

**Date**

12 March 2008

**Recipients**

All DME Members

**From**

Gary King, Chief Executive Officer

**Category**

Business Development

**Proposal**

Proposed Rule changes to the DME Rulebook to introduce requirements to comply with Section 6045 in the United States Internal Revenue Code, where applicable, and consequential disclosure requirements.

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Consultation Paper 08-005 is issued in accordance with DME Rule 4.21 and Section 9 of the Authorised Market Institutions Module of the DFSA Rulebook.

Consultation Paper 08-005 seeks comments on proposals to amend the DME Rulebook to introduce requirements upon Members, Seat Lessees and Guaranteed Customers to comply, where applicable, with Section 6045 of the United States Internal Revenue Code (**Section 6045**) and to provide the Exchange (or directly to the US authorities) certain information if required. The proposed changes to the Rules also provide for immediate suspension of access to DME Direct in the event of failure to comply with Section 6045 or to provide information when required, until such non-compliance is rectified.

**To whom does this Consultation Paper apply?**

Consultation Paper 08-005 is directed primarily at DME Members and other users or prospective users of DME's facilities. DME also welcomes any comments from any organisation which represents groups of DME Members, users or prospective users.

**How is this structured?**

**Background**

Section 6045 applies to any broker or middleman, US or non-US, who in the ordinary course of business, stands ready to effect sales to be made by others. In the DME context, Section 6045 applies, or may apply, to any Member, Seat Lessee or Guaranteed Customer who is a broker trading on behalf of Customers:

- (a) where such trading is effected in an office within the US; or
- (b) where such trading is effected in an office outside the US, if the broker is:
  - (i) a US citizen or resident; or
  - (ii) a corporation or partnership created under US law; or
  - (iii) a non-US corporation owned as to more than 50% by US shareholders; or

- (iv) a non-US partnership owned as to more than 50% by US persons or which engages in business in the US; or
- (v) a non-US person who derives 50% or more of its income from a US trade or business; or
- (vi) a US branch of a non-US bank or insurance company.

Section 6045 requires every person to whom it applies to file with the United States Internal Revenue Service (the **IRS**) an information return showing the name and address of each Customer and certain details recording proceeds and other information with respect of each transaction undertaken on behalf of the Customer. The US Internal Revenue Code (the **IRC**) provides for penalties in the event of failure to file such information returns.

The DME has applied to the IRS to obtain a ruling that the DME is a "qualified board or exchange" for the purpose of Section 1256(G)(7)(c) of the IRC. If the ruling is obtained, contracts traded on the DME would be treated as "Section 1256 contracts". Such contracts would be treated as marked to market at the end of the taxpayer's taxable year. The resulting gain or loss in respect of each such contract would, under the current legislation, be treated as 60% long-term and 40% short-term capital gain or loss.

In considering DME's application for that ruling, the IRS requires the DME Rules to be amended to ensure compliance with Section 6045 to the extent applicable to DME's Members, Seat Lessees and Guaranteed Customers. The DME has been advised that the IRS has imposed similar requirements upon other commodity exchanges.

### **Proposed Changes**

In accordance with the substance of the requirements imposed by the IRS, DME proposes the following changes to the DME Rulebook:

#### *Requirement to comply with Section 6045*

DME proposes to add a new sub-paragraph (3) to DME Rule 4.2(A) requiring Members to comply with reporting requirements under Section 6045, if applicable to that Member.

Under DME Rule 4.15(J) (unchanged), the new sub-paragraph (3) to DME Rule 4.2(A) would also apply to Guaranteed Customers and Seat Lessees.

#### *Requirement to keep DME informed of applicability of Section 6045*

DME proposes to introduce a new sub-paragraph (10) to Rule 4.3(A) establishing an ongoing information requirement upon Members to inform the DME whether the reporting requirements under Section 6045 apply, or cease to apply, to that Member. An equivalent obligation is imposed upon Guaranteed Customers and Seat Lessees under a proposed new paragraph (N) to Rule 4.15.

#### *Provision and disclosure of information*

Where the relevant reporting requirements apply, the Exchange should be provided with details of a US taxpayer identification number and a senior management contact (Rule 4.3(A)(10) in respect of Members and Rule 4.15(N) in respect of Seat Lessees and Guaranteed Customers). The Exchange may provide such information to the IRS.

The IRS will also require the DME to give certain commitments to obtain and disclose, or require direct disclosure of, certain information and documentation. Rule 4.7(G) is being introduced to enable DME to meet those commitments.



*Suspension in the event of non-compliance*

DME proposes to introduce a new paragraph (l) to Rule 7.37 providing that the Exchange shall immediately suspend and deny access to DME Direct to any Member who fails to comply with any reporting requirements upon it under Section 6045. Such suspension and denial of access will continue until the non-compliance has been rectified. There is no remedy of appeal or challenge available to a Member to whom such denial of access is imposed.

In accordance with Rule 7.1(c) (unchanged), the provision for such suspension and denial of access to DME Direct would also apply to Guaranteed Customers and Seat Lessees in default of applicable reporting requirements under Section 6045.

DME considers that the introduction of such specific provisions would not impose any unreasonable, discriminatory or disproportionate burden upon Members, Guaranteed Customers or Seat Lessees. The new Rules would take effect only to ensure compliance with already existing legal obligations under Section 6045.

Full details of the changes made to the Rules can be found in Appendices A and B attached to this Consultation Paper 008-005.

DME considers that the proposed Rules, as changed, will be clear, fair and enforceable.

**How to provide comments?**

The deadline for providing comments on the proposals in this Notice is 28 days following the date of this Consultation Paper 08-005. All comments on the proposed changes should be addressed to:

Mr Thomas Leaver  
Chief Operations Officer  
Dubai Mercantile Exchange Limited  
PO Box 66500  
Dubai  
UAE  
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**What is the next step?**

Unless specifically requested otherwise, DME may publish on its website any comments it receives in this consultation.

As soon as practicable following the deadline for comments on the proposals in this Notice, DME will consider whether any amendment or revision to the proposed changes is appropriate. DME will then implement the changes to the DME Rulebook (including any amendment or revision, if appropriate). The amendments to the DME Rules will only take effect once approved by the DFSA. DME will issue a Member Notice on the DME website confirming when DFSA approval has been obtained, the date upon which the changes to the DME Rules will become effective.

Signed. \_\_\_\_\_

Gary King  
Chief Executive Officer

## **APPENDIX A**

### **Chapter 4 Compliance and General Rules**

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#### **4.1 Requirement for Regulatory Status in DIFC**

- (A) Each Floor Member shall be incorporated or otherwise established in the DIFC.
- (B) Each Member shall be authorised, recognised or otherwise permitted by the DFSA to conduct the activities which it intends to conduct while trading on the Exchange and must provide evidence to the Exchange of such regulatory status.

#### **4.2 Compliance with regulatory requirements**

- (A) Each Member shall at all times have in place systems, controls and procedures designed to ensure compliance with:
- (1) these Rules;
- (2) all applicable laws and regulations, including all applicable rules and guidance published by the DFSA and any other regulator who is responsible for regulation of any of the Member's activities conducted on the Exchange or otherwise made subject to these Rules, all Applicable AML Requirements and Market Conduct Requirements; and

- (3) without prejudice to the generality of sub-paragraph (A)(2) of this Rule 4.2, the reporting requirements under Section 6045 of the United States Internal Revenue Code and regulations made thereunder and such other provisions of such Code and regulations that are pertinent thereto, to the extent applicable to that Member.
- (B) Each Member shall be able promptly to evidence the existence of the systems, controls and procedures required by paragraph (A) of this Rule 4.2 at the request of the Exchange.
- (C) Each Member which is not an Authorised Firm and which proposes to carry an account for any other person must appoint an individual as a Money Laundering Reporting Officer with responsibility for that Member's compliance with all Applicable AML Requirements.
- (D) No Member shall carry any account for any other person until it has verified the identity of that person for the purposes of Applicable AML Requirements. Members shall maintain all records and documents relating to its identity verification for at least (6) six years.

#### **4.3 Reporting obligations: general**

- (A) Each Member shall promptly provide the Exchange with the following information:
- (1) where applicable, annual audited accounts within four (4) months of the end of its financial year;
  - (2) where no annual audited accounts are available, such regular financial information as the Exchange may prescribe from time to time;
  - (3) any material adverse change in financial condition;
  - (4) any refusal of admission to; any withdrawal of any application for membership in; any suspension, expulsion, bar, fine, censure, denial of membership, registration or license or permission imposed by; any withdrawal of any application for registration with; or any cease and desist order, temporary or permanent injunction, denial of trading privileges or any other sanction or discipline through an adverse determination, voluntary settlement or otherwise, imposed by:
    - (a) the DFSA or any other regulatory authority of any state, territory or foreign country;
    - (b) any federal or state court;
    - (c) any quasi-governmental body; or
    - (d) any self-regulatory organisation or other business or professional association;
  - (5) any conviction, finding of guilt, confession of guilt or plea of guilt to a felony or misdemeanour charging misrepresentation, fraud, deceit, theft, embezzlement, gambling, conversion, abuse of a fiduciary relationship or other such act by the Member or any director, officer or partner of the Member;
  - (6) the commencement, by the issuance of a formal order of investigation (or its equivalent), or by the issuance or service of a written complaint (or its equivalent), of any judicial, administrative or self-regulatory proceeding, as the case may be, against such member by the DFSA, any other regulatory authority of any state, territory or foreign country, any commodity or securities exchange or related clearing organisation, or any registered futures or securities association, or any self-regulatory organisation or other business or professional association;
  - (7) details of any enforcement action taken against it, whether taken by the DFSA, any other exchange or any other regulatory authority of any state, territory or foreign country;

- (8) details of any enforcement action taken against one (1) or more of its employees or representatives employed or otherwise engaged in respect of any of its activities conducted on the Exchange, whether taken by the DFSA, any other exchange or any other regulatory authority of any state, territory or foreign country;
  - (9) any changes in the Member's memorandum or articles of association or other constitutional documents, or in the case of partnerships, any amendment to the partnership agreement;
  - (10) whether the reporting requirements under Section 6045 of the United States Internal Revenue Code apply, or have ceased to apply, in relation to that Member, and if such reporting requirements apply, that Member's US taxpayer identification number and details of an individual within the Member's senior management as a point of contact in respect of such reporting requirements;
  - (11) any further information in relation to commercial matters as may be required by the CEO or any person empowered by him generally or in any specific case; and
  - (12) any further information in relation to regulatory and compliance matters as may be required by the CCO or his designee.
- (B) Each Floor Member shall inform the Exchange and any Clearing Member with whom the Floor Member holds an account immediately of:
- (1) entry into an agreement with a Seat Lessee under which that Seat Lessee shall occupy a Seat on the Exchange Floor; and
  - (2) the termination of any such agreement and the reason(s) for such termination.
- (C) Each Clearing Member shall inform the Exchange immediately of:
- (1) entry into an agreement with a Customer under which that Clearing Member guarantees the Customer's access to the Trading Platform (a **Guaranteed Customer**);
  - (2) the termination of any such agreement and the reason(s) for such termination.

#### 4.4 Reporting obligations: DFSA authorisation information

- (A) Each Member shall confirm to the CCO annually in writing:
- (1) as to the nature of the Member's activities on the Exchange;
  - (2) in relation to those activities, that the Member has an appropriate authorisation, recognition or other permission to carry on the activities which it conducts on the Exchange or permission ; and
  - (3) whether the Member is subject to regulation by any other regulatory organisations, either in the UAE or elsewhere, and if so which organisation is its main regulator for the purposes of these activities or any other activities made subject to these Rules.
- (B) Each Member shall notify the Exchange immediately upon variation in or cancellation of its authorisation, recognition or other permission by the DFSA to carry on any activity which it conducts on the Exchange.
- (C) Each Member shall notify the Exchange immediately upon initiating any change in its business or circumstance which may affect its authorisation, recognition or other permission by the DFSA to carry on any activity which it conducts on the Exchange.

- (D) Any notice required to be given under paragraph (B) or (C) of this Rule 4.4 shall include details of the steps which the Member has taken to ensure that it will continue to comply with the requirements of Rules 4.1 and 4.2 in respect of any of its activities conducted on the Exchange.
- (E) Any notice required to be given under this Rule 4.4:
  - (1) shall be given on or around a date agreed in advance with the CCO and promptly upon any change in the particulars last notified;
  - (2) shall be in such form as the Exchange may from time to time prescribe; and
  - (3) where required, shall be certified by a firm of auditors, lawyers or some other person acceptable to the Exchange.

#### **4.5 Accuracy of information**

All Members shall ensure to the best of their ability that all information and documents provided to the Exchange pursuant to these Rules, and any information or documents provided to the Clearing House from time to time under any Clearing House Rule, or any information or documents provided pursuant to a request or direction made by the Exchange, the Clearing House, the CEO, the CCO or any committee of the Exchange, are complete, fair and accurate.

#### **4.6 Reports and records**

- (A) Members must make and file reports and keep and maintain records in respect of such documents, in such form and for such period as may be required under the rules and regulations of any regulatory body to whose rules and regulations they are subject (including the DFSA or as may be prescribed by the Board, and in any event all Members shall maintain all records relating to all orders and Market Contracts to which the Member is a party or which the Member has executed, forwarded for execution, transferred or assigned including details of the persons for whom the trade was made, the parties to it, the manner in which it was fulfilled, discharged or terminated.
- (B) Members shall maintain all such records in permanent hard copy or permanent and readily-retrievable electronic form, unless they are required to keep them in another form by the rules and regulations of any regulatory body to which that Member is subject.
- (C) All records required to be kept under this Rule 4.6 shall be kept for at least six (6) years, unless:
  - (1) they are required to be kept for a longer period by the rules and regulations of any regulatory body to which the Member is subject; or
  - (2) the Market Contract to which the records refer has not been settled within six (6) years from the trade date, in which case the relevant records shall be kept for a further one (1) year after the contract has been settled.
- (D) All records required to be kept under this Rule 4.6 shall be open to inspection by the Exchange, the Clearing House, the DFSA and any other regulator which is responsible for the regulation of the Exchange's activities or Members' activities on the Exchange.

#### **4.7 Information gathering and inspections by the Exchange**

- (A) The CCO or his designee may request trading or other information regarding any Clearing Member from the Clearing House and the Clearing House shall provide any such information promptly upon request.



- (B) The CCO or his designee shall be entitled at any time to inspect and take copies of the records, trading information, books of account and other documentation, howsoever made and retained, of Members (including any documentation howsoever made and retained by or in the possession of the Member for any other person) for the purposes of ensuring compliance with these Rules, and in particular with paragraph (A) of Rule 4.2.
- (C) The CCO or his designee shall be entitled at any time to inspect and take copies of:
  - (1) a Member's anti-money laundering procedures and any records relating to its compliance with Applicable AML Requirements howsoever made and retained; and
  - (2) documents and any records relating to a Member's compliance with Market Conduct Requirements howsoever made and retained.
- (D) Where the documentation referred to in paragraphs (B) or (C) of this Rule 4.7 is in the possession of a third party, the Member shall procure that the Exchange is given access to such documentation as if it were in the Member's, Seat Lessee's or Guaranteed Customer's possession.
- (E) The CCO or his designee may at any time attend at the premises of any Member for the purpose of inspecting any of the matters referred to in Rules 4.2, 4.3, 4.4 and paragraphs (B) and (C) of Rule 4.8, and the Member shall ensure that all cooperation is afforded to him.
- (F) The CCO or his designee may cooperate with the DFSA, AMLSCU and any other governmental or international agency, any Authorised Market Institution or Recognised Body, any other exchange or clearing house and any self-regulatory or other regulatory or enforcement organisation in such manner as he thinks fit and shall, in particular, be permitted to disclose to any of these persons or bodies any information for the time being in the possession of the Exchange regarding any Member's financial condition or trading activities, including any information obtained pursuant to these Rules.
- (G) Without prejudice to the generality of paragraph (F) of this Rule 4.7, the CCO or his designee may:
  - (1) provide to the US Internal Revenue Service a Member's US taxpayer identification number;
  - (2) require a Member to disclose details of all its executive officers, which details the Exchange may provide to the US Internal Revenue Service; and/or
  - (3) require a Member to disclose, either to the Exchange, the US Internal Revenue Service or any grand jury duly convened within the US, all books, papers, records and all data prescribed in Section 7602 of the United States Internal Revenue Code and regulations thereunder.

#### **4.8 Obligations of Integrity and Co-operation**

- (A) Whether or not an Authorised Firm, each Member shall observe high standards of integrity, fair dealing and market conduct as reflected in the DFSA Rulebook including, but not limited to, Chapter 4 GEN and any guidance published by it from time to time.
- (B) Each Member shall deal with the Exchange in an open and cooperative manner and keep the Exchange promptly informed of anything concerning the Member which might reasonably be expected to be disclosed to the Exchange.
- (C) Each Member shall cooperate fully and openly with any other agency or enforcement body having responsibility for the detection and prevention of financial crime or market misconduct, to the extent that that person requires information relating to the Member's Membership of, or trades carried out by the Member on, the Exchange.

- (D) Each Member shall organise and control its internal affairs in a responsible manner, keep proper records and have adequate arrangements to ensure that its staff and directors are suitable, adequately trained and properly supervised.
- (E) Each Member shall have appropriate measures to manage conflicts of interest arising in the course of its trading on the Exchange.

#### **4.9 Conduct and Trading Standards for Members**

- (A) **General Rule.** No Member may engage in any practice which might reasonably be expected to have an adverse impact on the operations of the Exchange or any market on the Exchange or which is unfair to its Customers or other market participants or which contravenes any Market Conduct Requirement.
- (B) **Front Running.** No Member may purchase or sell any Future or Option for its own account (or for any account in which it has an interest) or place an order to do so while holding an order from a Customer in the same direction for any such transaction either:
  - (1) where the Customer's order is executable at the market price or at the price at which such transaction can be made for such account; or
  - (2) intending to make or realise a profit from any price movement resulting from the execution of the Customer's order (whether alone or in combination with others).
- (C) **Wash Trades.** No Member shall make any order or execute any trade in an Exchange Contract which creates a misleading impression of activity in the market or causes the Exchange or any person to report misleading information as to the price or depth of the market in that Exchange Contract.
- (D) **Accommodation Trades.** No Member shall make any order or execute any trade in an Exchange Contract with a view to concealing any abusive trade or misconduct (past or future) by that Member or any other person.
- (E) **Compensation Trades.** No Member shall make any order or execute any trade or combination of trades in an Exchange Contract the primary purpose of which is to transfer money between accounts without creating (or reducing) any open interest, or for no legitimate purpose.
- (F) **Trading with Intent to Default.** No Member shall make any order or execute any trade in an Exchange Contract where that Member, either:
  - (1) intends to default in the performance of any contract resulting from such order or from the execution of such trade; or
  - (2) has no reasonable grounds for believing that it would be able to avoid any such default.
- (G) **Cross Trades.** Except as expressly permitted under these Rules, no Member may enter into any form of cross trade.
- (H) **False Trades.** No Member shall purport to make or report any fictitious trade.
- (I) **Retail Customers.** No Member shall open an account for, or accept any order from, a Retail Customer in respect of trading on the Exchange and no Member shall enter into any contract in the terms of an Exchange Contract with a Retail Customer.
- (J) **Transactions with Customers.** Except where expressly permitted under these Rules, no Member shall enter into any contract in the terms of an Exchange Contract with or for a Customer (a **Customer Contract**) and represent to that Customer that such contract is made on the Exchange by means of the Exchange's facilities or otherwise subject to these Rules,

unless such Member first executes on the Exchange's market (or has procured such execution by another Member of) a trade (a **Matching Trade**) in respect of and in the terms of such Customer Contract.

- (K) A Member executing a Matching Trade shall be the buyer (or seller) on the Matching Trade if its Customer is the buyer (or seller) on the Customer Contract, and the Matching Trade shall be at the same price as the Customer Contract.
- (L) **Confidentiality of Customer Orders.** No Member shall disclose at any time that he is holding an order of another person or divulge any order revealed to him by reason of his relationship to such other person, except to execute an order or at the request of an authorised representative of the Exchange, the Clearing House, the DFSA or any other regulator which is responsible for the regulation of the Member's activities on the Exchange.
- (M) **No Unfair Advantage.** No Member holding a Customer order given to him by another Member or having had actual disclosure of a Customer order from another Member may use the details of the Customer order at any time to take unfair advantage in a transaction for itself, directly or indirectly, or for its account or any account in which such Member has an interest.
- (N) No Member may take unfair advantage of a Customer order for the benefit of its own account or any account in which it has an interest or for any other person.
- (O) **Misallocation.** No Member shall allocate trades executed (or which were required to be executed) for the account of a Customer to the account of any other Customer or any other person. Where a Member unintentionally or accidentally misallocates a Customer trade, it shall be in breach of this Rule 4.9 if it fails promptly to remedy the misallocation.
- (P) **Withholding or Withdrawal of Orders.** No Member shall withhold or withdraw from the market any (or part of any) order for the convenience of another Member.
- (Q) No Member shall attempt to commit, or participate in the commission by another person (whether or not a Member) of, any of the actions prohibited by this Rule 4.9.
- (R) **Compliance with Financial and Other Limits.** No Member may make an order or execute any trade (other than to liquidate open positions) which would have the effect at the time of execution of any such trade of putting such Member in breach of any financial or other limit imposed on it by the Exchange or the Clearing House.

#### 4.10 Pre-arranged Trades

- (A) Except where otherwise provided in these Rules, Members shall not pre-negotiate or pre-arrange trades in Exchange Contracts or attempt to do so.
- (B) Any transaction in an Exchange Contract which was the subject of prior negotiation or arrangements made between Members may, except where expressly permitted under these Rules, be disallowed and declared invalid by the CCO or his designee.

#### 4.11 Trading Prohibition of Certain Persons

- (A) Members are prohibited from accepting or executing directly or indirectly any order for, or maintaining positions in, any Exchange Contract if such Member knows or, with the exercise of reasonable care, should know that the order or position is for or on behalf of:
  - (1) an employee of the Exchange;
  - (2) an employee, director or partner of a Member without the prior written consent of such Member and the CCO or his designee.
- (B) A Member may execute orders for the account of a director, employee or partner of another Member (or for an account in which such person holds an interest) provided that the Member

records and identifies such transactions separately in its trading records and otherwise deals with such orders and margins resulting positions in the same manner as it deals with or manages other Customer orders or positions. Members shall ensure that their senior managers (other than those interested in any such orders or trades) shall monitor such orders and any resulting transactions and shall maintain adequate systems to protect Customers from conflicts of interest arising and to prevent or prohibit breach by any such employee, director or partner, of the Markets Law or any other rule or law against market misconduct.

#### **4.12 Complaints against the Exchange regarding the performance of regulatory functions**

- (A) The Exchange will investigate and resolve complaints against it in accordance with Rule 7.2.17 of AML, Chapter 5 of GEN and the Exchange's own procedures.
- (B) A complaint against the Exchange may only be made in connection with the performance of, or failure to perform, any of its regulatory functions. Any such complaint must be made formally and in writing, addressed to the CCO. If it is made by a Member, it must be signed by a director or equivalent officer.
- (C) The complainant must set out clearly the nature of the complaint and the full facts of the matter (as far as they are known).

#### **4.13 Advertisements etc.**

- (A) Each Member shall ensure that all stationery, brochures and advertising or other marketing material issued by it or on its behalf concerning Membership, any Exchange Contract or any other contract available for trading on the terms of these Rules or otherwise using the Exchange's name or in relation to any matter of interest or concern to the Exchange shall:
  - (1) be clear, fair and not misleading;
  - (2) comply with all applicable laws and regulations; and
  - (3) conform to any guidelines as may from time to time be published by the Exchange.
- (B) Each Member shall ensure that all brochures, advertising or other marketing material issued by it or on its behalf shall, in addition to the requirements of paragraph (A) of this Rule 4.13, comply with the provisions of COB, whether or not the Member is an Authorised Firm.

#### **4.14 Customer agreements**

- (A) No Member shall open an account for a Customer, or enter into a contract with or accept an order to enter into a contract for a Customer, unless the Member has (subject to such exceptions as may be prescribed) entered into a written agreement with the Customer containing such terms as may from time to time be prescribed in these Rules or in directions of the Board.
- (B) Without prejudice to the generality of paragraph (A) of this Rule 4.14, each written agreement with a Customer must:
  - (4) import into every contract made with the Customer all the terms of these Rules insofar as they are applicable to that contract; and
  - (5) in relation to any business done with the Customer, enable the Member to perform all contracts from time to time registered in the Member's name with the Clearing House and to comply with all requirements of the Rules and any other arrangements, provisions and directions given by the Exchange.



#### 4.15 Seat Lessees and Guaranteed Customers

- (A) A Floor Member who holds more than one (1) Floor Membership Privilege may lease the Seat attaching to that Floor Member Privilege, always to include the right to trade on the Exchange Floor, to a Customer (a **Seat Lessee**), providing that the Floor Member retains occupation of at least one (1) of its Seats.
- (B) A Seat Lessee may trade either on the account of the Floor Member concerned or on its own account held with a Clearing Member, but not both. A Floor Member who permits a Seat Lessee to trade on that Floor Member's account shall be responsible for ensuring that the Seat Lessee does not undertake any trading on any account held by that Seat Lessee with a Clearing Member;
- (C) Without prejudice to Rule 4.14, a Floor Member who proposes to permit a Seat Lessee to occupy one or more of that Floor Member's Seats must ensure that its written agreement with that Seat Lessee contains:
  - (1) a requirement that the Seat Lessee provides a copy of the agreement to any Clearing Member with whom the Seat Lessee holds any account;
  - (2) a requirement that the Seat Lessee undertakes (in the prescribed form) to, and for the benefit of, the Exchange to be bound by these Rules and to maintain with the Exchange at all times details of an individual whom the Exchange may contact in connection with any matter whatsoever relating to the Seat Lessee's activities on the Exchange; and
  - (3) provision for the termination of the agreement if:
    - (a) the Seat Lessee fails to comply with any of these Rules; or
    - (b) the Floor Member's Floor Membership is withdrawn or suspended by the Exchange for any reason.
- (D) A Clearing Member may permit a Customer who is not a Member to have access to the Trading Platform under that Clearing Member's guarantee (a **Guaranteed Customer**).
- (E) A Clearing Member shall not permit access to the Trading Platform to any Customer who is already a Guaranteed Customer of another Clearing Member.
- (F) Without prejudice to Rule 4.14 a Clearing Member who proposes to permit a Guaranteed Customer to have access to the Trading Platform must ensure that its written agreement with that Guaranteed Customer contains:
  - (1) a requirement that the Guaranteed Customer undertakes (in the prescribed form) to, and for the benefit of, the Exchange to be bound by these Rules and to maintain with the Exchange details of an individual whom the Exchange may contact in connection with any matter whatsoever relating to the Guaranteed Customer's activities on the Exchange; and
  - (2) provision for the termination of the agreement if the Guaranteed Customer fails to comply with any of these Rules or the Clearing Member's Membership is cancelled or terminated for any reason.
- (G) No Seat Lessee shall be permitted access to the Trading Platform unless that Seat Lessee has satisfied the Exchange that it meets all of the criteria in paragraph (H) of this Rule 4.15 and the Exchange has so confirmed in writing to the Floor Member .
- (H) The criteria referred to in paragraph (G) of this Rule are:
  - (1) be a body corporate, partnership or unincorporated association;

- (2) be authorised or otherwise permitted by the DFSA to carry on the activities it intends to conduct on the Exchange;
  - (3) have good character, commercial standing and business experience;
  - (4) provide such evidence as is required as to its legal status and organisation and as to its ability to trade on the Exchange without breaching applicable laws, regulations and rules;
  - (5) designate an agent for service of process in the DIFC concerning and limited to the Exchange-related activities and business of the Seat Lessee;
  - (6) agree (in the prescribed form) to be bound by the Rules;
  - (7) designate (in the prescribed form) an officer, employee or partner as the Exchange liaison, whom the Exchange may contact in order to obtain additional information or documentation in connection with any matter whatsoever provided in these Rules;
  - (8) have an agreement with a Clearing Member to accept and clear that Seat Lessee's trading on the Exchange or provide evidence that the Seat Lessee will trade only on the account of the Floor Member from whom it leases its Seat;
  - (9) if the Seat Lessee intends to trade as principal or agent on the account of any Customer or to trade as agent on account of any third party, comply with all applicable DFSA or other regulatory capital requirements and have net capital of not less than one million dollars (\$1,000,000) or its equivalent in any other currency;
  - (10) provide, if requested, evidence of its experience and competence;
  - (11) provide, if requested, satisfactory evidence to enable DME to comply with its obligations under the Applicable AML Requirements; and
  - (12) do or submit such other things or documents as the Board may stipulate from time to time.
- (I) No Guaranteed Customer shall be permitted access to the Trading Platform until its respective Clearing Member has confirmed to DME:
- (1) that it has verified the identity of the Guaranteed Customer in accordance with all applicable requirements;
  - (2) that the Guaranteed Customer has agreed to be bound by these Rules;
  - (3) that the Guaranteed Customer has furnished the Clearing Member with all required details in relation to the Guaranteed Customer's Authorised Terminal Users; and
  - (4) that the Guaranteed Customer has an agreement with the Clearing Member to accept and clear that Guaranteed Customer's trading on the Exchange.
- (J) The provisions of Rule 4.2, Rules 4.5 to 4.14, Rule 4.16 and Rules 4.18 to 4.20 shall apply to each Seat Lessee and each Guaranteed Customer. In those Rules reference to a Member shall be read to mean either a Member, a Seat Lessee or a Guaranteed Customer as the case may be.
- (K) The provisions of Rules 2.7 and 2.8 shall apply to each Seat Lessee who is guaranteed to trade on the Exchange by a Clearing Member in respect of trades on the Exchange, and to each Guaranteed Customer, and to their respective Clearing Members. For this purpose, reference in Rules 2.7 and 2.8 to a Member shall be read to mean either a Member, Seat Lessee or a Guaranteed Customer as the case may be.

- (L) Each Seat Lessee and Guaranteed Customer shall at all times be appropriately licensed or authorised to enable it lawfully to carry on the activities it intends to conduct on the Exchange and must, upon request by the Exchange, produce documentary evidence of such regulatory status.
- (M) Each Seat Lessee and Guaranteed Customer shall be responsible for, and subject to disciplinary action as a result of, the acts and omissions of, and any breach of these Rules by, their directors, officers, partners, employees and other representatives.
- (N) Immediately upon becoming a Seat Lessee and/or Guaranteed Customer under this Rule 4.15, a person shall notify the Exchange whether that person is subject to the reporting requirements under Section 6045 of the United States Internal Revenue Code, and shall thereafter immediately inform the Exchange of any subsequent change in such status. If the Seat Lessee or Guaranteed Customer is subject to such reporting requirements, it shall provide to the Exchange its US taxpayer identification number and details of an individual within its senior management as a point of contact in respect of such reporting requirements.

#### **4.16 US Customers**

- (A) No Member shall assign an account number that would accept the entry of orders on the Exchange by a Customer in the US (including a Guaranteed Customer in the US) unless such Customer has been provided with the following disclosures (or statements having an equivalent effect):
  - (1) a statement explaining that all trading on the Exchange is undertaken electronically;
  - (2) a statement confirming that these Rules apply to all trading to be effected by means of the Exchange;
  - (3) a statement advising Customers that they should read these DME Rules carefully before engaging in any trading involving use of the Exchange, to ensure that they understand, amongst other things:
    - (a) the order matching procedure, opening and closing procedures and prices, error trade policies and trading limitations or requirements applicable to the Exchange; and
    - (b) the qualifications for access and grounds for termination and limitations on the types of orders that may be entered into the Exchange;
  - (4) a statement clarifying that internet-based systems may present additional types of risks related to system access, varying response times and security, as well as risks related to service providers and the receipt and monitoring of electronic mail;
  - (5) a statement reminding Customers that trading by means of the Exchange exposes them to risks associated with system or component failure, and that in the event of system or component failure Customers may not be able, for a certain period of time, to enter new orders, execute existing orders or modify or cancel orders that were previously entered, and that orders or order priority may be lost;
  - (6) a statement recommending that Customers should check the Rules which limit the Exchange's liability, the liability of Members, and of software and communication system vendors, as well as the amount of damages that Customers may be able to collect, in the event of system failure and delays, to ensure that they understand these limitations of liability.
- (B) For the avoidance of doubt, the requirements of this Rule 4.16 shall be considered satisfied if the relevant Customer has been provided with the Standard Electronic Trading and Order Routing Systems Disclosure Statement published by the Futures Industry Association of the US.

#### **4.17 Trade confirmations**

Each Member shall give a written confirmation to its Customers recording the terms of any contract made with each of them.

#### **4.18 Customer orders**

Each Member shall be responsible for exercising due diligence in the execution of all executable Customer orders as of the time the order was time stamped on the Exchange Floor.

#### **4.19 Customer margin**

- (A) The Board shall from time to time establish and publish to Members the minimum margins which Members must require of Customers. Unless stated otherwise, all changes to customer margin requirements established and published under this paragraph (A) will apply to open positions initiated both before and after the date of any such change.
- (B) The margin requirements established by the Board may vary for different commodities.
- (C) Additional margins may be required of any and all customers of any Clearing Member on all open trades in such commodity contracts and in such amounts as the Board may deem necessary.
- (D) A Member must require a Customer to respond to a margin call issued by that Member in full within three (3) Business Days of such call. A Member may call, at any time, for margins above and beyond the minimums required by the Exchange. A Member may liquidate any or all positions maintained by a Customer for failure to meet a margin call. The Customer will be liable for any loss or deficiency resulting therefrom.
- (E) A Member shall not accept orders for new trades on behalf of a Customer other than those which reduce its initial margin requirement unless such Member has been given assurances by that Customer that funds sufficient to restore the account of the Customer to its prevailing initial margin requirement will be received in a reasonable amount of time, not to exceed three (3) Business Days.
- (F) A Member may accept deposits from a Customer in one or more of the following forms as margin in respect open positions on the Exchange:
  - (1) US dollars; or any currency freely convertible to US dollars; provided that if foreign currency is deposited, its value shall be calculated so that at the prevailing rate of exchange the US dollar equivalent of the foreign currency satisfies the Customer's margin obligation at any given time;
  - (2) securities issued by the Department of the Treasury of the United States maturing within ten (10) years of the date of the deposit and guaranteed as to principal and interest by the Government of the US. Such securities shall be valued at ninety five percent (95%) of par value;
  - (3) fully paid equity securities which are listed for trading on the Dubai International Financial Exchange, the New York Stock Exchange, Inc., the American Stock Exchange, Inc. or Nasdaq, provided that such securities; (i) are free from liens and encumbrances; (ii) represent no more than 5% of the issued and outstanding shares of any one issuer; (iii) have a market value of at least \$10 per share; and (iv) are not equity securities listed by the Customer or any of the Customer's Affiliates. Such equity securities shall be valued at 75% of the market value. Clearing Members may not accept as margin from a Customer equity securities issued by that Customer or those of that Customer's Affiliates;



- (4) letters of credit in favour of the Member or the Exchange, in such form as may be prescribed by the Exchange and by a depository which has been approved by the Exchange for this purpose. Members or in favour of the Exchange, as applicable. Members may not accept from Customers letters of credit issued by the Customer, its Affiliates, the Member or the Member's Affiliates; and/or
  - (5) deliverable warehouse receipts for commodities traded on the Exchange provided that such receipts will be valued as margin at no more than 75% of the value of the commodity.
- (G) Withdrawals of margin from a Customer's account may only be permitted by the Member carrying that account if the remaining funds in that account are, at the time a request for such a withdrawal is made, equal to or in excess of the then prevailing initial margin required in relation to the open positions held by the Customer on the Exchange.

#### **4.20 Obligations of Members: dealing with complaints**

- (A) Each Member shall ensure that all complaints in relation to business concerning Futures, Options or contracts for differences, whether or not subject to the Exchange's terms, are promptly, thoroughly and fairly investigated, and that in the most serious cases such investigations will be conducted by one of its senior officers or employees who has no personal interest in the subject matter of the complaint.
- (B) Each Member shall ensure that, following an investigation conducted pursuant to paragraph (A) of this Rule 4.20, the complainant is informed in writing of the outcome of the investigation.
- (C) Each Member shall retain for at least 6 years all such complaints which were made in writing and in relation to each complaint all documents relating to its subject matter.
- (D) Each Member shall create and maintain a register of complaints, showing the following details:
  - (1) the date of receipt of each complaint;
  - (2) the Customer who made the complaint;
  - (3) the relevant employees or representatives of the Member who are the subject of the complaint or whose conduct appears relevant to it;
  - (4) the subject matter of the complaint; and
  - (5) any action taken by the Member.
- (E) The register referred to in paragraph (D) of this Rule 4.20 shall be open to inspection by the Exchange upon the Exchange's demand.
- (F) The requirements of paragraphs (A) to (E) of this Rule 4.20 are without prejudice to any other requirements upon the Member under the DFSA Rulebook or any other regulatory rules to which the Member is subject in relation to addressing complaints by Customers.

#### **4.21 Rule Changes**

- (A) Subject to paragraph (E) of this Rule 4.21, the Board may at any time adopt, amend or delete any Rule by a majority vote.
- (B) Any Rule adopted, amended or deleted pursuant to paragraph (A) of this Rule 4.21 shall be notified to Members and shall take effect at such time and in such manner as the Board may direct.

- (C) The Board will consult with Members on adopting, amending or deleting a Rule, save that the Board shall not be obliged to consult where it exercises its powers pursuant to Rule 4.23 and the DFSA has waived any requirement for consultation under the DFSA Rules.
- (D) The Board may carry out consultation on the adoption, amendment or deletion of any Rule in such forum as it considers appropriate to the Rule change including consulting with:
  - (1) relevant committees;
  - (2) Members and other users of its facilities, including groups and appropriate representative bodies (or any of these groups of persons, as the Board considers appropriate); and
  - (3) such other groups of persons as the Board considers appropriate in the circumstances.
- (E) No proposed adoption, amendment or deletion of a Rule will take effect until approved by the DFSA.

#### **4.22 Physical emergencies**

- (A) For the purposes of this Rule 4.22 and Rule 4.23, **Physical Emergency** means:
  - (1) fires or other casualties, bomb threats, substantial inclement weather, power failures, communication or transportation breakdowns, computer system breakdowns, screen-based trading system breakdowns and malfunctions of plumbing, heating, ventilation and air conditioning systems; or
  - (2) any other event which, in the reasonable opinion of an Exchange official designated for the purposes of paragraph (B) of this Rule 4.22, justifies an action taken under that paragraph as being in the interests of the Exchange or its users of the Exchange, or the preservation of a fair and orderly market.
- (B) Without prejudice to Rule 4.23 (and subject to any order to the contrary by the Board or any persons authorised under that Rule), a designated Exchange official, the CEO or CCO may temporarily suspend trading on the Exchange in the event of a Physical Emergency.
- (C) Trading will be resumed as soon as reasonably practicable following a suspension in accordance with paragraph (B) of this Rule 4.22.

#### **4.23 Emergencies: powers of the Board, the CEO and the CCO**

- (A) Subject to paragraph (I) of this Rule 4.23, the Board may at any time:
  - (1) amend, delete or add to the Rules or procedures of the Exchange where, in either case, it considers that the circumstances constitute an Emergency and the Rule change is necessary or desirable for the performance of the Exchange's regulatory functions or its orderly operations as a market (including to maintain its status as an AMI);
  - (2) in the event of an Emergency, order suspension of trading for such period as in its judgment is necessary.
- (B) For the purposes of this Rule 4.23, an **Emergency** includes, but is not limited to, the following circumstances:
  - (1) where any manipulative activity or attempted manipulative activity is suspected;
  - (2) any actual, attempted or threatened corner, squeeze, congestion or undue concentration of positions;

- (3) any circumstance or circumstances that may materially affect the performance of futures or options contracts traded on the Exchange;
  - (4) any action taken by or against the UAE government, the Government of the Emirate of Dubai, the DIFC Authority, any foreign government, any local government, authority or agency, or by any other exchange or trade association, whether foreign or domestic, which action may have a direct impact on trading on the Exchange;
  - (5) any circumstances that may have a severe, adverse effect on the physical functions of the Exchange, including a Physical Emergency;
  - (6) any other unusual and unforeseeable adverse circumstance.
- (C) Any such Rule change will take effect as the Board may direct, and will be notified to Members and such other users and interested parties who may request notification.
  - (D) The Board will endeavour to give Members, Seat Lessees and Guaranteed Customers prior notice of such Rule changes, but where this is not possible Members, Seat Lessees and Guaranteed Customers will be informed by email as soon as possible following such Rule change.
  - (E) In an Emergency, or to determine whether an Emergency exists, a meeting of the Board may be convened on immediate notice.
  - (F) In the event of an Emergency where a quorum of the Board is unavailable, all trading on the Exchange may be suspended by an affirmative vote of two-thirds of the members of the Board present.
  - (G) In the event of an Emergency in which no other member of the Board is present, the Chairman or, in his absence, the Deputy Chairman or, in their absences, any one (1) director (or alternate) present or, in their absences, the CEO or the CCO or, in both their absences, the COO, may order suspension of trading for such period as in their or his judgment is necessary.
  - (H) Any action taken pursuant to this Rule 4.23 will be subject to review and modification by the Board.
  - (I) Any proposed amendment, deletion or addition to the Rules pursuant to this Rule 4.23 will not take effect until it has been approved by the DFSA.

#### **4.24 Position Reporting**

- (A) Each Clearing Member shall report to the Exchange positions equal to or in excess of the levels set out in Rule 4.25. This requirement extends to proprietary and Customer positions (including underlying Customer positions within an Omnibus Account).
- (B) Reports must be submitted in such form and manner, with such accompanying information and frequency (not exceeding twice daily) and by such deadlines as the Exchange may prescribe by notice to Clearing Members.
- (C) Where an account includes any sub-account, the Clearing Member shall report the aggregated gross long and/or the aggregated gross short positions in the account and all sub-accounts if either equals or exceeds the levels specified by Rule 4.25.
- (D) If a Clearing Member holds separate Customer accounts for Affiliates, the Clearing Member must report positions of each Affiliate separately, citing the prescribed identification information for each entity.
- (E) The CCO may require any Member, Seat Lessee or Guaranteed Customer to file additional reports under this Rule 4.24 to be compiled on the basis that, where any person who holds, controls or has a significant financial interest in more than one account, all such accounts shall

be treated as a single account for the purposes of the reports under this paragraph (E). For the purposes of this paragraph (E), "control" shall include having discretionary authority over, or day-to-day control of trading activity in, that account.

- (F) The Exchange shall restrict access to information in reports filed to comply with this Rule 4.24, and in particular the confidentiality obligations of Rule 2.26 shall apply to all such information.

#### **4.25 Reporting Levels**

The quantities fixed for the purposes of filing a report under Rule 4.24 are:

- (1) DME Crude Oil Futures Contract - twenty-five (25) contracts.
- (2) WTI-Oman Financial Spread Contract - twenty-five (25) contracts
- (3) Brent-Oman Financial Spread Contract - twenty-five (25) contracts

#### **4.26 Large Positions and Undesirable Practices**

- (A) The Board may take any action to correct, counteract or check the further development of, or stop any position, speculation, situation or practice, which the Board in its absolute discretion considers:
- (1) is affecting or may affect the Exchange or any market on the Exchange; or
  - (2) is excessive, unwarranted or otherwise undesirable.
- (B) Without limiting the generality of paragraph (A) of this Rule 4.26, action by the Board under paragraph (A) of this Rule 4.26 may include:
- (1) directing any Member, Seat Lessee or Guaranteed Customer to take, or desist from, any action (including without limitation closing out all or part of any position held by it for its own or a Customer's account and/or action in relation to physical positions held);
  - (2) action in relation to trades executed before the action was initiated; and
  - (3) action not otherwise provided for in these Rules.
- (C) Any contravention of a direction given under paragraph (A) or (B) of this Rule 4.26 shall be deemed a breach of these Rules and punishable as a Major Offence.

#### **4.27 Waivers and variations of Rules**

- (A) The Board or the CCO may, in accordance with paragraph (B) of this Rule 4.27, grant to a Member (or applicant for Membership), or to any Seat Lessee or Guaranteed Customer a waiver or variation of particular requirements of any Rule, or an additional period of time for compliance with any such requirements, in such circumstances and subject to such conditions as the Board or CCO may think fit.
- (B) A waiver, variation or additional period of time may be granted if the Board or the CCO is satisfied that:
- (1) compliance with the relevant requirements, or within the relevant period of time, would be unduly burdensome to the Member (or applicant for Membership), Seat Lessee or Guaranteed Customer;
  - (2) the waiver, variation or additional period of time would not create unacceptable risks for the Exchange, or the market generally, and in particular would not be inconsistent



with the Licensing Requirements to which the DME is subject or the good repute of the Exchange or its Members; and

- (3) the waiver, variation, or additional period of time, would not unfairly disadvantage others or unreasonably discriminate against them.
- (C) The Exchange shall maintain and keep updated a register of all waivers, variations and grants of time under paragraph (A) of this Rule 4.27.
- (D) The Board shall publish any waiver, variation or grant of time under paragraph (A) of this Rule 4.27 unless the Board considers it inappropriate or unnecessary to do so.

#### **4.28 Billing and commissions**

Any bill for services rendered on the Exchange shall be issued in the name of, and as payable to, a Member, Seat Lessee or Guaranteed Customer.

#### **4.29 Payment of gratuity to employees of others**

No Member, Seat Lessee or Guaranteed Customer or employee or agent thereof shall directly or indirectly pay or offer any compensation or gratuity in excess of one thousand dirhams (AED 1000) to any employee of another Member, Seat Lessee or Guaranteed Customer or to an employee of the Exchange or of the Clearing House for any service rendered or to be rendered, or requested, unless express written consent be obtained in advance from the employer of such employee.

## APPENDIX B

### Chapter 7 Disciplinary Rules

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#### 7.1 Jurisdiction

- (A) All Members, Seat Lessees and Guaranteed Customers shall be subject to the jurisdiction of the Exchange for the purposes of this Chapter 7 of these Rules.
- (B) All employees of Members, Seat Lessees and Guaranteed Customers shall be subject to the jurisdiction of the Exchange to the same extent as their employers for the purposes of this Chapter 7 of these Rules.
- (C) In this Chapter 7, a reference to a Member shall be read to mean either a Member, a Seat Lessee or a Guaranteed Customer, as the case may be, and a reference to a Floor Member shall be read to mean either a Floor Member or a Seat Lessee, as the case may be.

## **7.2 Retention of jurisdiction over former Members**

- (A) The Exchange shall, subject to the provisions of this Rule 7.2, retain jurisdiction over former Members with respect to any proceeding or matter which occurred prior to the termination of Membership or Trading Privileges (**termination of Exchange privileges**) of such Member, howsoever such termination occurs.
- (B) Subject to paragraph (C) of this Rule 7.2, the CCO or his designee shall notify a former Member of an investigation or hearing pursuant to this Chapter 7 in connection with any matter involving such former Member which occurred prior to the termination of its Membership or access to the Trading Platform and/or the Exchange Floor. Such notice shall be in writing and shall be posted to the former Member as soon as possible and, in any event, no later than one (1) year after the effective date of such termination, by courier delivery to his last address as shown in the books and records of the Exchange.
- (C) Written notice in accordance with paragraph (B) of this Rule 7.2 shall not be necessary where such notice has been given prior to the termination of Membership or access to the Trading Platform and/or the Exchange Floor in relation to the former Member, whether in writing or orally during a recorded interview.
- (D) At any time after the notice has been served or given in accordance with paragraph (B) or (C) of this Rule 7.2, the CCO or his designee may, in connection with any matter specified in such notice, request in writing that the former Member furnish books, records and copies of documents, supply written or oral statements under oath, or appear and testify at any hearing. The former Member shall comply with such request as promptly as possible.
- (E) As soon as is practicable after the notice has been served or given in accordance with paragraph (B) or (C) of this Rule 7.2, the former Member may be charged with any breach of the Bylaws or Rules relating to any matter specified in such notice, including any failure to comply with a request pursuant to this Rule 7.2 or any subsequent breach of the Bylaws or Rules arising from the conduct of the former Member during the investigation. Any such former Member shall be subject to discipline as though its Membership or access to the Trading Platform and/or the Exchange Floor had not been terminated.

## **7.3 Retention of jurisdiction over former employees of Members**

- (A) Employees of Members having access to the Exchange Floor or to the Trading Platform or any part of the Exchange premises shall remain subject to Exchange jurisdiction for the purposes of this Chapter 7 if, subject to paragraph (B) of this Rule 7.3, within a period of one (1) year of such employee's termination of employment with any Member, the CCO or his designee advises such person in writing, by registered post to the employee's last known residence address as reflected in Exchange's records, or the records of the Member, that it is conducting an investigation of a possible breach or breaches of these Rules during the period of his employment.
- (B) Written notice in accordance with paragraph (A) of this Rule 7.3 shall not be necessary where such notice has been given prior to termination of the employee's employment, whether in writing or orally during a recorded interview.
- (C) Employees of Members notified of any investigation pursuant to paragraph (A) or (B) of this Rule 7.3 shall respond to all inquiries of the Compliance Department at the time and place and in the manner designated by the Compliance Department, and shall make available to the Compliance Department any books and records maintained by him in the course of his Exchange-related employment. Any person under such investigation shall be entitled to be accompanied by legal representatives in any interview conducted by the Compliance Department in the course of, and for the duration of, such investigation. Any interview conducted by the Compliance Department may be tape-recorded or transcribed stenographically at the election of the Compliance Department.

#### 7.4 Obligation of employees of Members to comply with Rules

All employees of Members must comply with all Rules, resolutions of the Board and policies of the Exchange as if specifically referred to therein. Any Rule which provides for the discipline, suspension, or imposition of a fine or other penalty for breach thereof shall apply to all employees of Members for the purposes of disciplinary and summary action as provided in this Chapter 7. Rule breaches and suspected Rule breaches shall be investigated and resolved as described in this Chapter 7, including summary action taken pursuant to Rules 7.31 and 7.32.

#### 7.5 Classification of offences

- (A) Offences shall be classified as major offences (**Major Offences**) and minor offences (**Minor Offences**).
- (B) Major Offences shall be punishable by one or more of the following:
- (1) expulsion or suspension from all or some rights and privileges of Membership, Trading Privileges, authorisation as an Authorised Terminal User and employment on the Exchange Floor;
  - (2) a censure;
  - (3) a fine of not more than one million dollars (\$1,000,000);
  - (4) a cease and desist order; or
  - (5) an order directing restitution to any injured person.
- (C) Minor Offences shall be punishable by one or more of the following:
- (1) a fine of not more than ten thousand dollars (\$10,000);
  - (2) a censure;
  - (3) a cease or desist order;
  - (4) an order directing restitution to any injured party; or
  - (5) suspension of not more than one (1) year from all or some rights and privileges of Membership, access to the Trading Platform and/or the Exchange Floor, authorisation as an Authorised Terminal User and/or employment on the Exchange Floor.
- (D) Unless a good cause is shown, any offence involving fraudulent or deceitful trading practices detrimental to a Customer's order shall be a Major Offence and shall be punishable at a minimum with a suspension or revocation of the Member's right to execute Customer orders.
- (E) Where a Member or any employee of a Member commits the same Minor Offence or breaches the same Rule twice within a period of twenty-four (24) months of a final disciplinary action by the Exchange, he will be subject to penalty provisions equivalent to a Major Offence.
- (F) **Major Offences.** A Member or employee of a Member shall not do any of the following, which shall be deemed Major Offences:
- (1) knowingly give an execution to a Customer which purports to be a Market Contract executed on the Exchange but which is not backed by a contract traded on the Exchange (i.e. "bucketing"), or aid, abet or collude with any other person to carry out, or attempt to carry out, such an action;
  - (2) act fraudulently or in bad faith;

- (3) conduct itself dishonestly;
- (4) make or report, or attempt to make or report, a false or fictitious trade;
- (5) attempt or engage in extortion;
- (6) default on, be delinquent in or otherwise fail to comply with the delivery requirements on any contract;
- (7) attempt or engage in wash trading or accommodation trading;
- (8) manipulate prices or attempt to manipulate prices or corner or attempt to corner the market, or engage in any practice which results in such manipulation or cornering;
- (9) engage in any behaviour amounting to market misconduct as provided for in Part 8 (Prevention of Market Misconduct) of the Markets Law;
- (10) make a material misstatement to the Board or to a committee of the Exchange, or in any information supplied to the Exchange or its officials;
- (11) knowingly disseminate or attempt to disseminate false, misleading or inaccurate reports concerning market information or conditions that affect or tend to affect the price of any commodity upon the Exchange;
- (12) trade or accept margins after insolvency;
- (13) refuse to appear before the Board, the CCO or his designee or any committee or at a duly convened investigative hearing, or, in connection with any investigation, refuse fully to answer all questions and produce all books and records at such hearing or investigation, or testify falsely;
- (14) make use of or reveal any Confidential Information obtained by reason of participating on the Board or on any committee or in any investigative proceeding or hearing;
- (15) knowingly accept, execute or clear a trade on the Exchange, or attempt to do so, for:
  - (a) the account of an Exchange employee;
  - (b) the account of any person who is not a Member; or
  - (c) an account in which such employee or non-Member has a direct or indirect interest;
- (16) use or permit the use of the Exchange or the Trading Platform in a manner that impairs the dignity or degrades the good name of the Exchange, or creates a market or other situation detrimental to the Exchange, or results in breach of the Price Fluctuation Limits, or effects or attempts to effect manipulations or corners;
- (17) use improperly or permit the unauthorised use of the Trading Platform;
- (18) fail to maintain minimum financial requirements;
- (19) attempt or commit an act which is substantially detrimental to the interests or welfare of the Exchange;
- (20) refuse to comply with an order of the Board, the CEO or his designee, the CCO or his designee or any committee of the Exchange;
- (21) intentionally breach any Rule that results in harm to a Customer;

- (22) fail to provide a required notice to the Exchange;
  - (23) breach Rule 3.8 (Confidential Information), Rule 4.29 (Payment of gratuity), Rule 2.2(B) (Training) or Rule 6.9 (Telephone Calls); or
  - (24) fail to supervise any employee or agent adequately so as to prevent that person breaching any Rule that:
    - (a) results in substantial detriment of the welfare and interests of the Exchange;
    - (b) results in harm to a Customer or another Member; or
    - (c) otherwise constitutes a Major Offence.
- (G) **Minor Offences.** A Member or employee of a Member shall not do any of the following, which shall be deemed Minor Offences:
- (1) attempt or engage in conduct detrimental to the Exchange;
  - (2) attempt or engage in conduct inconsistent with just and equitable principles of trade;
  - (3) attempt or engage in conduct tending to impair the dignity or the good name of the Exchange;
  - (4) breach any Rule, the breach of which is not a Major Offence;
  - (5) circulate or aid in the circulation in any manner of rumours which tend to reflect on the integrity of any Exchange Contract;
  - (6) fail consistently to conform to audit trail and/or trade submission standards;
  - (7) breach Rule 6.6(B) (Trading Badge); or
  - (8) fail to supervise any employee or agent adequately in order to prevent breaches of Rules by such person,

provided that, where the breach of a Rule by such a person is a first offence of that kind and the Member discloses the breach to the Exchange and takes immediate and appropriate remedial action on its own initiative upon discovering the breach, that shall constitute mitigating circumstances to a charge of breaching this paragraph (G) of this Rule 7.5.

- (H) A breach of a cease and desist order may be determined to be either a Major or a Minor offence.

## **7.6 Compliance Department**

- (A) The Compliance Department shall consist of employees of the Exchange. Such employees may not be Members or persons otherwise subject to the jurisdiction of Chapter 7 of these Rules.
- (B) The Compliance Department shall be headed by the CCO. The Exchange may also employ persons (who shall not be Members or persons otherwise subject to the jurisdiction of Chapter 7 of these Rules) to assist the Compliance Department in carrying out its functions under this Chapter 7.
- (C) The Compliance Department may also receive support from representatives of NYMEX, Inc. to assist the Compliance Department in carrying out its functions.
- (D) The Compliance Department shall conduct investigations of Rule breaches and suspected Rule breaches.



## **7.7 Complaints about users of the Exchange**

- (A) Any complaint about the conduct of a Member or employee of a Member, or suspicion that any of the foregoing has committed or is about to commit a Rule breach, shall be made in writing and be addressed to the CCO.
- (B) The Compliance Department will acknowledge such complaint promptly after receiving it. Enclosed with the acknowledgement will be a copy of this Chapter 7.
- (C) Any complaint received by the CCO under paragraph (A) of this Rule 7.7 will be considered promptly by a member of the Compliance Department.
- (D) If the Compliance Department considers that the conduct complained of may constitute a Rule breach, it will instigate a full investigation according to the procedures set out in Rule 7.9.
- (E) The Compliance Department shall retain copies of all documents and materials relating to any complaint received by the CCO under paragraph (A) of this Rule 7.7 for a minimum of six (6) years.

## **7.8 Inspections and enquiries**

- (A) The CCO may authorise the Compliance Department to carry out routine inspections and enquiries about the conduct of any Member or employee of a Member. In carrying out such inspections and enquiries, the Compliance Department shall have the powers described in paragraphs (B) to (D) of Rule 7.9. Members or employees of Members shall co-operate fully with the Compliance Department's inspection and enquiries.
- (B) If the Compliance Department concludes from such inspections and enquiries that there may have been a Rule breach, it shall instigate an investigation according to the procedures set out in Rule 7.9.

## **7.9 Investigation**

- (A) During the investigation of a Rule breach or suspected Rule Breach by the Compliance Department, the CCO may, in his discretion, taking into account the circumstances of the matter, advise all relevant parties of the investigation. In that event, the Member or employee of a Member shall be permitted to present to the Compliance Department any facts in their defence.
- (B) The Compliance Department may, in the course of its investigation, interview any Member or employee of a Member as it sees fit and at such time, manner and place it determines in its absolute discretion. For the purposes of any interview conducted pursuant to this paragraph (B) of this Rule 7.9, a Member or employee of a Member must be informed in writing prior to the interview that he may be legally represented at the interview. Procedures governing the conduct of an interview under this paragraph (B) of this Rule 7.9, including the limitation on adjournments granted to accommodate an interviewee's legal representative's schedule to reasonable periods of time, shall be determined by the Compliance Department. Any interview conducted by the Compliance Department may be tape-recorded or transcribed stenographically at the election of the Compliance Department.
- (C) Any Member or employee of a Member who fails to attend any interview pursuant to paragraph (B) of this Rule 7.9 may be fined two thousand dollars (\$2,000) per day of non-attendance and may be excluded from the Exchange Floor or the Trading Platform until he takes reasonable steps to make himself available on an alternative date.
- (D) In investigating the conduct and transactions of Members and employees of Members the Compliance Department may visit their premises and examine their books and records. Members and employees of Members shall make their books and records available to the Compliance Department and shall respond to all inquiries of, and requests for information

from, the Compliance Department as it deems necessary to pursue its investigation at the time, place and in the manner designated by the Compliance Department.

- (E) The Compliance Department may issue warning letters to persons under investigation informing them that there may have been a Rule breach and that such continued activity may result in more severe disciplinary sanctions. Such warning letter is not a penalty nor is it an indication that a finding of a Rule breach has been made.
- (F) The CCO shall submit reports to the Board. Such reports shall describe for the period covered by each report:
  - (1) the activities of the Compliance Department;
  - (2) all investigations commenced and terminated; and
  - (3) the disposition of all cases presented to the Disciplinary Committee and the Appeal Committee.

Such reports are to be submitted at least twice a year.

#### **7.10 Service and filing of documents**

- (A) For the purposes of all proceedings under this Chapter 7, unless otherwise stated, any document shall be deemed to be served or filed (as appropriate):
  - (1) on the second Business Day after it is posted, if it is sent by registered post;
  - (2) on the day it is delivered, if it is delivered personally or by a generally recognised overnight delivery service before 17.00 (in the place of delivery) on a Business Day; or
  - (3) on the Business Day following the day on which it is delivered, if it is delivered personally or by a generally recognised overnight delivery service after 17.00 (in the place of delivery) on a Business Day.

#### **7.11 Investigative Report**

- (A) When an investigation is completed, the Compliance Department shall prepare an investigative report (**Investigative Report**).
- (B) The Investigative Report shall be in writing and shall set out:
  - (1) the reason the investigation was initiated;
  - (2) the relevant facts;
  - (3) the conclusions of the Compliance Department; and
  - (4) if the Compliance Department concludes that there is a reasonable basis to believe that a Rule breach occurred, the recommendation of the Compliance Department to the Disciplinary Committee.
- (C) The Investigative Report, when completed, shall be submitted for presentation to the Disciplinary Committee.

#### **7.12 Disciplinary Committee**

- (A) The Disciplinary Committee shall have the power to direct the Compliance Department to investigate any suspected Rule breach within its jurisdiction in which case the Compliance Department shall carry out a full investigation according to the procedure set out in Rule 7.9 and prepare an Investigative Report in accordance with Rule 7.11.

- (B) The Disciplinary Committee shall meet monthly, or as necessary, to review Investigative Reports.
- (C) As provided for in Rule 3.10(B), a member of the Disciplinary Committee shall excuse himself from such review where he, or any person with whom he is affiliated, has a financial, personal or other interest in the matter or parties under consideration.
- (D) The Disciplinary Committee shall permit the Member or employee of a Member under investigation to present evidence on its or his behalf. Such presentation shall be conducted pursuant to the following procedures:
  - (1) the Investigative Report shall be served by the Compliance Department on the Member or employee of a Member that is the subject of the report at the last address filed with the Exchange;
  - (2) the Member or employee of a Member may submit to the Disciplinary Committee a written statement together with any supporting documentation which is relevant to the investigation;
  - (3) such statement shall be filed with the Membership Department not later than ten (10) Business Days following service of the Investigative Report from the Compliance Department.
- (E) The Compliance Department shall be present during the Disciplinary Committee's review of an Investigative Report, and shall respond to all inquiries of the Disciplinary Committee. Members or employees of Members who have submitted a written response to the Disciplinary Committee in the manner set out in paragraph (D) of this Rule 7.12 may, after the presentation of the Compliance Department's report and before deliberations of the Disciplinary Committee, personally appear before the Disciplinary Committee, either with or without legal representation, with the Compliance Department present to make an oral presentation relevant to the Disciplinary Committee's review of the Investigative Report, and may answer any questions posed by the Disciplinary Committee, provided, however, that the presentation be limited to matters raised in the written statement submitted pursuant to paragraph (D) of this Rule 7.12.
- (F) If the Disciplinary Committee concludes that a reasonable basis exists for finding that a Rule breach has occurred, it shall direct the Compliance Department to advise the Member or employee of a Member of that fact and take any one of the following actions:
  - (1) issue a warning letter to the effect that the Disciplinary Committee has concluded that a Rule breach has occurred but that in all the circumstances no disciplinary proceedings will be initiated against the Member or employee of a Member in relation to that Rule breach;
  - (2) issue a Notice in accordance with Rule 7.13.

#### **7.13 Notice instituting disciplinary proceedings (a Notice)**

- (A) If the Disciplinary Committee directs the Compliance Department to issue a Notice, the Notice shall be served on the Member or employee of a Member named in the Notice either:
  - (1) personally; or
  - (2) by courier delivery to the last address filed with the Exchange.
- (B) The Notice shall:
  - (1) set out the acts, practices or conduct in which the Member or employee of a Member is alleged to have engaged; and

- (2) state the Rule or Rules alleged to have been, or about to be, breached.
- (C) **Respondent** means a Member or employee of a Member against whom a Notice has been filed.
- (D) The Compliance Department shall also notify the Respondent that the Respondent:
  - (1) is entitled to a hearing on the charges in the Notice;
  - (2) if the Respondent wishes such a hearing, must so request in writing, and that failure to request a hearing within twenty (20) Business Days after service of the Notice will operate as a waiver of the right to a hearing, unless good cause for the delay in making the request is shown by the Respondent;
  - (3) must file an Answer to the Notice with the Membership Department within twenty (20) Business Days of service of the Notice, in accordance with Rule 7.14; and
  - (4) will be deemed to admit the allegations in the Notice if the Respondent does not so file an Answer.

#### **7.14 Answer**

- (A) The Respondent must serve on the Compliance Department and file with the Membership Department a written notice (an **Answer**) and a request for a hearing within twenty (20) Business Days of service of the Notice.
- (B) If no Answer is filed within such period, unless good cause is shown, all the charges in the Notice will be deemed to have been admitted.
- (C) Any charges in the Notice not denied in the Answer shall be deemed admitted.

#### **7.15 Reply**

- (A) The Compliance Department may serve upon the Respondent and file with the Membership Department a written reply (a **Reply**) to any Answer within ten (10) Business Days of the filing of the Answer by the Respondent.
- (B) Any Reply must be limited to the matters set out in the Answer.

#### **7.16 Hearing Panel**

- (A) The Notice, any Answer and any Reply shall be filed with the chairman of the Membership Committee not later than Twenty (20) Business Days after service of the Reply, if any.
- (B) The chairman of the Membership Committee shall assign the case to a Hearing Panel to hear and decide the matter.
- (C) The chairman of the Membership Committee shall give written notification to the Respondent and the Compliance Department of the names of the persons on the Hearing Panel to which the case has been assigned pursuant to paragraph (B) of this Rule 7.16 at least fifteen (15) Business Days prior to the initial hearing date.
- (D) The Hearing Panel shall be appointed by the chairman of the Membership Committee and shall consist of a chairman and no fewer than two (2) lay members. The Chairman of the Hearing Panel must have been a lawyer by profession for at least ten (10) years who has relevant experience and who is not a Member or a director, officer or employee of any Member or of any Affiliate of any Member. A lay member of the Hearing Panel may be a Member or director, officer or employee of a Member or of an Affiliate of a Member.
- (E) No member of the Disciplinary Committee may serve on a Hearing Panel.

- (F) No person may serve on a Hearing Panel in a case in which he has any financial, personal or other interest in the matter under consideration, or if such person has engaged previously in any disciplinary function under these Rules in connection with the matter before the Hearing Panel, including service as a member of the Disciplinary Committee. Such person shall promptly make such interest known to the chairman of the Membership Committee.
- (G) The Compliance Department and/or the Respondent may file with the Membership Department a written challenge against any member of the Hearing Panel for cause. The merits of such challenge shall be decided by the chairman of the Membership Committee in his sole discretion, unless the challenge relates to the chairman of the Membership Committee in which case the merits of the challenge will be decided by the CEO or his designee. Unless a party's written challenge is received by the Membership Department within seven (7) Business Days of service of notice in accordance with paragraph (C) of this Rule 7.16, any right of challenge shall be waived.
- (H) The initial hearing shall be conducted on such date and at such time and place as the chairman of the Hearing Panel decides on not less than ten (10) Business Days' written notice to the Compliance Department and to the Respondent.

#### **7.17 Pre-hearing procedures**

- (A) At least seven (7) Business Days before the scheduled start of the hearing, the Compliance Department and the Respondent respectively shall furnish each other with a list of witnesses they intend to call in the presentation of their cases at the hearing, and a list of all documents they intend to rely on at the hearing.
- (B) The Compliance Department shall retain all rights and powers of investigation under paragraph (D) of Rule 7.9 after completion of the Investigative Report and until the hearing is completed.

#### **7.18 Hearing procedures**

- (A) The Hearing Panel may determine the procedures to be applied in any hearing before it, provided, however, that the following procedures shall apply in every case.
  - (1) The prosecution shall be conducted by the Compliance Department.
  - (2) The Respondent may be represented by a lawyer or any other representative and may, either personally or through this representative, present witnesses or other evidence and cross-examine witnesses.
  - (3) The formal rules of evidence shall not apply and the Hearing Panel shall have the discretion to accept or to reject any and all evidence.
  - (4) A record of the proceedings shall be made.
  - (5) The Notice, any Answer, any Reply, the record of the proceedings, and (if any) the documentary evidence or other material presented to the Hearing Panel by either party shall constitute the record of the hearing.
  - (6) The burden of proof shall be on the Compliance Department.
  - (7) A finding of a Rule breach shall be made on the weight of the evidence contained in the record of the proceeding.
- (B) In advance of the hearing, the Respondent shall be entitled to examine all books, documents and other evidence in the possession or under the control of the Exchange that:
  - (1) are to be relied upon by the Compliance Department in prosecuting the matter; or

- (2) are relevant to the charges.
- (C) The Compliance Department shall make such material available to the Respondent and the Respondent's representative for inspection within twenty (20) Business Days after the filing of an Answer by the Respondent pursuant to Rule 7.14.
- (D) Any person within the jurisdiction of the Exchange who is called as a witness at any hearing shall appear at such hearing and give testimony or produce evidence.
- (E) The Hearing Panel shall have the power to impose a penalty against any person who is within the jurisdiction of the Exchange and whose actions impede the progress of a hearing.
- (F) The Compliance Department may make submissions to the Hearing Panel as to the appropriate sanction and any such submissions shall be made available to the Respondent, who shall have the right to make submissions in reply regarding the sanction.

#### **7.19 Settlements**

- (A) When the Compliance Department concludes that a Rule breach has occurred, the Compliance Department may at any time prior to the submission of an Investigation Report to the Disciplinary Committee negotiate with the Respondent and enter into a written offer of settlement with the Respondent (an **Offer of Settlement**).
- (B) The Respondent may agree, without admitting or denying a Rule breach, to an Offer of Settlement which may provide for any one of the following:
  - (1) a cease and desist order;
  - (2) a censure;
  - (3) an order directing restitution to any injured person;
  - (4) a fine of not more than five thousand dollars (\$5,000) for each Rule breach alleged; or
  - (5) any combination of such penalties.
- (C) Any such settlement is subject to the approval of the Disciplinary Committee .
- (D) Concurrent with the review and consideration of an Investigation Report, the Disciplinary Committee may also approve an Offer of Settlement which has been submitted by the Respondent and recommended by the Compliance Department (a **Joint Offer of Settlement**) or has been unilaterally submitted by the Respondent (a **Unilateral Offer of Settlement**).
- (E) Prior to the Respondent's submission of the Unilateral Offer of Settlement to the Disciplinary Committee, the Respondent shall be required to file a written copy of the Unilateral Offer of Settlement with the Compliance Department. Thereafter, the Compliance Department may submit a written response to the Disciplinary Committee.
- (F) The Disciplinary Committee has the sole discretion to determine whether it will hear oral arguments, and it may approve or reject either a Joint or a Unilateral Offer of Settlement.
- (G) Subsequent to the Disciplinary Committee's consideration of an Investigative Report and its directive that a Notice be issued, but prior to filing of the Notice on the chairman of the Membership Committee, the Respondent may submit a Joint Offer of Settlement to the Disciplinary Committee. Alternatively, the Respondent may submit a Unilateral Offer of Settlement to the Disciplinary Committee, in which case the provisions of paragraph (E) of this Rule 7.19 will apply.
- (H) Any Offer of Settlement agreed to under paragraphs (D) to (G) of this Rule 7.19 may provide for any of the following:

- (1) a cease and desist order;
  - (2) a censure;
  - (3) an order directing restitution to any injured person;
  - (4) a fine of not more than twenty five thousand dollars (\$25,000) for each Rule breach alleged to have been committed; or
  - (5) an expulsion or a suspension from all or some rights and privileges of Membership, access to the Exchange Floor and/or the Trading Platform, authorisation as an Authorised Terminal User or employment on the Exchange Floor, for a period not to exceed three (3) months for each Rule breach alleged; or
  - (6) any combination of such penalties.
- (I) Any Offer of Settlement approved by the Disciplinary Committee shall be accompanied by a Notice and is subject to the approval of the Board.
- (J) If the Respondent wishes to settle a matter at any time after the filing of the Notice with the chairman of the Membership Committee, the Respondent may submit a Unilateral Offer of Settlement to the Hearing Panel to which the case has been assigned. Prior to the Respondent's submission of an Offer of Settlement to the Hearing Panel under this paragraph (J), the Respondent shall be required to file a written copy of the Unilateral Offer of Settlement with the Compliance Department.
- (K) The Compliance Department may recommend to the Hearing Panel an approval or a rejection of any Offer of Settlement made in accordance with paragraph (J) of this Rule 7.19.
- (L) An Offer of Settlement made in accordance with paragraph (J) of this Rule 7.19 may provide for any of the following:
- (1) a cease and desist order;
  - (2) a censure;
  - (3) an order directing restitution to any injured person;
  - (4) a fine not to exceed one million dollars (\$1,000,000) for each Rule breach alleged to have been committed;
  - (5) an expulsion or a suspension from all or some rights and privileges of Membership, access to the Exchange Floor and/or the Trading Platform, authorisation as an Authorised Terminal User or employment on the Exchange Floor; or
  - (6) any combination of such penalties.
- (M) Any Offer of Settlement made in accordance with paragraph (J) of this Rule 7.19 must be approved by the Hearing Panel and further approved by the Board.
- (N) In approving an Offer of Settlement, the Board shall determine the date on which the settlement is to take effect and, if the settled terms include provision for payment of a fine, the date on which such fine is payable by the Respondent.
- (O) Following the Board's approval of an Offer of Settlement, the Compliance Department shall forthwith issue and send to the Respondent a Notice of Settlement which sets out the settled terms and the dates which the Board has directed those terms to become effective and any fine is to be payable.



## 7.20 Decision

- (A) The Hearing Panel shall give a written decision (a **Decision**) within forty-five (45) Business Days after the later of the close of the hearing and the last day on which any post-hearing submissions were required to be filed by the Compliance Department or the Respondent, unless by virtue of the complexity of the case or other special circumstances, additional time is required for the preparation of the Decision.
- (B) The Decision shall include:
- (1) a summary of the Notice (including the charges) and the Answer;
  - (2) a summary of the evidence produced at the hearing (if any);
  - (3) a statement of the findings and conclusions of the Hearing Panel with respect to each charge; and
  - (4) where the Hearing Panel finds that the Respondent has committed any Rule breach, an order stating the penalties imposed and the effective date of such penalties.
- (C) Notwithstanding the provisions of paragraph (A) of this Rule 7.20, the Hearing Panel may issue a written summary decision setting forth its determination of liability and penalties, if any, prior to the issue of the Decision.
- (D) Where the Respondent has admitted any Rule breach charged in the Notice, the Hearing Panel shall impose a penalty for each breach in accordance with paragraph (G) of this Rule 7.20. The Hearing Panel shall notify the Respondent of the penalty within forty-five (45) Business Days after the filing of the admission of a Rule breach.
- (E) Where the Respondent has:
- (1) failed to deny the Rule breach(es) charged; or
  - (2) submitted an Answer denying the Rule breach(es) charged but not requested a hearing; or
  - (3) waived a hearing,
- the Hearing Panel shall make its decision in accordance with paragraphs (A) and (B) of this Rule 7.20 based on such documents filed by the Compliance Department and the Respondent as required by the Hearing Panel.
- (F) Where the Respondent fails to appear at a requested hearing at the time and place scheduled, the Hearing Panel shall make its decision in accordance with paragraphs (A) and (B) of this Rule 7.20 based on such documents filed by the Compliance Department and the Respondent as required by the Hearing Panel.
- (G) If the Hearing Panel determines to order the imposition of a penalty, the penalties which may be imposed are any one of the following:
- (1) a cease and desist order;
  - (2) a censure;
  - (3) an order directing restitution to any injured person;
  - (4) a fine of not more than one million dollars (\$1,000,000) for each Rule breach found to have been committed;

- (5) an expulsion or a suspension from all or some rights and privileges of Membership, access to the Exchange Floor and/or the Trading Platform, authorisation as an Authorised Terminal User or employment on the Exchange Floor; and
- (6) any combination of such penalties.
- (H) Notice of the Respondent's right to appeal, pursuant to Rule 7.22, shall be incorporated into a Decision issued in accordance with paragraph (A) of this Rule 7.20.
- (I) The Decision shall be served by the Membership Department on the Respondent either:
  - (1) personally; or
  - (2) by overnight courier delivery to the last address filed with the Exchange.
- (J) Unless appealed, a Decision is the final decision of the Exchange and shall be effective fifteen (15) Business Days after a copy of the Decision has been served upon the Respondent.
- (K) Any fine imposed by a Hearing Panel shall be due and payable on the effective date of the Decision or on such later date as the Hearing Panel may specify in the Decision.
- (L) The Compliance Department may (and shall, if the Hearing Panel so directs) give such publicity as it considers appropriate (or is directed to give) to any finding of, or any sanction imposed or order made by, the Hearing Panel.

#### **7.21 The level of fine**

- (A) In assessing the amount of any fine, the Hearing Panel shall take account of the following factors:
  - (1) the seriousness and potential impact of the Rule Breach or, if more than one, the Rule breaches when taken in aggregate;
  - (2) whether the Rule breach was deliberate or reckless;
  - (3) the extent to which the Respondent has accrued profits or avoided losses as a result of the Rule breach(es);
  - (4) where the Respondent is an individual, the financial resources available to him or her and the potential effect on his or her livelihood;
  - (5) where the Respondent is a corporate body, unincorporated association or partnership, the size of the Respondent and the financial resources available to it;
  - (6) the disciplinary and compliance history of the Respondent;
  - (7) whether the fine is to be combined with another penalty;
  - (8) the extent to which the Respondent co-operated in the Exchange's investigation and subsequent disciplinary action;
  - (9) any other relevant circumstance of which the Hearing Panel is, or has been made, aware in relation to the Respondent.
- (B) In approving any Joint or Unilateral Offer of Settlement containing provision for payment of a fine, the Disciplinary Committee, the Hearing Panel and the Board (as the case may be) shall take account of the factors set out in (1) to (9) of paragraph (A) of this Rule 7.21, having regard to the nature of the Rule breach or breaches as alleged in the Notice.

## 7.22 Appeals

- (A) Within ten (10) Business Days of the Decision being served upon the Respondent, the Respondent may appeal the Decision by serving on the Compliance Department and filing with the Membership Department a written notice of appeal (a **Notice of Appeal**) and a request for the transcript of the proceedings before the Hearing Panel. Such transcript shall be provided to the Respondent as soon as is reasonably practical.
- (B) Within ten (10) Business Days of service of the transcript of the proceedings, a Respondent who has filed a Notice of Appeal within the time stipulated in paragraph (A) of this Rule 7.22 shall serve on the Compliance Department and file with the Membership Department a written memorandum of appeal (a **Memorandum of Appeal**) specifying the grounds of the appeal. The grounds of appeal may be any one or more of the following:
- (1) the Hearing Panel misdirected itself;
  - (2) the Decision was:
    - (a) one which no reasonable Hearing Panel could have reached;
    - (b) unsupported by the evidence or against the weight of the evidence; or
    - (c) based on an error of law or a misinterpretation of these Rules;
  - (3) the sanction imposed by the Hearing Panel was excessive or otherwise inappropriate; or
  - (4) new evidence is available and, had it been adduced before the Hearing Panel, the Hearing Panel could reasonably have come to a different decision.
- (C) The ground of appeal referred to in paragraph (B)(4) of this Rule 7.22 will not be a valid ground for appeal if the evidence could have been made available to the Hearing Panel by the exercise of reasonable diligence.
- (D) A failure to file either a Notice of Appeal or Memorandum of Appeal within the times stipulated shall operate as a waiver of all rights of appeal.

## 7.23 Compliance Department's Answer

The Compliance Department shall serve upon the Respondent and file with the Membership Department, within ten (10) Business Days of the Respondent filing the Memorandum of Appeal, a written answer (an **Answer on Appeal**).

## 7.24 Respondent's Reply

The Respondent may serve on the Compliance Department and file with the Membership Department, within five (5) Business Days of the service of the Compliance Department's Answer on Appeal, a written reply (a **Reply on Appeal**). Such Reply on Appeal must be limited to the matters contained in the Answer.

## 7.25 Appeal Committee

- (A) Any appeal shall be heard and decided by the Appeal Committee.
- (B) The chairman of the Appeal Committee shall notify the Respondent and the Compliance Department in writing of the names of the members of the Appeal Committee at least fifteen (15) Business Days prior to the initial hearing date.
- (C) No person who has participated in any stage of the disciplinary process, or who has any financial, personal or other interest in the matter or parties under consideration, may serve on

the Appeal Committee. Any person so interested shall promptly notify the chairman of the Appeal Committee of his interest.

- (D) The Compliance Department and/or the Respondent may file with the Membership Department a written challenge against any member of the Appeal Committee for cause. The merits of such challenge shall be decided by the chairman of the Appeal Committee in his sole discretion, unless such challenge is made against the chairman of the Appeal Committee, in which case the merits of the challenge shall be decided by the alternate member of the Committee. Unless a party's written challenge is received by the Membership Department within seven (7) Business Days of service of the notice by the chairman of the Appeal Committee under paragraph (B) of this Rule 7.25, any right of challenge shall be waived.

## **7.26 Procedures of the Appeal Committee**

- (A) The Appeal Committee may, if it considers it appropriate, but only with the agreement of the Compliance Department and the Respondent, decide the appeal on the basis of the record of the proceeding, the Memorandum of Appeal, Answer on Appeal and Reply on Appeal, and any other documentary evidence which the Compliance Department and the Respondent each wish to place before it. In all other cases, the Compliance Department and the Respondent shall be given the opportunity (and may be required by the Appeal Committee upon reasonable notice) to attend and give evidence before the Appeal Committee and be questioned by the other party and the Appeal Committee. The Compliance Department or the Respondent may call witnesses to give evidence and be questioned by the other party and the Appeal Committee.
- (B) The Appeal Committee may call for any person to attend its hearings. This provision aside, all hearings shall be in private unless the Respondent requests otherwise and the Exchange and the Appeal Committee consent to its or his request.
- (C) The Appeal Committee shall adopt such procedures as it thinks fit and just, provided however that the following procedures shall apply in all cases:
  - (1) the Appeal Committee may request from the Compliance Department or the Respondent such further statements, information, documents or other evidence as it may think fit;
  - (2) the Compliance Department and the Respondent may adduce such further evidence as they consider necessary within reasonable time limits agreed by the Appeal Committee;
  - (3) the Appeal Committee, or its chairman sitting alone, may deal with such matters as it considers appropriate at a pre-hearing review of the appeal;
  - (4) the Appeal Committee, or its chairman sitting alone, may issue directions and take such other steps as it considers appropriate for the clarification of the facts and issues and for the just and expeditious determination of the appeal;
  - (5) the Appeal Committee may accept as conclusive any finding of fact made by a court or any regulatory body;
  - (6) a Respondent's disciplinary history shall not be disclosed to the Appeal Committee until the Appeal Committee has decided that the Respondent has committed a Rule breach; and
  - (7) if the Appeal Committee determines that the Respondent has breached a Rule, it shall request the Respondent's disciplinary record from the Compliance Department and may take that record into account in deciding the appropriate sanction.

- (D) The Compliance Department may make submissions to the Appeal Committee as to the appropriate sanction and any such submissions shall be made available to the Respondent, who shall have the right to make submissions in reply regarding the sanction.

#### **7.27 Decision of the Appeal Committee**

- (A) No findings of a Hearing Panel referred to in paragraph (A) of Rule 7.20 may be set aside if supported by the evidence in the record of the proceeding.
- (B) The Appeal Committee may affirm, reverse or modify a Decision in whole or in part. In the event of a reversal, the matter may be remitted to the same or a differently constituted Hearing Panel for further proceedings or may be dismissed. Modification of a Decision may include, among other things, an increase in any penalties imposed by the Hearing Panel taking account of the factors set out in sub-paragraphs (1) to (9) of paragraph (A) of Rule 7.21.
- (C) The Appeal Committee shall issue a written decision as soon as reasonably practical after the hearing of the appeal.
- (D) The Appeal Committee's decision shall include:
  - (1) a statement of its findings and conclusions with respect to each charge or penalty reviewed;
  - (2) its reasons for those findings and conclusions;
  - (3) the specific Rule breach(es) which the Respondent was found to have committed;
  - (4) an order confirming or modifying any penalties imposed, if any; and
  - (5) the effective date of such decision and penalty.
- (E) Any decision of the Appeal Committee is the final decision of the Exchange and shall be effective fifteen (15) Business Days after it is served upon the Respondent.
- (F) Any fine imposed or modified by the Appeal Committee shall be due and payable on the effective date of the Appeal Committee's decision as stated therein or on such later date as the Appeal Committee may specify in its decision.
- (G) The Compliance Department may (and shall, if the Appeal Committee so directs) give such publicity as it considers appropriate (or is directed to give) in relation to any finding of, or any sanction imposed or order made by, the Appeal Committee.

#### **7.28 Ex parte communications**

- (A) While proceedings before either the Hearing Panel or the Appeal Committee are pending, there shall be no *ex parte* communications relating to those proceedings between representatives of the Compliance Department, the Respondent, the Respondent's legal representative, or anyone acting on the Respondent's behalf, and any member of the Hearing Panel or Appeal Committee (as appropriate) or any legal adviser to the Hearing Panel or Appeal Committee, provided that such parties may have *ex parte* communications with the legal adviser (if any) to the Hearing Panel or Appeal Committee on timetabling and procedural matters.
- (B) Any person who receives, makes, or learns of any *ex parte* communication which is prohibited by paragraph (A) of this Rule 7.28 shall promptly give written notice of such communication and any response thereto to all parties to the proceedings to which the communication relates and place on the record of the proceeding any such written communications or responses and a memorandum stating the substance of any such oral communications or responses.

## 7.29 Confidentiality of Exchange investigations and proceedings

Save to the extent disclosed in a Decision, all investigatory materials and all other documents and evidence presented in any disciplinary proceeding shall be confidential and shall not be disclosed to any person other than the Complaints Commissioner, as provided in the Exchange's complaints procedure(s).

## 7.30 Expulsion or Permanent Withdrawal of Trading Privileges by the Board

- (A) The Board, under the procedures set out in paragraph (B) of this Rule 7.30, may expel any Member or employee of a Member who, within a five (5) year period, has either:
- (1) on two or more occasions, as a result of a Notice under Rule 7.13 or a settlement under Rule 7.19, withdrawn or been suspended from all or some rights and privileges of Membership, access to the Trading Platform and/or the Exchange Floor, authorisation as an Authorised Terminal User or employment on the Exchange Floor;
  - (2) been fined or agreed to pay in settlement more than fifty thousand dollars (\$50,000) in aggregate.
- (B) The Compliance Department shall inform the Board of any individual or entity who falls within this Rule 7.30 within thirty (30) Business Days of receipt of a final disciplinary decision which makes applicable its provisions.
- (C) The following procedures shall be followed for any proceedings that the Board may institute under paragraph (A) of this Rule 7.30.
- (1) The Compliance Department shall provide each member of the Board, for his review, copies of all transcripts, exhibits received in evidence and decisions in all disciplinary actions and copies of all settlements concerning such Member or employee of a Member, together with any arguments filed on appeal and appeal decisions in connection with such disciplinary actions.
  - (2) The Board, if it determines that consideration of expulsion or withdrawal of Membership or access to the Trading Platform and/or the Exchange Floor, is warranted, may issue a written notification (a **Notification**) to the Member or employee of a Member within a reasonable time of receiving such a referral from the Compliance Department, informing them that the Board is considering expulsion or withdrawal of Membership or of access to the Trading Platform and/or the Exchange Floor, authorisation as an Authorised Terminal User or employment on the Exchange Floor, as the case may be, and the reasons for it considering this option.
  - (3) The Member or employee of a Member shall within twenty (20) Business Days of such Notification submit to the Board a statement of reasons in support of its continued Membership, access to the Trading Platform and/or the Exchange Floor, authorisation as an Authorised Terminal User or employment on the Exchange Floor, as the case may be (the **Statements**) and may at the same time request a hearing before the Board.
  - (4) Within five (5) Business Days of such a Statement being filed with the Board, the CCO shall schedule a hearing to consider the issue of expulsion or withdrawal.
  - (5) The hearing shall be convened within fifteen (15) Business Days of such Statement being filed, unless good cause is shown to justify a delay of such hearing.
  - (6) If no hearing is requested, the Board shall render a decision on the documents provided to it under paragraphs (C)(1) to (3) of this Rule 7.30.
  - (7) A Member or employee of a Member shall have the right to be heard before the Board and to be represented by a lawyer or any other person.

- (8) Promptly following the hearing, the entire Board shall by majority vote render a decision as to whether or not to expel the Member or employee of a Member from Membership or withdraw access to the Trading Platform and/or the Exchange Floor, authorisation as an Authorised Terminal User or employment on the Exchange Floor, as the case may be.
- (9) The decision of the Board shall be communicated immediately to the Member or employee of the Member and to the Compliance Department and shall include a statement of findings and conclusions with respect to its decision, the reason(s) for the decision and the effective date of such decision. This decision shall be deemed the final decision of the Exchange.

### 7.31 Summary Action for Floor and Other offences

- (A) **Breaches of Decorum or Attire Rules.** The CEO or any Exchange employee designated by the CEO as so empowered may impose summarily on any Floor Member or any person under the control of a Member, a warning letter and/or fine of not more than three thousand five hundred dollars (\$3,500) for each breach of any Rules relating to decorum or attire on the Exchange Floor or in any part of the Exchange premises, having regard to the seriousness of the breach and whether it was deliberate or reckless
- (B) **Other Floor Offences and Other Offences.** The CEO or any Exchange employee designated by the CEO as so empowered may impose summarily on any Member or any person under the control of a Member, a warning letter and/or fine of not more than three thousand five hundred dollars (\$3,500), having regard to the seriousness of the Rule Breach and whether it was deliberate or reckless for:
  - (1) failure by an Authorised Terminal User to undertake prescribed training (Rule 2.2(B)); or
  - (2) in the case of Floor Members, each breach of Rule 6.9 (Telephone Calls) or Rule 6.27 (Floor and General Trading Offences).
- (C) **Minimum Presence and Trading Offences.** The CEO or any Exchange employee designated by the CEO as so empowered may impose summarily on any Floor Member a warning letter and/or fine of not more than thirty thousand dollars (\$30,000) for any breach by that Floor Member of Rules 6.6 and/or 6.7.
- (D) The official imposing a fine shall issue a notice of fine (a **Notice of Fine**) in a form to be prescribed by the Exchange, which shall be served on the Respondent in accordance with Rule 7.10, notifying him of the offence committed and the fine to be imposed.
- (E) Any warning letter or fine imposed in accordance with paragraph (A) of this Rule 7.31 may be appealed to the Disciplinary Committee by filing a written request with the Membership Department within ten (10) Business Days of service of the warning letter and/or the Notice of Fine. The request should set out the reason for the appeal and attach any relevant documents. The Disciplinary Committee shall adopt procedures in accordance with Rule 7.26, modified as it deems appropriate to the circumstances of the case before it. It shall affirm, modify or reverse the penalty appealed and shall issue its decision in writing within thirty (30) Business Days of the appeal.
- (F) Unless it is subject to an appeal, any fine imposed in accordance with paragraph (A) of this Rule 7.31 shall be due and payable within ten (10) Business Days of service of the Notice of Fine. Where a determination has been made by the Disciplinary Committee following an appeal, such a determination shall be final ten (10) Business Days after notice of it is given to the Member or person under the control of the Member, and any fine imposed as a result of such determination shall be due and payable within ten (10) Business Days after notice of the determination is given to the Member.





- (2) a fine not to exceed fifty thousand dollars (\$50,000) for each Rule breach.
- (C) Authorised Terminal Users shall also be personally liable for applicable summary fines imposed pursuant to Rule 7.31 or Rule 7.32.
- (D) Members shall be responsible for any fine issued to their employees during their tenure pursuant to this Rule 7.34, provided however that a Hearing Panel may waive such responsibility if it determines that the Member did not have knowledge of the employee's conduct, and that a substantial injustice would result from imposing responsibility for a fine on the Member.

### **7.35 Summary fines: payment and appeals**

- (A) Summary fines imposed pursuant to Rules 7.32 and 7.33 shall be payable to the Exchange within ten (10) Business Days of notice of such fine being given to the employee or Member.
- (B) Summary fines imposed pursuant to Rules 7.32 and 7.33 may be appealed as provided for in paragraph (E) of Rule 7.31.

### **7.36 Member summary suspension**

- (A) If, at any time, the CEO or his designee or the CCO or his designee has a reasonable belief that immediate action is necessary to protect the best interests of the Exchange, he may suspend, or take other summary action against, an individual or entity that is subject to the jurisdiction of the Exchange. Such action may be taken in circumstances including but not limited to, the following:
  - (1) notification of any suspension, expulsion, revocation or restriction of Membership or trading privileges, through an adverse determination, voluntary settlement or otherwise, by any court, commodity or securities exchange or related clearing organisation, the DFSA or any other regulator, or any other regulatory or self-regulatory or other business or professional association;
  - (2) notification of other DFSA action against an individual or firm (based on an individual's actions);
  - (3) notification of any finding of guilt to a crime involving fraud, deceit, theft, embezzlement, gambling or other such act; or
  - (4) upon application by the Compliance Department, any other circumstance where the CEO or his designee determines there is a reasonable basis to believe that the Respondent:
    - (a) has committed a breach of the Rules constituting a Major Offence involving honesty or integrity; and
    - (b) is reasonably likely to do so again unless summary action is taken.
- (B) Any suspension or other summary action taken pursuant to this Rule 7.36 shall be taken in accordance with the following procedure:
  - (1) any action under this Rule 7.36 may be taken without notice or a hearing, where the Respondent waives notice or hearing, or when the CEO or his designee or the CCO or his designee determines, in his sole discretion, that the furnishing of notice or an opportunity for a hearing, or both, before such suspension or other summary action is taken, is not practicable under the circumstances;
  - (2) whenever practicable, the Respondent shall be served with a notice before any action is taken;

- (3) such notice shall state the circumstance giving rise to the summary action and the date, time and place of the hearing, and shall notify the Respondent of the right to legal representation at such hearing and all subsequent proceedings;
  - (4) in any case where the CEO or his designee has taken action against the Respondent without prior notice or hearing because of impracticability, the Exchange shall promptly give the Respondent notice of:
    - (a) the action taken;
    - (b) the reasons for it being taken;
    - (c) the effective date, time and duration of the action; and
    - (d) that, upon written request by a specified date, a hearing will be held to determine if action was and is necessary to protect the best interest of the Exchange.
- (C) Any hearing held pursuant to this Rule 7.36 shall be before a panel of the Disciplinary Committee. The panel shall adopt procedures in accordance with Rule 7.18, modified as it deems appropriate, provided however that for actions taken as a result of paragraphs (A)(1), (2) or (3) of this Rule 7.36, paragraph (A)(7) of Rule 7.18 shall not apply.
- (D) Promptly following the hearing provided for in this Rule 7.36, the hearing panel shall issue a written decision and shall provide a copy of the decision to the Respondent.
- (E) The decision shall include:
  - (1) a description of the summary action taken;
  - (2) the reasons for the summary action;
  - (3) a brief summary of the evidence produced at the hearing;
  - (4) its findings and conclusions;
  - (5) a determination that the summary action should be affirmed, modified or reversed; and
  - (6) a declaration of any action to be taken and the effective date and duration of such action.
- (F) A Respondent against whom summary action has been taken pursuant to this Rule 7.36 may appeal such action to the Appeal Committee, which shall adopt procedures in accordance with Rules 7.22 to 7.26, modified as it deems appropriate.
- (G) Any decision of the Appeal Committee is the final decision of the Exchange and shall be effective immediately upon being served upon the Respondent.
- (H) A Respondent suspended under this Rule 7.36 may apply for reinstatement at any time within one (1) year of the date of his suspension, but thereafter may not apply to be reinstated.
- (I) Any application for reinstatement shall be filed with the Membership Department. Written notice of the time and place of the meeting of the Board at which the application for reinstatement is to be considered shall be sent to the suspended Member and to the Membership Department not less than five (5) Business Days prior to the meeting. The vote of a majority of the Board present and voting is required to reinstate the suspended Member.

### 7.37 Summary procedures for denial of access to the Trading Platform

- (A) The following events (each a **Failure**) shall be grounds for summary denial of access to the Trading Platform:
- (1) any representation, warranty or covenant of a Member ceases to be true and accurate;
  - (2) an Authorised Terminal User fails to comply with any Rule which applies to them;
  - (3) a Member or Authorised Terminal User uses the Trading Platform from a jurisdiction other than those permitted by the Exchange;
  - (4) a Member fails to maintain a clearing arrangement acceptable to the Exchange;
  - (5) a Member fails to pay the Exchange the fees due on any transaction as provided by the applicable fee schedule; or
  - (6) as a result of any other conduct by a Member or Authorised Terminal User, the Exchange considers it necessary to take action to protect the Exchange, its markets or other Members or Customers.
- (B) In the event of such a Failure, the Exchange may, without limitation, take any or all of the following actions:
- (1) terminate or restrict a Member's access to the Trading Platform;
  - (2) close out all of a Member's open positions;
  - (3) cancel any or all of the orders entered by an Authorised Terminal User into the Exchange;
  - (4) treat any or all of a Member's obligations to the Exchange as immediately due and payable; and
  - (5) set off any obligations of the Exchange to a Member against any of that Member's obligations to the Exchange.
- (C) Actions taken pursuant to paragraph (B) of this Rule 7.37 (a **Summary Action**) shall be the final action of the Exchange if the Member or Authorised Terminal User does not request a review when and as hereinafter provided.
- (D) The CEO or his designee or the CCO or his designee shall determine when a Failure has occurred and any Summary Action that will be taken by the Exchange without prior notice to the Member or Authorised Terminal User or a hearing. The Exchange shall provide the Member or Authorised Terminal User with written notice of a Summary Action via electronic mail or facsimile communication, which shall be sent to the Member or Authorised Terminal User in accordance with the current contact information on file at the Exchange for the Member or Authorised Terminal User, and such notice shall be deemed to be received by the Member or Authorised Terminal User upon successful transmission of a facsimile communication or, in the case of an electronic mail communication, one (1) Business Day following an electronic mail message. Such notice shall specify the date of the Failure for which the Summary Action is being imposed and the provisions of any applicable agreement or other basis for the Summary Action. Within ten (10) Business Days of receipt of the notice, the Member or Authorised Terminal User may submit a written request to the Exchange to review the Summary Action taken and any such request shall specify the basis for such a review.

- (E) The chairman of the Membership Committee shall appoint a Hearing Panel to hear and consider a request for review made pursuant to paragraph (G) of this Rule 7.37 at a hearing to be held promptly after the Exchange has received such a request.
- (F) The Hearing Panel shall follow procedures in accordance with Rule 7.26, modified as it deems appropriate. A hearing pursuant to this Rule 7.37 may, at the discretion of the Hearing Panel, be conducted by telephone.
- (G) The Hearing Panel shall issue a written decision containing the following:
  - (1) a description of the Failure and Summary Action taken by the Exchange as provided in paragraphs (A) to (F) of this Rule 7.37;
  - (2) a summary of the evidence produced at the hearing;
  - (3) a statement of its findings and conclusions with respect to the Failure; and
  - (4) its conclusion concerning whether the Summary Action was appropriate or its imposition of a different Summary Action, if any.

Such decision shall be the final action of the Exchange and shall not be subject to further appeal within the Exchange.

- (H) An Member or Authorised Terminal User suspended or terminated from access to the Trading Platform pursuant to this Rule 7.37 may apply for reinstatement if at the time of the application the Member or Authorised Terminal User can demonstrate compliance with all material terms of applicable agreements with the Exchange. The determination of such compliance and possible readmission shall be made by and is within the sole discretion of the CEO.
- (I) The Exchange shall immediately suspend, and deny access to the Trading Platform to, any Member who fails to comply with its obligations under Rule 4.2(A)(3) and/or Rule 4.7(G). Such suspension and denial of access shall continue until the Member has complied in full with those obligations. The provisions of paragraphs (C) to (H) of this Rule 7.37 shall not apply to a denial of access under this paragraph (I) and the provisions of Rule 7.36 shall not apply to a suspension under this paragraph (I).
- (J) Nothing in this Rule 7.37 shall preclude any action against a Member pursuant to the Rules.

### **7.38 Notification of Final Disciplinary Action involving financial harm to a Customer**

- (A) For the purposes of this Rule 7.38, **Final Disciplinary Action** means any decision by or settlement with the Exchange in a disciplinary matter which cannot be further appealed at the Exchange.
- (B) Upon a Final Disciplinary Action in which the Exchange finds that a Member has committed a Rule breach that involved a transaction for a Customer, whether executed or not, which resulted in financial harm to the Customer:
  - (1) If the Member is not a Clearing Member, the Exchange shall promptly provide written notice of the disciplinary action to the Clearing Member that cleared the transaction;
  - (2) a Clearing Member that receives a notice under paragraph (B)(1) of this Rule 7.38 shall promptly provide written notice of the disciplinary action to the Customer as disclosed on its books and records; and
  - (3) if the Customer is another Clearing Member, such Clearing Member shall promptly provide the notice to the Customer as disclosed on its books and records.
- (C) A written notice required by paragraph (B) of this Rule 7.38 must include:

- (1) the principal facts of the disciplinary action;
- (2) a statement that the Exchange has found that the Member has committed a Rule breach that involved a transaction for the Customer, whether executed or not; and
- (3) a statement that the Rule breach resulted in financial harm to the Customer.

**7.39 Notification to the DFSA of Disciplinary Action**

- (A) The Compliance Department shall forthwith notify the DFSA of any disciplinary action taken under this Chapter 7, together with a statement of the reason(s) why such disciplinary action was taken.
- (B) The Compliance Department shall forthwith notify the DFSA:
  - (1) of any appeal made pursuant to either Rule 7.22 or Rule 7.35;
  - (2) of the outcome of such appeal.