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ICE Futures U.S. (IFUS) review 2023

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Executive summary

IFUS and the purpose of this report

The Financial Markets Authority – Te Mana Tātai Hokohoko (**FMA**) may, at any time, carry out a review of how well a licensed market operator is meeting its obligations, and it must do so at least once in respect of each reporting period.

ICE Futures U.S. Inc. (**IFUS**) held a market operator licence under section 317 of the Financial Markets Conduct Act 2013 (**FMC Act**) to operate the IFUS derivatives market (the **Derivatives Market**) in New Zealand from 1 December 2014 until 5 April 2023, when its licence was cancelled at IFUS's request. The reporting period for IFUS is set out in its licence conditions, and generally covers a two-year period.¹

Due to IFUS requesting the cancellation of its licence, this will be the final obligations review for IFUS. It covers the period 1 January 2021 to 5 April 2023 (**the review period**). This is our fourth review of IFUS since it became licensed on 1 December 2014.

IFUS is a designated contract market (**DCM**) regulated in the U.S. by the Commodity Futures Trading Commission (**CFTC**). As a result of this designation, IFUS is required to comply with the 23 Core Principles for Designated Contract Markets (the **DCM Core Principles**) set out in Part 38 of the CFTC Regulations and the Commodity Exchange Act (**CEA**) on an ongoing basis.

IFUS has over 300 members, however only one of these members is New Zealand-based and has been accessing this market indirectly through offshore executing brokers.

Given that IFUS was licensed as an overseas-regulated market, our review focused on whether the CFTC was satisfied with IFUS's compliance during the review period, and whether there is reason to believe that IFUS was 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 IFUS met all of its obligations under the FMC Act, including:

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

¹ A condition of IFUS's licence is a review every two years.

We based our conclusions largely on the CFTC's oversight of IFUS, and the self-assessment report issued by IFUS under section 337 of the FMC Act.

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

About IFUS

IFUS operates the Derivatives Market. Products traded on the Derivatives Market include agricultural commodities such as coffee, sugar, cocoa, cotton and canola, energy contracts based on electric power, natural gas, oil refined products and carbon emissions, precious metals, foreign exchange cross-rates, equity indexes, digital assets, and interest rates.

IFUS 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 IFUS's contracts by ICE Clear US and ICE Clear Europe, both subsidiaries of Intercontinental Exchange and both of which are designated clearing organisations (DCO) regulated by the CFTC.

IFUS's licence and conditions

During the review period, as a licensed market operator in New Zealand, IFUS had to comply with the FMC Act and the Financial Markets Conduct Regulations 2014 (**FMC Regs**).

The conditions of [IFUS's licence](#) in New Zealand also required it to inform New Zealand investors it is primarily regulated under U.S. law, and to ensure any of its members making regulated offers² of derivatives in New Zealand are licensed under the FMC Act, if required.

Every six months, IFUS was required to provide the FMA with information about members making derivatives offers in New Zealand. IFUS was also required to notify the FMA if it intended to materially change the rules for the Derivatives Market. Rule changes must also be submitted to the CFTC for review.

Requirements under the FMC Act and CEA

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 by the DCM Core Principles under the CEA and CFTC Regulations. More information about [Core principles](#) is available on the [CFTC's website](#).

IFUS must also comply with regulations for U.S. DCMs and undertake a number of additional regulatory reporting obligations set by the CFTC, such as submitting rule changes and quarterly financial statements to the CFTC.

² As defined in the FMC Act

The findings below reflect the risk-based approach taken to reviewing IFUS's compliance with its FMC Act obligations. Our review has focused on conduct monitoring, disclosure, and conflict of interest requirements, given that no New Zealand-based participants are accessing the market directly.

Findings

Our review focused on whether the CFTC was satisfied with IFUS's compliance with the DCM Core Principles during the review period.³

The CFTC's oversight of IFUS

The CFTC's Division of Market Oversight (**DMO**) monitors IFUS's ongoing compliance with the CEA, DCM Core Principles, and relevant CFTC regulations and guidance. More information is available [here](#) about how the CFTC carries out its oversight functions.

The CFTC has confirmed that it has not identified any information that would cause it to recommend that IFUS's licence as a market operator in New Zealand be revoked, suspended, or conditioned.

The CFTC has also confirmed that it will provide the FMA with information regarding any findings of deficiency in IFUS's compliance with its obligations, and notify the FMA if it takes any enforcement action against IFUS. The FMA has not received any such notification.

Conduct monitoring

Under the FMC Act, a market operator must have adequate arrangements for monitoring the conduct of participants on, or in relation to, its markets.

Under the CEA and CFTC Regulations, DCM Core Principles 4 and 12 require DCMs to have the capacity to prevent manipulation, price distortion and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices. DCMs must also protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant.

IFUS undertakes real-time and post-trade monitoring to ensure the orderly operation of its market, and to ensure that participants are not engaging in abusive conduct or conduct leading to a disorderly market.

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.

³ Further information on our approach is available in the Appendix

As IFUS does not list single stock futures or equity products on the Derivatives Market, these particular notification requirements for disclosures do not apply.

DCM Core Principle 8 requires IFUS to “make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market”. IFUS has complied with this core principle by making this information available through its ‘Daily Market Report’. This is posted on its website and faxed or mailed to individuals on request.

It is our view that DCM Core Principle 8 provides equivalent obligations to the FMC Act relating to products quoted on the Derivatives Market.

Conflicts of interest

The FMC Act requires market operators 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.

Core Principle 16 provides an equivalent obligation, requiring IFUS to establish and enforce rules “to minimise conflicts of interest in the decision-making process of the contract market” and “to establish a process for resolving [those] conflicts of interest.”

The governing board of IFUS has established a Regulatory Oversight Committee (**ROC**) comprised exclusively of ‘public directors’⁴ to assist in minimising actual and potential conflicts of interest. The ROC oversees IFUS’s regulatory programme on behalf of the governing board, and the board must ensure that the ROC has sufficient authority, resources and time to fulfil its mandate.

IFUS’s self-assessment

As required by the FMC Act, IFUS 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 2021 to 31 December 2022.

IFUS explained how it complied with each of its FMC Act obligations and referred to the equivalent DCM Core Principles of the CEA, where appropriate.

We are satisfied that IFUS had adequate arrangements in place to comply with its FMC Act obligations.

Conclusion

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

- IFUS demonstrated that it had adequate arrangements in place to meet the FMC Act obligations, as set out in its self-assessment report; and
- the CFTC has confirmed it has not identified any information that would give cause for it to recommend IFUS’s licence be revoked, suspended or conditioned.

⁴ Under the CFTC’s definition, ‘public directors’ are required to have no ‘material relationship’ with the DCM

Appendix: How we conducted our review

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 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,⁵ 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 requirement 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.⁶ This allows us to rely on the overseas regulator to assess and monitor the capability and compliance

⁵ New Zealand Minister for Commerce and Consumer Affairs

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

of the market operator.

The Core Principles for DCMs include requirements that are very similar to IFUS's obligations under the FMC Act. The CFTC monitors IFUS's compliance with the DCM Core Principles.

The CFTC can also, at any time, require IFUS to demonstrate how it complies with the DCM Core Principles and its obligations under the CEA.

Our approach was, therefore, to focus on:

- whether the CFTC was satisfied with IFUS's compliance with the DCM Core Principles during the review period;
- whether there is reason to believe that IFUS is unable to meet its market operator obligations in New Zealand, and
- what activity, if any, IFUS had in New Zealand.

Information reviewed

A key component of our review was requesting information from the CFTC on IFUS's compliance with the Core Principles, and whether IFUS was of good standing in its home jurisdiction.

The CFTC confirmed it has not identified any information that would give cause for it to recommend IFUS's licence be revoked, suspended or conditioned.

We also looked at the following:

- IFUS's self-assessment report;
- information on the Intercontinental Exchange's website about how IFUS approaches its obligations and interprets its obligation to operate fair, orderly and transparent markets; and
- additional information on CFTC's website.

