



## New Zealand Financial Product Market Licence (ICE Futures USA) 2014

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### 1 Title

This licence may be cited as the New Zealand Financial Product Market Licence (ICE Futures USA) 2014.

### 2 Definitions

(1) In this licence:

**Act** means the Financial Markets Conduct Act 2013.

**Clearing House** means ICE Clear U.S., Inc. or an alternative clearing house approved by the FMA.

**Commencement Date** means the date on which clause 42 of Schedule 4 of the Act commenced, being 1 December 2014.

**Company** means ICE Futures U.S., Inc.

**Existing Market** means the derivatives market operated by the Company that, immediately before the Commencement Date, was an authorised market within the meaning of section 37(1) of the Act.

**FMA** means the Financial Markets Authority.

**Market Rules** has the same meaning as in the Act and includes the rules of the Company, the Charter, Certificate of Incorporation, and By-Laws and all other documents that form part of the market rules as defined in the Market Rules.

**Member** has the meaning given to that term in the Market Rules.

**New Zealand Member** means a Member who is making Regulated Offers of derivatives in New Zealand within the territorial scope of the Act.

**Regulated Offer** has the same meaning as in the Act.

(2) Any term or expression that is defined in the Act and used, but not defined, in

this licence has the same meaning as in the Act.

### **3 Licence and revocation**

- (1) This licence is a deemed licence conferred under clause 42, Schedule 4 of the Act to operate the Existing Market.
- (2) This licence is deemed to have been issued under section 317 of the Act.
- (3) This licence shall continue in force until revoked by the FMA.

### **4 Application**

This deemed licence is subject to conditions set out in this licence and applicable requirements in the Act for licensed market operators.

### **5 Operating condition**

Under this licence the Company may operate only the Existing Market.

### **6 Market Rules condition**

- (1) The Market Rules that applied to the Existing Market immediately before the Commencement Date continue to have effect in relation to that market as if those rules have been approved under section 331 of the Act.
- (2) The Company must notify the FMA of any proposed material amendments to the Market Rules, where reasonably practicable having regard to emergency situations, not less than 14 days, or such other time as agreed with the FMA, before such amendments are effected, unless the amendments relate to the listing of a new product on the Existing Market.
- (3) If the Company intends to list a new product on the Existing Market, and the listing of that product will require an amendment to the Market Rules, the Company must notify the FMA of the proposed amendment to the Market Rules not less than 48 hours before such amendments are effected.
- (4) The Company must notify the FMA if it seeks to transfer or assign any of its rights, entitlements, or obligations under the Market Rules to any person, where reasonably practicable having regard to emergency situations, not less than 14 days before such transfer or assignment becomes effective.

## **7 Conditions relating to the licensing of New Zealand Members**

- (1) The Company must require New Zealand Members to be licensed as a derivatives issuer under Part 6 of the Act, unless the terms and conditions of the New Zealand Member's participation in the Existing Market restrict the New Zealand Member from making Regulated Offers of derivatives.
- (2) The Company must require New Zealand Members to notify the Company immediately if the New Zealand Member's derivatives issuer licence under Part 6 of the Act is revoked.

## **8 Disclosure by Members to New Zealand clients**

- (1) Before a Member accepts the first order from a client in New Zealand to deal on the Existing Market, the Company must require the Member to disclose to the client the significant differences between trading derivatives on the Existing Market and trading derivatives on a New Zealand-based market.
- (2) The matters that must be disclosed include, but are not limited to, the following:
  - (a) the Company's principal place of business is located in the USA;
  - (b) the Existing Market is regulated primarily under the regulatory regime of the USA;
  - (c) the rights and remedies of, and compensation arrangements for, investor who acquire products offered on the Existing Market may differ from the rights and remedies of, and compensation arrangements for, investors who acquire products offered on a New Zealand-based market;
  - (d) New Zealand investors who acquire products offered on the Existing Market may be subject to the effects of changes in currency exchange rates.

## **9 Clearing and settlement arrangements conditions**

- (1) The Company must have and maintain at all times clearing and settlement arrangements for transactions effected through the Existing Market. The clearing and settlement arrangements for the Existing Market are those provided by the Clearing House.

- (2) The Company must notify the FMA of any proposed amendments to the rules and procedures of the Clearing House, where reasonably practicable having regard to emergency situations, not less than 14 days, or such other time as agreed with the FMA, before such amendments are effected.

## **10 Enforcement of Market Rules condition**

The Company must maintain the arrangements with the Business Conduct Committee, as set out in the ICE Futures U.S., Inc. Disciplinary Rules, for enforcing compliance with the Market Rules.

## **11 Reporting obligations conditions**

- (1) The Company must give the FMA the following information:
  - (a) the current name and business address of each New Zealand Member; and
  - (b) the name of the Clearing House clearing member used by each New Zealand Member to clear the trades of that New Zealand Member; and
  - (c) details of any written complaint received by the Company during the reporting period concerning a New Zealand Member or that New Zealand Member's directors or other personnel where such complaint has not been resolved to the satisfaction of the complainant; and
  - (d) any information that the United States Commodity Futures Trading Commission has obtained from the Company during the reporting period pursuant to the Commodity Futures Trading Commission's role as a regulator of the Company in relation to a New Zealand Member or in relation to the Company's operation of the Existing Market in New Zealand.
- (2) The Company must give the FMA the information required under clause 10(1) within 30 days of the end of each reporting period. For the purposes of this clause 10, the reporting period is each six-month period ending on 30 June or 31 December.
- (3) The Company must notify the FMA as soon as practicable if:
  - (a) the Company's licence to operate a derivatives market in the Company's place of incorporation is varied or revoked; or

- (b) any statutory requirement applying to the Company as a result of, or in connection with, its operation of a derivatives market is amended in a manner that materially alters an obligation or requirement imposed on the Company.
- (4) To the extent permissible by law, the Company must immediately notify the FMA if:
- (a) the Company becomes aware that the Company, or any of the Company's directors or senior management personnel, is subject to investigation by any regulatory or law enforcement agency; or
  - (b) the Company, or any of the Company's directors or senior management personnel, is subject to any adverse finding by any Court, tribunal, regulatory authority, or disciplinary committee; or
  - (c) the Company becomes aware that the Clearing House, or any of its directors or senior management personnel, is subject to investigation by any regulatory or law enforcement agency; or
  - (d) the Clearing House, or any of its directors or senior management personnel, is subject to any adverse finding by any Court, tribunal, regulatory authority, or disciplinary committee.
- (5) The Company must immediately notify the FMA if the Company knows or suspects that a New Zealand Member has committed, is committing, or is likely to commit a significant contravention of –
- (a) the rules and procedures of the Clearing House, if applicable; or
  - (b) any enactment effective in the Company's place of incorporation which the New Zealand Member must comply with because of its participation in the Existing Market.
- (6) The Company must, if requested to do so in writing by the FMA and if not prohibited by any applicable law, answer any question asked by the FMA (or any person authorised by the FMA), that is necessary or desirable to enable the FMA to fulfil its functions.

(7) The Company must at all times ensure that the FMA has been given notice of the person, or persons, the FMA should contact in the first instance about matters that require a response from the Company.

## **12 Compliance report**

For the purposes of section 337 of the Act, the reporting period is every second financial year of the Company following the Commencement Date.

## **13 Oversight by US Commodity Futures Trading Commission**

The Company must provide the FMA with a copy of any report on the Company by the US Commodity Futures Trading Commission, or any other applicable regulatory agency, within three working days of its publication.

## **14 Condition relating to jurisdiction**

The Company must submit to the non-exclusive jurisdiction of the New Zealand courts in actions brought by the FMA.

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