

15 March 2019



Circular C19/053

ICE Clear Europe: Proposed Changes to the Clearing Rules

Category
Regulations

Attachments
ICE Clear Europe Clearing Rules

BACKGROUND

If the UK exits the European Union (“EU”) in circumstances where: (i) no final or transitional withdrawal agreement has been agreed between the UK and the EU27 which stipulates that EU data protection law, among other laws, shall continue to apply in the UK (a “withdrawal agreement”); and (ii) the UK’s data protection laws have not been found to provide for an adequate level of protection for the personal data of individuals in the EU pursuant to a decision made by the European Commission under Article 45 of the EU General Data Protection Regulation (“GDPR”) (an “adequacy decision”), the UK would be a ‘third country’ for GDPR purposes.

This outcome would have potential implications for the continued transfer of personal data to the Clearing House from EU27-based Clearing Members/participants with effect from the date of exit.

ICE CLEAR EUROPE RULE CHANGES

Although Rule 106 (which requires, among other provisions, that Clearing Members ensure that personal data transfers to the Clearing House are lawful) will continue to be relevant in the ‘no deal’ Brexit scenario described above, the Clearing House considers that it would be prudent to amend its Rules to ensure that transfers of personal data from Clearing Members and participants based in the EU to the Clearing House are subject to ‘appropriate safeguards’ within the meaning of the GDPR.

The proposed amendments, set out in the attachment to this Circular, incorporate standard data protection clauses pursuant to Article 46(2) of the GDPR (in the form of the Set II Standard Contractual Clauses published by the European Commission for the transfer of personal data from the EU to third countries) into Rule 106 and a new Exhibit 5. The proposed amendments have received applicable regulatory approvals and are now subject to a market consultation (as detailed below).

Interested parties are advised to familiarise themselves with the proposed amendments to the Clearing House Rules by reference to the attachment and to seek independent professional advice as necessary.

I therefore give formal notice that the amendments set out in the attached draft Clearing Rules are proposed. Clearing Members are invited to comment on the proposed amendments to the Clearing Rules within 14 days of publication of this Circular.

Clearing Members are invited to comment on the proposed amendments to the Clearing Rules within 14 days of publication of this Circular.

Comments should therefore be made by 29 March 2019 in writing to:

**The Deputy Head of Legal
ICE Clear Europe
Milton Gate 5th Floor
60 Chiswell Street
London EC1Y 4SA**

The proposed change will come into effect at midnight on 29 March 2019 only in circumstances where the UK has exited the EU on such date without a withdrawal agreement having been agreed and in the absence of an

[View All Circulars](#) / [Contact Us](#) / [Media Inquiries](#)

15 March 2019



adequacy decision. For the avoidance of doubt, if a 'no deal' Brexit does not occur on this date, the proposed amendments will not take effect.

Should you have any questions in relation to this Circular please contact: George Milton (Deputy Head of Legal, Europe and ICE Data Protection Officer) by phone on +44 (0)20 7429 4564 or by email on george.milton@theice.com.

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

Signed:

A handwritten signature in black ink, appearing to read 'Finbarr Hutcheson'.

Finbarr Hutcheson
President

For more information, please contact:

George Milton
Deputy Head of Legal, Europe and ICE Data Protection Officer
+44 (0)20 7429 4564
george.milton@theice.com

[View All Circulars](#) / [Contact Us](#) / [Media Inquiries](#)

Registered name: ICE Clear Europe Limited, (Registered in England, No. 06219884)
Registered office: Milton Gate, 60 Chiswell Street, London EC1Y 4SA, United Kingdom
ICE Clear Europe Ltd is recognised as a clearing house and central counterparty under the Financial Services and Markets Act 2000 (which incorporates the European Market Infrastructure Regulation (EMIR), as applicable), supervised by the Bank of England.