

# CIRCULAR

23 JUNE 2017

**CIRCULAR 17/089**

## **MIFID II: MEMBER REQUIREMENTS GUIDANCE AND MEMBER INFORMATION REQUEST**

### **CATEGORY**

Regulations

### **ATTACHMENTS**

**Attachment 1:** ICE MiFID II Member Requirements Guidance

**Attachment 2:** MiFID II Member Information Request Form

This Circular notifies Exchange Members of ICE Futures Europe's MiFID II Member Requirements Guidance, which sets out the conditions and requirements of Exchange Membership from Wednesday 03 January 2018.

**Please note that, in addition, the Circular also requests that all Exchange Members submit certain information to the Exchange to assist with MiFID II Implementation.**

### **Background**

Under Article 48<sup>1</sup> of MiFID II and Article 7 of the MiFID II Regulatory Technical Standards for trading venues (RTS 7)<sup>2</sup>, a Regulated Market permitting algorithmic trading is required to have arrangements in place, and comply with specific requirements relating to how Members use their electronic systems from January 2018. These arrangements include setting the criteria or conditions that apply to new Member applicants and all existing Members, and must cover at least the following:

- pre- and post-trade controls;
- qualifications of staff in key positions;
- technical and electronic conformance;
- policy on the use of the kill functionality;
- provisions on whether the Member can provide direct electronic access ("DEA") to its clients, and the conditions that apply in respect of those clients.

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<sup>1</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0065&from=EN>

<sup>2</sup> RTS 7: Commission Delegated Regulation (EU) 2017/584 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying organisational requirements of trading venues <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0584&from=EN>

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These criteria are intended to ensure that Members of European trading venues are suitable and to set a control framework under which all Members need to comply.

As part of the Exchange's MiFID II implementation plan to comply with these requirements, the Exchange has produced the attached Guidance document which provides Members with detail on these Membership conditions and on the minimum organisational standards the Exchange requires. The Exchange also intends to amend its Membership Rules and Procedures in advance of the MiFID II implementation date.

The areas covered by the Guidance document include the following:

- Governance;
- Compliance;
- Supervision;
- Risk management;
- DEA;
- Testing of systems;
- Business Continuity Plans ("BCP")
- Back office operations.

### Applicability

The Guidance applies to all Members of the Exchange, including non-MiFID firms/Members from third countries and new Member applicants, and will take effect from Wednesday 03 January 2018, on the implementation of MiFID II. It has been published in advance of its effective date to help Members with their preparations for MiFID II implementation. This Guidance is based on the MiFID II legislation, and the MiFID II technical standards that apply to investment firms<sup>3</sup> and investment firms engaged in algorithmic trading<sup>4</sup>. The Exchange believes that these requirements set the standard with which all Members should comply. In applying these standards, the Exchange is consistent in its approach to all Members and ensures that an appropriate control framework is applied by its Members to protect their clients and other users.

### DEA providers

Where a Member permits another person to trade electronically on the Exchange using its Member mnemonic, and involves an arrangement whereby that person is using the infrastructure provided by the Member to trade (Direct Market Access or "DMA") or uses another infrastructure (Sponsored Access or "SA"), the Member may be providing DEA.

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<sup>3</sup> Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&from=EN>

<sup>4</sup> RTS 6: Commission Delegated Regulation (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0589&from=EN>

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The Exchange may permit Members to provide DEA to their clients who are investment firms; credit institutions; MiFID exempt firms; and third country firms from equivalent jurisdictions or Members that benefit from the UK's Overseas Person Exclusion.

Such Members will be subject to additional requirements, including performing due diligence on their DEA clients before access is provided; setting risk management controls on their trading activity; and monitoring their order flow for any disorderly trading or violations. Any Member that is providing Sponsored Access to its clients must also be authorized to do so by the Exchange.

### **DEA and WebICE**

Members, including Clearing Members, who provide trading access to firms with WebICE are, in the Exchange's view, providing Sponsored Access. If any Member is currently providing DEA to clients and does not meet any of the above criteria, they should seek their own legal advice on the matter. For further information, please contact the Exchange.

### **Member Information Request**

The Exchange has been working with its Members and clients to develop the technology solutions to comply with the MiFID II requirements. In addition to this the Exchange also needs to gather information to comply with its requirements relating to Member arrangements. This includes collecting information about a Member's status as a DEA provider and its regulatory status as an investment firm or a non-investment firm.

To collect this information, the Exchange has attached a form which should be submitted to the Exchange no later than Friday **21 July 2017**. For firms that are Members of both ICE Futures Europe and ICE Endex, only one submission is required. Please submit the completed form either to [compliance-europe@theice.com](mailto:compliance-europe@theice.com) or [Compliance-endex@theice.com](mailto:Compliance-endex@theice.com)

Please ensure that the appropriate members of staff within your organisation and customers are advised of the content of this Circular and prepare for implementation.

Signed:



Dee Blake  
Head of Regulation

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**FOR MORE INFORMATION, PLEASE CONTACT:**

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