

**2013 No. 1382**

**STAMP DUTY**

**STAMP DUTY RESERVE TAX**

**The Stamp Duty and Stamp Duty Reserve Tax (ICE Clear Europe Limited) Regulations 2013**

<i>Made</i> - - - -	<i>4th June 2013</i>
<i>Laid before the House of Commons</i>	<i>5th June 2013</i>
<i>Coming into force</i> - -	<i>1st July 2013</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 116 and 117 of the Finance Act 1991(a).

**Citation, commencement and effect**

**1.**—(1) These Regulations may be cited as the Stamp Duty and Stamp Duty Reserve Tax (ICE Clear Europe Limited) Regulations 2013 and come into force on 1st July 2013.

(2) These Regulations have effect—

- (a) for the purposes of the charge to stamp duty, in relation to instruments executed on or after 1st July 2013;
- (b) for the purposes of the charge to stamp duty reserve tax—
  - (i) in the case of agreements to transfer traded securities or options which are not conditional, in relation to agreements made on or after 1st July 2013;
  - (ii) in the case of agreements to transfer traded securities or options which are conditional, in relation to agreements where the condition is satisfied on or after 1st July 2013.

**Interpretation**

**2.** In these Regulations—

“clearing participant” means a member of ICE Clear Europe who as such is permitted by the Rules of ICE Clear Europe to clear facility transactions and/or over the counter transactions;

“client” means a person who gives instructions to a non-clearing firm for traded securities or options to be sold in a facility transaction or an over the counter transaction;

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(a) 1991 c. 31. Section 116(4) was amended by paragraph 5 of Schedule 20 to the Financial Services and Markets Act 2000 (c. 8), by paragraph 7 of Schedule 21 to the Finance Act 2007 (c. 11) and by regulation 20 of S.I. 2013/504. Sections 116(1)(b) and 117(1)(b) were amended by section 65 of the Finance Act 2010 (c. 13) and substituted by regulation 20 of S.I. 2013/504.

“facility” means a recognised investment exchange within the meaning of sections 116(4)(b) and 117(3) of the Finance Act 1991;

“facility transaction” means a transaction in traded securities or options that is made on or reported to a recognised investment exchange;

“ICE Clear Europe” means ICE Clear Europe Limited(a);

“nominee” means, save in relation to a non-clearing firm or its client (regulation 4(3)(b) and (e)), a person whose business is or includes holding traded securities or options as a nominee for ICE Clear Europe, or another prescribed recognised clearing house, acting in its capacity as a person providing clearing services in connection with an over the counter transaction or a facility transaction, or as a nominee for a clearing participant;

“non-clearing firm” means a person other than a clearing participant who has an agreement with a clearing participant to clear over the counter transactions or facility transactions or both;

“option” means an option to buy or sell traded securities;

“over the counter transaction” means a transaction in traded securities or options made other than on a recognised investment exchange;

“traded securities” means stocks and shares which are issued or raised by a body corporate but does not include stocks and shares issued or raised by a body corporate not incorporated in the United Kingdom unless—

- (a) the stocks and shares are registered in a register kept in the United Kingdom by or on behalf of the body corporate; or
- (b) in the case of shares, they are paired, within the meaning of section 99(6A) of the Finance Act 1986(b), with shares issued by a body corporate incorporated in the United Kingdom.

### **Prescription of a recognised clearing house**

3. For the purposes of sections 116 and 117 of the Finance Act 1991 ICE Clear Europe is prescribed as a recognised clearing house.

### **Prescribed circumstances for the purposes of section 116 and 117**

4.—(1) In the circumstances prescribed by paragraph (2), the charges to stamp duty and stamp duty reserve tax shall be treated as not arising.

(2) The circumstances prescribed are where, in connection with a facility transaction or an over the counter transaction (excluding transactions that come within section 80C and 89AA of the Finance Act 1986(c)), conditions A, B and C are met.

(3) Condition A is that traded securities or options are transferred, or agreed to be transferred, from—

- (a) a clearing participant or its nominee to another clearing participant or its nominee;
- (b) a non-clearing firm or its client, or nominee of a non-clearing firm or its client, to a clearing participant or its nominee;
- (c) a clearing participant or its nominee to ICE Clear Europe or its nominee;
- (d) a person other than a clearing participant to ICE Clear Europe or its nominee, as a result of a failure by a clearing participant to fulfil its obligations in respect of the transaction concerned to transfer traded securities or options to ICE Clear Europe or its nominee;

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(a) ICE Clear Europe Limited is a recognised clearing house within the meaning of section 285(1)(b) of the Financial Services and Markets Act 2000 (c. 8). Section 285(1)(b) was substituted by regulation 3 of S.I. 2013/504.

(b) 1986 c. 41. Section 99(6A) was inserted by section 144 of the Finance Act 1988 (c. 39), and was amended by section 113(2) of the Finance Act 1990 (c. 29).

(c) Sections 80C and 89AA of the Finance Act 1986 (c. 41) (which were inserted by section 98 and section 103 of the Finance Act 1997 (c. 16)) relate to stock lending transactions.

- (e) a person other than a clearing participant to a clearing participant or its nominee as a result of a failure by a non-clearing firm or its client, or nominee of a non-clearing firm or its client or by another clearing participant or its nominee to fulfil its obligations in respect of the transaction concerned to transfer traded securities or options to that clearing participant or its nominee;
- (f) a prescribed recognised clearing house or its nominee to ICE Clear Europe or its nominee; or
- (g) ICE Clear Europe or its nominee to a clearing participant or its nominee.

(4) Condition B is that the person to whom those securities or options are agreed to be transferred under any of the agreements specified in paragraph (3) (“the relevant agreement”) is required on receipt of those securities or options to transfer traded securities or options under a matching agreement to another person or, in the case of an agreement falling within paragraph (3)(d) or (3)(e), would have been so required if the failure referred to in those paragraphs had not occurred.

(5) Condition C is that where traded securities or options which are the subject of the relevant agreement are received by a clearing participant, the agreement must be identified by the clearing participant as an agreement that has been made solely in relation to the clearing of those traded securities or options on behalf of a third party.

(6) In this regulation “matching agreement” means an agreement under which—

- (i) the traded securities or options agreed to be transferred are of the same kind as the traded securities or options agreed to be transferred under the relevant agreement; and
- (ii) the number and transfer price of the traded securities or options agreed to be transferred are in total identical to the number and transfer price of the traded securities or options agreed to be transferred under the relevant agreement.

*Mark Lancaster*  
*Anne Milton*

4th June 2013

Two of the Lords Commissioners of Her Majesty’s Treasury

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations give relief from stamp duty and stamp duty reserve tax (“SDRT”) to certain transfers of, or agreements to transfer, traded securities or options made in the course of trading in those traded securities or options either on a facility or over the counter. The transfers and agreements eligible for relief are those involving ICE Clear Europe Limited (“ICE Clear Europe”), and its nominees, (through whom transactions on the facility are cleared) or clearing participants of ICE Clear Europe and its nominees.

Regulation 1 provides for citation, commencement and effect, and regulation 2 contains definitions.

Regulation 3 prescribes ICE Clear Europe as a recognised clearing house for the purposes of the relief.

Regulation 4 prescribes the circumstances in which the stamp duty and SDRT will not be charged.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://hmrc.gov.uk/thelibrary/tiins.htm>.

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