICE is permitted to operate an auction platform for the purposes of auctioning primary emission allowances under Phase III of the EU Emissions Trading Scheme.
- 21 ICE is also authorised to operate in a number of jurisdictions, including the United States, Singapore, Hong Kong, Dubai and all of the member countries of the European Economic Area.

## Our assessment process

- 22 We use the assessment process to reach conclusions about the adequacy of the arrangements a market licensee had in place for operating its market in accordance with its obligations, and to identify issues that in our view need (or may need) to be addressed to ensure ongoing compliance.
- 23 In conducting our assessment we considered:
- information from the FSA about ICE;
  - information we received from and about ICE in the ordinary course of our dealings with ICE, including information sought from ICE for the purpose of this assessment;
  - ICE's:
    - annual regulatory report required under s792F;
    - six-monthly licence conditions report; and
    - financial report for the year ended 31 December 2012; and
  - information from the media, ICE's website and other sources.
- 24 ICE has had the opportunity to view and comment on the factual accuracy of a draft version of this report. Where appropriate, our findings reflect ICE's clarifications.

## Our observations

### Arrangements for operating the market

- 25 We conclude that during the assessment period ICE had adequate arrangements for the operation of its market in accordance with its obligations under s792A(c).
- 26 Our conclusion is based on our review of the measures that typically guide our assessment of ICE and like markets, being:
- The FSA confirmed that ICE continues to be recognised as an RIE. The FSA also confirmed that there was no disciplinary action taken against ICE over the course of the past year;
  - during the assessment period, ICE did not notify us of any significant changes to the regulatory regime in its home jurisdiction. After the assessment period, as noted in paragraph 19, the responsibility for the supervisory and regulatory oversight of ICE as an RIE was transferred to the FCA;
  - ICE confirmed that during the assessment period:
    - there were no complaints by market users about the operation of the market; and
    - ICE's arrangements for operating the market did not change; and
  - during the assessment period, we did not receive any complaints about the operation of the market.

### Reporting obligations

- 27 We note that ICE lodged its annual regulatory report (as required under s792F) with ASIC in a timely manner with the required information.
- 28 We also note that ICE lodged its six-monthly reports with us within a reasonable timeframe and these contained the information required.
- 29 ICE has provided notices on rule changes in a timely manner and with sufficient information to satisfy s793D(3).