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**Date**

29 March 2010

**Recipients**

All DME Members

**From**

Greg Collins, Chief Compliance Officer

**Category**

Compliance

**Proposal**

Proposed Rule change for termination of trading on front month DME Oman Crude Oil Futures Contracts

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Consultation Paper 10-001 (CP 10-001) is issued in accordance with Dubai Mercantile Exchange Limited (DME) Rule 4.20 and Section 9 of the Authorised Market Institutions Module of the Dubai Financial Services Authority (DFSA) Rulebook.

This Consultation Paper has been issued to provide market participants with an opportunity to comment on a proposed Rule change that aligns the termination of trading in the front month of the DME Oman Crude Oil Futures Contract (DME Oman) with the calculation of the Final Settlement Price.

**Application of the Consultation Paper**

Consultation Paper 10-001 is directed primarily at DME Members, users and prospective users of DME's facilities. DME also welcomes any comments from any organisation which represents groups of such users or prospective users. All capitalised terms not defined herein have the meaning given to them in the DME Rulebook.

**Overview of changes**

Currently, trading in the front month DME Oman terminates on the last Trading Day of the month that is a Singapore Business Day and a Clearing Business Day. In contrast, the calculation of Final Settlement Price must occur on the last Trading Day of the month whether or not it is a Singapore Business Day and a Clearing Business Day. The proposed revision will eliminate the requirement that trading in DME Oman terminate on the last Trading Day of the month that is a Singapore Business Day and a Clearing Business Day.

In addition, we have made housekeeping revisions to Rule 10.12 (D) (5), Rule 10.12 (D) (6) and Appendix A 3. (2) ii.

DME proposes to implement these changes before the last Trading Day of May 2010.

**Rationale for Rule changes**

Changes will align the termination of trading in the front month DME Oman with the calculation of the Final Settlement Price of the front month DME Oman. In turn, this will eliminate any potential issues around the termination of trading and calculation of Final Settlement Price where the last Trading Day of the front month DME Oman is not a Singapore Business Day and a Clearing Business Day.

**How to provide comments**

The deadline for providing comments on the proposals in this Consultation Paper is twenty eight (28) calendar days from the date of this Consultation Paper. For the avoidance of doubt, all comments must be received by

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the Exchange on or before 26 April, 2010 at 6:00 PM in Dubai. All comments on the proposed changes should be addressed to:

Mr Greg Collins  
Chief Compliance Officer  
Dubai Mercantile Exchange Limited  
P.O. Box 66500  
Dubai  
United Arab Emirates  
[compliance@dubaimerc.com](mailto:compliance@dubaimerc.com)


**Next steps**

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

As soon as practicable following the deadline for comments on the proposals in this Consultation Paper, 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 Rulebook will only take effect once approved by the DFSA. DME will issue a Member Notice on the DME website confirming the date upon which the changes to the DME Rulebook will become effective.

Signed

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Greg Collins  
Chief Compliance Officer

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Please pass comments to:  
Mr Greg Collins, Chief Compliance Officer  
[compliance@dubaimerc.com](mailto:compliance@dubaimerc.com)

## Chapter 10 DME Oman Crude Oil Futures Contract

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#### 10.1 Scope

The provisions of Chapter 10 (which include the Appendices) shall apply to all contracts bought or sold on the Exchange for future delivery of Oman crude oil of normal export quality.

#### 10.2 Definitions

For the avoidance of doubt, terms defined in Chapter 1 of these Rules that are used in this Chapter 10 shall have the meanings given to them in Chapter 1 of these Rules. For the purpose of this Chapter 10, the following terms shall have the following meanings, unless the context otherwise requires:

- (1) **Alternative Notice of Intention to Deliver** has the meaning given to it in Rule 10.14 (A).
- (2) **Appellant** has the meaning given to it in Rule 10.18(A).
- (3) **Barrel** means forty-two (42) US standard gallons of two hundred and thirty-one (231) cubic inches per gallon corrected for temperature to sixty (60) degrees Fahrenheit.
- (4) **B/L Details** has the meaning given to it in Rule 10.15(E).

- (5) **Buyer Clearing Member** means, in relation to a Contract to which the Clearing House is party, the long Clearing Member.
- (6) **Buying Customer** means the customer of a Buyer Clearing Member or such Buyer Clearing Member if the Buyer Clearing Member is acting for its own account.
- (7) **Clearing Business Day** means a day on which the Clearing House is open for the processing and clearing of Exchange Contracts.
- (8) **Confirmation Notice** has the meaning given to it in Rule 10.15(E).
- (9) **Contract Value** has the meaning given to it in Rule 10.4.
- (10) **Crude Lifting Procedures** means the procedures for the lifting of Oil at the Loading Port promulgated by the Terminal Operator, as the same may be amended from time to time.
- (11) **Customer** means a Buying Customer or Selling Customer.
- (12) **Delivery Documents** has the meaning given to it in Rule 10.15(F).
- (13) **Delivery Month** means the month in which the Oil is to be delivered and received as specified by the Exchange.
- (14) **Delivery Notice** has the meaning given to it in Rule 10.15(E).
- (15) **Failure to Perform** means in respect of a Buyer Clearing Member or Seller Clearing Member, its failure or that of its Customer to perform its obligations for the purposes of making or taking delivery of Oil in accordance with the terms of the Contract other than as a result of a Force Majeure Event, and **Failed to Perform** shall be construed accordingly.
- (16) **Final Settlement Price** has the meaning given to it in Rule 10.9.
- (17) **Force Majeure Event** means any circumstance (including but not limited to a strike, lock-out, national emergency, governmental action, or act of God) which is beyond the reasonable control of the affected Clearing Member and its Customer, and which prevents such Clearing Member or Customer from performing its respective obligations for the purposes of making or taking delivery of Oil in accordance with the terms of the Contract or Physical Contract.
- (18) **Hearing Date** has the meaning given to it in Rule 10.17(D).
- (19) **ISPS Code** means the International Ship and Port Facility Security Code and the relevant amendments to Chapter XI of SOLAS.
- (20) **Laydays** means those days that are the accepted days for loading a Parcel.
- (21) **Letter of Indemnity** means a letter of indemnity in the form set out in Appendix B to this Chapter 10.
- (22) **LIBOR** means the London Interbank Offered Rate for one (1) month US dollar deposits displayed on the appropriate page of the Reuters screen as of the date any amount owing hereunder falls due or, if no such rate is available for such period, the rate quoted by Barclays Bank PLC for one (1) month US dollar deposits to leading banks in the London interbank market.

- (23) **Loading Port** means the Mina Al Fahal Terminal, Oman.
- (24) **Non Confirmation Notice** has the meaning given to it in Rule 10.15(E).
- (25) **Notice** has the meaning given to it in Rule 10.11(C).
- (26) **Notice of Appeal** has the meaning given to it in Rule 10.18(A).
- (27) **Notice of Assessment** has the meaning given to it in Rule 10.17.
- (28) **Notice of Hearing** has the meaning given to it in Rule 10.17(D).
- (29) **Notice of Intent to Arbitrate** has the meaning given to it in Rule 10.19(B).
- (30) **Notice of Intention to Accept** has the meaning given to it in Rule 10.11(A).
- (31) **Notice of Intention to Deliver** has the meaning given to it in Rule 10.11(B).
- (32) **ODC** means the Oman Delivery Committee which shall be formed for the purposes of Rule 10.17 and 10.18.
- (33) **ODC Administrator** means a person selected from time to time by the Clearing House and the Exchange to perform the duties allocated to the ODC Administrator in this Chapter 10.
- (34) **ODC Chairman** has the meaning given to it in Rule 10.17(E).
- (35) **ODC Hearing** has the meaning given to it in 10.17(D)
- (36) **ODC Panel** has the meaning given to it in Rule 10.17(F).
- (37) **ODC Panellist** has the meaning given to it in Rule 10.17(F).
- (38) **ODC Review Hearing** has the meaning given to it in Rule 10.18(D).
- (39) **Oil** means crude oil for delivery F.O.B. at the Loading Port pursuant to a Contract.
- (40) **Oman Futures Contract** or **Contract** means the DME Oman Crude Oil Futures Contract formed under Rule 6.29 and which includes the terms set out in this Chapter 10.
- (41) **Parcel** has the meaning given to it in Appendix A.
- (42) **Party** means:
- (a) in the Physical Delivery Procedures, a Selling Customer or a Buying Customer; and
  - (b) in all other cases, a Seller Clearing Member or a Buyer Clearing Member.
- (43) **Payment Date** has the meaning given to it in Rule 10.15(F).
- (44) **Physical Contract** has the meaning given to it in Rule 10.12(A).
- (45) **Physical Delivery Procedures** means Appendix A to this Chapter 10.



- (46) **Prior Month** means the month immediately prior to the Delivery Month.
- (47) **Seller Clearing Member** means in relation to a Contract to which the Clearing House is party, the short Clearing Member.
- (48) **Selling Customer** means the customer of a Seller Clearing Member or such Seller Clearing Member if the Seller Clearing Member is acting for its own account.
- (49) **Selling Customer's Invoice** has the meaning given to it in Rule 10.15(F).
- (50) **Selling Customer's Suppliers** means any person being a direct or indirect source of supply for the Selling Customer.
- (51) **Singapore Business Day** means a day (other than a Saturday or Sunday) on which banks in Singapore are open for the normal conduct of banking business.
- (52) **Terminal Operator** means Petroleum Development Oman L.L.C. or its successor as operator of the Loading Port.
- (53) **Vessel** means the tanker transporting the Oil.

### 10.3 Grade and Quality Specifications

The Oil must be the same quality as the oil generally being supplied at the Loading Port at the time of loading. This Rule 10.3 constitutes the whole of Selling Customer's and Seller Clearing Member's obligations with respect to the quality of Oil to be supplied and (to the extent permitted by law) all statutory or other conditions or warranties with respect to the description, merchantability or quality of the Oil or its fitness for any purpose are hereby excluded.

### 10.4 Contract Value

The contract value shall be the Final Settlement Price multiplied by one thousand (1,000) multiplied by the number of Contracts to be delivered (**Contract Value**).

### 10.5 Contract Months

Trading shall be conducted in such Contract Months as shall be determined by the Exchange. Trading in a Contract Month shall commence on the day fixed by the Exchange.

### 10.6 Prices and Price Fluctuations

Prices shall be quoted in US dollars and cents per Barrel. The minimum price fluctuation shall be 1 cent (\$0.01) per Barrel. There shall be no maximum price fluctuation limits.

### 10.7 Trading Hours

The Exchange shall determine the trading hours from time to time.

### 10.8 Termination of Trading

Trading in the current Contract Month shall cease on the last Trading Day of the second (2<sup>nd</sup>) month preceding the Delivery Month ~~that is a Singapore Business Day and a Clearing Business Day~~.

## 10.9 Final Settlement Price

The final Settlement Price for a Contract Month shall be the Settlement Price for the last Trading Day of the Contract Month. The Settlement Price for the last Trading Day of the Contract Month shall be determined as at 16:30 (Singapore time) using the same procedures as those set out at Rule 6.30 (the **Final Settlement Price**). The Exchange shall publish the Final Settlement Price on the last Trading Day of that Contract Month. The Final Settlement Price will be used for purposes of margins for delivery of the Oil.

## 10.10 Availability for Delivery

A Seller Clearing Member shall for the purposes of the Clearing House Rules, be regarded as in a position to fulfil its contractual obligations only if, prior to one (1) hour before the close of trading in the applicable Contract Month, such Seller Clearing Member has received from the Selling Customer a certification, in the form prescribed by the Clearing House, stating that the Selling Customer has or will have in position at the Loading Port, a quantity and quality of Oil sufficient to meet the Seller Clearing Member's obligations to make delivery when and as prescribed by these Rules; provided, however, that the receipt of such certification shall not relieve the Seller Clearing Member of any obligations under any Rule of the Clearing House or the Exchange, other than the Clearing House Rules.

## 10.11 Procedures for Physical Delivery

### (A) Notice of Intention to Accept

Clearing Members having open long positions after trading has ceased shall give the Clearing House a notice of intention to accept delivery (**Notice of Intention to Accept**) by 14:00 (New York time) on the first (1st) Clearing Business Day after the last Trading Day in the applicable Contract Month. The Notice of Intention to Accept shall be in the form prescribed by the Clearing House, shall be properly completed and signed, and shall indicate the name(s) of the Buying Customer(s), the number of Contracts to be accepted, and such additional information as may be required by the Clearing House.

### (B) Notice of Intention to Deliver

Clearing Members having open short positions after trading has ceased shall give the Clearing House a notice of intention to deliver (**Notice of Intention to Deliver**) by 14:00 (New York time) on the first (1st) Clearing Business Day after the last Trading Day in the applicable Contract Month. The Notice of Intention to Deliver shall be in the form prescribed by the Clearing House, shall be properly completed and signed, and shall indicate the names of the Selling Customer(s), the number of Contracts to be delivered and any additional information as may be required by the Clearing House.

### (C) Matching Procedures and Notification

- (1) The Clearing House will, pursuant to the Clearing House Rules, aggregate the positions held in respect of the same Customer by Buyer Clearing Members and Seller Clearing Members and then match the aggregate long position held in respect of a Customer by one (1) or more Clearing Members with one (1) or more aggregate short positions held in respect of one (1) or more Customers by one (1) or more Clearing Members. The criteria for matching will be determined by the Clearing House and will take into account in respect of each aggregate position:
  - (i) the total quantity of Oil for which the Buying Customer or Selling Customer must make or take delivery; and

- (ii) whether the total quantity of Oil for which the Buying Customer or Selling Customer must make or take delivery is greater than or equal to two hundred thousand (200,000) Barrels, including whether such Barrels are a combination of OTC and Exchange traded Barrels.
  - (2) The Clearing House will, pursuant to the Clearing House Rules, carry out the following activities by 15:01 (New York time) on the first (1st) Clearing Business Day after the last Trading Day in the applicable Contract Month:
    - (i) the Clearing House will notify each Buyer Clearing Member and Seller Clearing Member of the identity of each Seller Clearing Member and Buyer Clearing Member to which it has been matched and that of each such Party's corresponding Customer;
    - (ii) the Clearing House will allocate Notices of Intention to Deliver and Notices of Intention to Accept (each a **Notice**) to the Buyer Clearing Member and Seller Clearing Member matched to the Party that gave the Notice; and
    - (iii) the Clearing House will give copies of the Notices to the Exchange and the respective Customers of the Clearing Members.
- (D) **Delivery Tolerance**

The Oil must be delivered within a loading tolerance of plus or minus zero point two percent (0.2%).

## 10.12 Physical Contract, Making and Taking Delivery, Risk and Title

### (A) Physical Contract

- (1) With respect to each transaction to which a Buying Customer and a Selling Customer are matched pursuant to Rule 10.11(C), a contract shall be deemed to have arisen between such Selling Customer and Buying Customer (the **Physical Contract**) which is collateral to the Contract, governed by and construed in accordance with English law and subject to the Rules. The terms of each Physical Contract will be the obligations specified to apply to the Selling Customer and the Buying Customer in this Chapter 10. For the avoidance of doubt, the Contract shall remain in full force and effect following the creation of the Physical Contract and all rights and obligations between the Parties to the Contract shall remain intact.
- (2) A Clearing Member that submits a Notice of Intention to Accept or Notice of Intention to Deliver on behalf of a Customer pursuant to Rule 10.11(A) or (B) (as applicable) will be deemed to have acknowledged and agreed (as agent on behalf of such Customer) that: (a) such Customer will be legally bound to a Physical Contract with the Customer to which it is matched pursuant to Rule 10.11(C), (b) such Customer is familiar with the terms of this Chapter 10 and the Crude Lifting Procedures as in effect on the date of submission of the Notice of Intention to Deliver or Notice of Intention to Accept and (c) such Customer will be bound by the Crude Lifting Procedures except to the extent that such Crude Lifting Procedures conflict with the terms of this Chapter 10, in which case the terms of this Chapter 10 shall prevail.



**(B) Selling Customer's Obligations**

The Selling Customer is obliged to:

- (1) subject to the terms of this Chapter 10 and for each position that has been matched pursuant to Rule 10.11(C), make delivery to the Buying Customer in respect of that match;
- (2) give all notices and other communications and provide all documents required of it under this Chapter 10;
- (3) make delivery in accordance with this Chapter 10 at the Loading Port on the actual Laydays determined in accordance with this Chapter 10;
- (4) make delivery within a loading tolerance of plus or minus zero point two percent (0.2%), and if it fails to comply with such obligation for reasons other than the occurrence of a Force Majeure Event, indemnify the Buying Customer in respect of all damages, costs, expenses and liabilities (save for indirect loss and consequential damages) incurred by the Buying Customer to its immediate contractual counterparty as a direct result of such failure;
- (5) provide the documentary requirements to the Exchange as set out in Paragraph 4(1) of the Physical Delivery Procedures;
- (6) insofar as delivery is not completed within the actual Laydays, pay any additional delivery fees and demurrage for which it is responsible under the Physical Contract, the Crude Lifting Procedures, or in accordance with good industry practice;
- (7) comply with the terms of this Chapter 10;
- (8) make delivery in accordance with applicable law; and
- (9) use best efforts to mitigate any losses suffered under Rule 10.12 (C)(4).

**(C) Buying Customer's Obligations**

The Buying Customer is obliged to:

- (1) subject to the terms of this Chapter 10 and for each position that has been matched pursuant to Rule 10.11(C), take delivery from the Selling Customer in respect of that match;
- (2) give all notices and other communications and provide all documents required of it under this Chapter 10;
- (3) take delivery in accordance with this Chapter 10 at the Loading Port on the actual Laydays determined in accordance with this Chapter 10;
- (4) take delivery within a loading tolerance of plus or minus zero point two (0.2%), and if it fails to comply with such obligation for reasons other than the occurrence of a Force Majeure Event, indemnify the Selling Customer in respect of all damages, costs, expenses and liabilities (save for indirect loss and consequential damages) incurred by the Selling Customer to its immediate contractual counterparty as a direct result of such failure;

- (5) provide the documentary requirements to the Exchange as set out in Paragraph 4(1) of the Physical Delivery Procedures;
- (6) promptly take up documents and make payment in accordance with Rule 10.15;
- (7) comply with the terms of this Chapter 10;
- (8) take delivery in accordance with applicable law; and
- (9) use best efforts to mitigate any losses suffered under Rule 10.12 (B)(4).

(D) **Crude Lifting Procedures**

- (1) Customers and Clearing Members shall comply with and be bound by the obligations set out in the Crude Lifting Procedures, except to the extent that such Crude Lifting Procedures conflict with the terms of this Chapter 10, in which case the terms of this Chapter 10 shall prevail.
- (2) Any costs or expenses in respect of the Vessel including demurrage or any additional charge, fee or duty levied on the Vessel at the Loading Port and actually incurred by the Buying Customer resulting directly from the failure of the Loading Port to comply with the ISPS Code, shall be for the account of the Selling Customer, including but not limited to the time required or costs incurred by the Vessel in taking any action or any special or additional security measures required by the ISPS Code.
- (3) Save where the Vessel has failed to comply with the requirements of the ISPS Code, the Selling Customer shall be responsible for any demurrage actually incurred by the Buying Customer arising from the delay to the Vessel at the Loading Port resulting directly from the Vessel being required by the Terminal Operator to take any action or any special or additional security measures or undergo additional inspections by virtue of the Vessel's previous ports of call.
- (4) The Selling Customer's liability to the Buying Customer in respect of a matched delivery under this Chapter 10 for any costs, losses or expenses incurred by the Vessel, the charterers of the Vessel or the Vessel owners resulting from the failure of the Loading Port to comply with the ISPS Code shall exclude the payment of demurrage and costs not actually incurred by the Buying Customer in accordance with the provisions of this Rule 10.12 and Paragraph 5 of the Physical Delivery Procedures.
- (5) No claim for demurrage shall be entertained unless the fully documented claim is received (or if not all documents are available to the Buying Customer, notice of formal claim is given by the Buying Customer with an estimate of the amount of the claim) within forty (40) days from the time and date ~~of~~ the bill of lading was issued.
- (6) The documentation to be submitted with the claim shall include all information required by the Terminal Operator under the Crude Lifting Procedures. Any documents not available on the date of formal claim but which the Terminal Operator requires shall be provided to the Selling Customer within eighty (80) days from the time and date ~~of~~ the bill of lading was issued.
- (7) The Buying Customer shall not be entitled to recover demurrage from the Selling Customer except to the extent that the Selling Customer is able to recover such demurrage from the Selling Customer's Suppliers and the Selling Customer shall not be obliged to pay any amounts in excess thereof. The Selling Customer shall however use reasonable endeavours to recover from the Selling Customer's Suppliers any demurrage

for which the Buying Customer has presented a claim in accordance with the terms of the Physical Contract.

- (8) If the Vessel concerned loads Oil under a Contract as well as other Oil at the Loading Port, the Selling Customer's liability to the Buying Customer under the Physical Contract in respect of that Contract shall be limited to that proportion of the total demurrage due that is equal to the ratio of the Oil loaded under the Contract in relation to the total quantity of Oil loaded on the Vessel concerned at the Loading Port.
- (E) Any dispute between Customers arising from or in connection with a Physical Contract (including any dispute regarding the parties to the Physical Contract, or the formation, existence, breach or termination of a Physical Contract) that is not resolved through their Clearing Members pursuant to the procedures set forth in Rule 10.17 and Rule 10.18 shall be referred to arbitration under the Arbitration Rules as if the Physical Contract were a Contract; provided, however, that:
- (1) if pursuant to Rule 10.17 an ODC has been convened, then in no event shall any Customer commence any proceedings under the Arbitration Rules until such time as the ODC has rendered its decision, direction and/or fine and either (a) the ODC has rendered its decision, direction and/or fine in respect of an ODC Review Hearing following any appeal pursuant to Rule 10.18 or (b) the time period for bringing an appeal of such ODC decision, direction and/or fine has expired. In the event any arbitration proceedings are commenced before the ODC is convened, such proceedings will be stayed until the foregoing requirements of this Rule 10.12(E)(1) are satisfied; and
  - (2) in any arbitration proceedings, the factual findings of the ODC at an ODC Hearing or, where applicable, the factual findings established at an ODC Review Hearing which has reconsidered the factual findings of the original ODC Hearing (including the findings in respect of the occurrence or non-occurrence of a Failure to Perform or a Force Majeure Event) will not be subject to dispute, and in considering the matter the Tribunal (as such term is defined in Chapter 5 of these Rules) will consider such findings to have been agreed and stipulated by the Customers. For the avoidance of doubt, to the extent that there are any inconsistencies between the factual findings established by the ODC at the original ODC Hearing and the factual findings established by the ODC at an ODC Review Hearing, the factual findings established at the ODC Review Hearing shall prevail; and
  - (3) there shall not be pending simultaneously arbitral proceedings under this Rule 10.12(E) and Rule 10.19 with respect to the same underlying claim(s). Accordingly, no Customer shall commence any arbitration proceedings under this Rule 10.12(E) if proceedings under Rule 10.19 in respect of the same underlying claim(s) have already been commenced and in the event that, subsequent to the institution of proceedings under Rule 10.19, proceedings which are commenced with respect to the same underlying claim(s), then the proceedings under this Rule 10.12(E) will be stayed insofar as they relate to the same underlying claim(s) at issue in the proceedings under Rule 10.19; and
  - (4) in the event that proceedings have been commenced with respect to the same underlying claim(s) under this Rule 10.12(E) and Rule 10.19, and those proceedings have been stayed in accordance with either Rule 10.12(E)(3) or Rule 10.19(F), then the decision of the arbitration panel under Rule 10.19, with respect to the same underlying claim(s), shall be final and following the determination of the arbitration panel under Rule 10.19, Customers shall be prohibited from commencing, or continuing with, arbitral proceedings in respect to the same underlying claim(s) under this Rule 10.12(E).

(F) **Risk and Title**

The risk and title in the Oil delivered under the terms of the Physical Contract shall pass to the Buying Customer at the Loading Port as the Oil passes the loading Vessel's permanent hose

connection. Any loss of or damage to the Oil during loading, if caused by the Vessel or her officers or crew, shall be for the account of the Buying Customer.

### 10.13 EFPs and EFSs

- (A) An EFP or EFS must be posted before 23:00 (Singapore time) on the Trading Day following the last Trading Day in the expiring Contract Month otherwise it shall not be valid and effective. An EFP or EFS transaction must be posted into the appropriate Clearing House clearing system as advised by the Exchange from time to time.
- (B) Any EFP or EFS shall be governed by the provisions of Rule 6.28.
- (C) Each Clearing Member must satisfy the Exchange at its request that the transaction is a legitimate EFP or EFS transaction. All documentary evidence relating to the EFP or EFS, including (without limitation) evidence as to change of ownership of the physical commodity or swap commitment, shall be obtained by the Clearing Members from their Customers and made available by the Clearing Members for examination by the Exchange upon request.

### 10.14 Alternative Delivery Procedures

- (A) Where the Clearing House has under Rule 10.11(C) matched a position of a Seller Clearing Member with a position of a Buyer Clearing Member, the Customers in respect of the matched positions may agree to make and take delivery under terms and conditions that differ from the Rules of this Chapter 10. In such a case, the Clearing Members shall execute an alternative notice of intention to deliver on the form prescribed by the Clearing House (an **Alternative Notice of Intention to Deliver**) and shall deliver a completed executed copy of such Alternative Notice of Intention to Deliver to the Clearing House by 18:00 (Singapore time) on the first actual Layday or at such later time and date following the first actual Layday but prior to the Payment Date as the Clearing House may agree. No Alternative Notice of Intention to Deliver shall be effective unless a completed executed copy is delivered to the Clearing House in accordance with the preceding sentence.
- (B) The delivery of an executed Alternative Notice of Intention to Deliver to the Clearing House in accordance with Rule 10.14(A) shall release the Seller Clearing Member and Buyer Clearing Member and the Clearing House from their respective obligations in respect of the Contracts relating to the matched position. Upon receipt of an executed Alternative Notice of Intention to Deliver, the Clearing House shall pursuant to the Clearing House Rules, release any delivery margins it holds with respect to the Contracts to which the Clearing House is party.
- (C) In executing an Alternative Notice of Intention to Deliver, Clearing Members shall indemnify the Clearing House against any liability, cost or expense it may incur for any reason in connection with a Contract to which the Alternative Notice of Intention to Deliver relates.

### 10.15 Margins and Payment

- (A) By 11:00 (New York time) on the final Business Day of the Prior Month, the Buyer Clearing Member shall obtain from the Buying Customer margin equal to the full value of the product to be delivered. Such margin shall be in a form acceptable to the Clearing House.
- (B) The Seller Clearing Member shall obtain from the Selling Customer margin in a form acceptable to the Clearing House in an amount fixed from time to time by the Clearing House. The Buyer Clearing Member shall obtain from the Buying Customer margin in a form acceptable to the Clearing House in an amount fixed from time to time by the Clearing House.
- (C) For the avoidance of doubt, the forms of margin acceptable to the Clearing House include a letter of credit deposited with the Clearing House in a form approved by the Clearing House, that is

issued or approved by a Clearing House approved original margin depository and is drawn in favour of the Clearing House.

- (D) The Buyer Clearing Member and Seller Clearing Member shall provide delivery margins to the Clearing House in such amounts and in such form as required by the Clearing House.
- (E) Upon receipt by the Selling Customer (from the Selling Customer's Supplier) of the applicable bill of lading details as issued by the Terminal Operator in respect of a delivery of Oil (**B/L Details**), the Selling Customer shall provide a copy of such B/L Details by e-mail or fax to the Buying Customer (who will in turn provide a copy to the Buyer Clearing Member), the Seller Clearing Member, and the Exchange. Thereafter the following shall occur:
- (1) Within one (1) Business Day of the Seller Clearing Member and Buyer Clearing Member receiving the B/L Details, the Seller Clearing Member and Buyer Clearing Member shall submit a notice to the Clearing House by email or fax confirming receipt of the same. Such notice shall be in a form prescribed by the Clearing House (the **Delivery Notice**).
  - (2) Upon receipt of the Delivery Notice, the Clearing House shall seek confirmation from the Exchange that the B/L Details confirm that the Selling Customer and Buying Customer have satisfied their delivery obligations to each other with respect to the quantity and quality of Oil delivered under this Chapter 10.
  - (3) To the extent that the Selling Customer and the Buying Customer have satisfied the Exchange in accordance with Rule 10.15(E)(2) above, the Exchange shall submit a notice confirming the same (the **Confirmation Notice**) by email or fax to the Clearing House. In the event that the Selling Customer or the Buying Customer have failed to satisfy the Exchange in accordance with Rule 10.15(E)(2) above, the Exchange shall submit a notice stating the same (the **Non Confirmation Notice**) by email or fax to the Clearing House. In submitting a Confirmation Notice or a Non Confirmation Notice the Exchange shall be entitled to rely on the information set forth in the B/L Details and the Delivery Notice and will not be liable for any inaccuracy therein.
  - (4) Upon receipt of the Delivery Notices and Confirmation Notice by the Clearing House, the Clearing House shall, in accordance with the Clearing House Rules, release the Seller Clearing Member's delivery margin to the Seller Clearing Member, which shall in turn release the Selling Customer's margin to the Selling Customer.
  - (5) In the event that the Clearing House receives a Non Confirmation Notice from the Exchange, it shall retain the Seller Clearing Member's delivery margin until it receives satisfactory confirmation that all issues in respect of the Selling Customer's and Buying Customer's performance of its delivery obligations with respect to the quantity and quality of Oil delivered under this Chapter 10 have been resolved. Upon such resolution the Clearing House will release the Seller Clearing Member's delivery margin to the Seller Clearing Member (who shall in turn release the Selling Customer's margin to the Selling Customer). For the purposes of clarity and the avoidance of doubt, the Buying Customer's delivery margin will continue to be held in accordance with Rule 10.15(K).
- (F) The Buying Customer shall pay the Selling Customer in respect of a delivery of Oil and (subject to Rule 10.15(O)) payment shall be due on the date (the **Payment Date**) that is the later of:
- (1) the day thirty (30) days after the date of the bill of lading (such calculation shall not include the actual date of the bill of lading itself); and
  - (2) on the date of presentation of the following documents applicable to the delivery:



- (i) a full set (original, duplicate and triplicate) of clean original bills of lading made out or endorsed to the order of the Buying Customer;
- (ii) an invoice complying with the requirements of this Rule 10.15 (**Selling Customer's Invoice**);
- (iii) a certificate of quantity and quality;
- (iv) a certificate of origin;
- (v) a cargo manifest;
- (vi) an ullage report;
- (vii) a Vessel loading time sheet; and
- (viii) a receipt for any sealed sample of the cargo provided by the Selling Customer, (**Delivery Documents**).

If any or all of the Delivery Documents are not presented the Buying Customer may agree to pay the Selling Customer for the delivery against presentation of those Delivery Documents that are presented and a Letter of Indemnity for the missing Delivery Documents duly executed by the Selling Customer or, if the Buying Customer chooses, duly executed and given jointly and severally by the Selling Customer and the Selling Customer's bank.

- (G) The Selling Customer's Invoice shall be based on the quantity of Oil delivered under the Contract, determined so as to reflect the quantities determined in accordance with Paragraph 2 of the Physical Delivery Procedures. The amount payable on the Payment Date in respect of the delivery shall be the Contract Value adjusted for the quantity of Oil delivered under the Contract, determined so as to reflect the quantities determined in accordance with Paragraph 2 of the Physical Delivery Procedures.
- (H) Unless otherwise agreed, the payment of any other costs, expenses or charges payable by the Buying Customer that arise under this Chapter 10 shall be made against presentation of the Selling Customer's Invoice (or any other invoice from the Selling Customer) and shall be for immediate settlement by the Buying Customer on or by the date notified therein.
- (I) Not later than 12:00 (New York time) on the third (3rd) Business Day prior to the Payment Date, the Selling Customer shall notify, by e-mail or fax, the Seller Clearing Member of the bank account to which payment shall be made. The Seller Clearing Member shall notify the Buyer Clearing Member who shall in turn notify the Buying Customer.
- (J) On the Payment Date, the Buying Customer shall pay the Selling Customer the amount payable under Rule 10.15(G). Payment shall be made by bank transfer to the bank account nominated by the Selling Customer. Not later than 12:00 (New York time) the Buying Customer shall notify, by e-mail or fax, the Buyer Clearing Member of the details of the transfer of funds. The Buyer Clearing Member shall notify, by e-mail or fax, the Seller Clearing Member who shall in turn notify the Selling Customer.
- (K) The Selling Customer shall notify the Seller Clearing Member that it has received payment not later than the Business Day following the date of receipt. Where payment has been received, the Seller Clearing Member shall deliver a notice of payment to the Buyer Clearing Member and the Clearing House not later than the Business Day following the date payment is made. On receipt of such notice of payment the Clearing House shall, in accordance with the Clearing House Rules, release the Buyer Clearing Member's delivery margin to the Buyer Clearing Member, who shall in turn release the Buying Customer's margin to the Buying Customer. Where the Selling

Customer has not received payment on or before the Payment Date, it shall so notify the Seller Clearing Member, which will in turn notify the Buyer Clearing Member and the Clearing House in writing.

- (L) If the Seller Clearing Member receives notification that payment has not been received, it shall notify the Buyer Clearing Member and the Clearing House in writing. On the following Business Day, unless the Buyer Clearing Member or Buying Customer have notified the Clearing House that the Seller Clearing Member has Failed to Perform, the Clearing House shall, in accordance with the Clearing House Rules, liquidate the Buying Customer's delivery margin and, when liquidation is complete, pay the Seller Clearing Member, which shall in turn pay the Selling Customer.
- (M) All payments to be made under this Chapter 10 shall be made in dollars and shall be made free of all charges and without asserting at the time for payment any set-off, counterclaim or right to withhold whatsoever.
- (N) Any amounts not paid by the due date specified in this Chapter 10 will bear interest at a rate of LIBOR plus two hundred (200) basis points per annum (compounded monthly) from and including the date payment was due until but excluding the date on which payment is made.
- (O) If the day on which any payment hereunder would otherwise be due under this Chapter 10 is a Saturday, Sunday or a banking holiday in New York, payment will be effected on the last New York banking day prior to which payment is due.

#### **10.16 Non-Performance of Delivery Obligations**

- (A) The Seller Clearing Member and the Buyer Clearing Member are each responsible to the Exchange and the Clearing House for their respective obligations and those of their respective Customers under the provisions of this Chapter 10.
- (B) When a Seller Clearing Member or a Buyer Clearing Member has Failed to Perform, the Buyer Clearing Member or Seller Clearing Member, as the case may be, shall be liable to the Clearing Member with which its position has been matched pursuant to Rule 10.11(C) for any damages awarded pursuant to Rule 10.19 and to the Clearing House for any assessments or fines made pursuant to Rule 10.17 or Rule 10.18 and to the Exchange, Clearing House and/or ODC for any costs awarded pursuant to Rule 10.17(N).

#### **10.17 Oman Delivery Committee (ODC)**

- (A) If any Buying Customer, Selling Customer, Buyer Clearing Member or Seller Clearing Member is of the view that a Failure to Perform or possible Failure to Perform has occurred, it shall notify the Clearing House (with a copy to the Exchange) thereof, such notification to include (1) an identification of the Contract(s), Clearing Members and Customers involved and (2) a description of the circumstances involved (including any alleged Force Majeure Event that may excuse the alleged Failure to Perform). In addition, a Buyer Clearing Member or Seller Clearing Member may request at any time that the Clearing House refer a Failure to Perform or possible Failure to Perform to the ODC.
- (B) If it appears to the Clearing House (whether through notification received pursuant to Rule 10.17(A) or otherwise) that a Seller Clearing Member or Buyer Clearing Member has Failed to Perform, or may have Failed to Perform, the Clearing House in conjunction with the Exchange and the ODC Administrator may, as soon as practicable, take such steps as it deems appropriate to help achieve an amicable settlement between the Parties to the affected Contract (including any affected Customer). Such assistance may include convening a meeting (which may be held

in person or by telephone or video conference) among the Parties to the affected Contract to discuss avenues for an amicable settlement among such Parties.

- (C) The Clearing House may refer a Failure to Perform (or possible Failure to Perform) to an ODC if in the opinion of the Clearing House the Failure to Perform (or possible Failure to Perform):
- (1) is by the Seller Clearing Member, concerns the quantity or quality of Oil that has been delivered, would not entitle the Buying Customer to reject the delivery (a **minor quantity or quality issue**) and is not resolved within sixty (60) days of coming to the attention of the Clearing House;
  - (2) is a failure to make or take delivery that is not cured within ten (10) days of the last actual Layday determined in accordance with this Chapter 10;
  - (3) is not a minor quantity or quality issue and is not resolved amicably by the Parties within ten (10) days of coming to the attention of the Clearing House;
  - (4) urgently requires review in the interests of the Oman Futures Contract, the Exchange or the Clearing House.
- (D) Upon a determination by the Clearing House to refer a Failure to Perform or possible Failure to Perform to the ODC pursuant to Rule 10.17(C), the Clearing House shall so notify the ODC Administrator who shall in turn issue a notice of hearing (**Notice of Hearing**) convening the ODC to a hearing (an **ODC Hearing**). The Notice of Hearing shall be issued to the Exchange, the Clearing House, the members of the ODC and the Parties to the affected Contract. The Notice of Hearing will state:
- (1) the date and time at which the ODC Hearing will first convene (**Hearing Date**) (which may be no less than two (2) and no more than five (5) Business Days following the date of issuance of the Notice of Hearing);
  - (2) the parties to the ODC Hearing;
  - (3) a summary of the dispute to be resolved; and
  - (4) the means by which the ODC Hearing will be conducted, including by conference call, in person, or by other means.
- (E) Each ODC shall consist of:
- (1) two (2) representatives of the Clearing House, one (1) of whom shall be the chairman of the ODC (**ODC Chairman**);
  - (2) three (3) ODC Panellists selected in accordance with Rule 10.17(F).
- A representative of a relevant Ministry of the Oman Government shall be entitled to observe the proceedings of each ODC Hearing, as well as the ODC Administrator and such other persons as the ODC Chairman shall deem appropriate.
- (F) The Exchange shall consult with the Clearing House in maintaining a panel of individuals (each an **ODC Panellist**) willing and able to participate in ODC proceedings and sufficient in number to support the timely formation of one (1) or more ODCs (the **ODC Panel**). In appointing ODC Panellists, consideration shall be given to the appointee's:
- (1) experience with lifting Oman crude;

- (2) general knowledge of oil trading and shipping; and
- (3) possession of such other qualifications as the Clearing House may deem relevant;

provided, that membership or affiliation with the Exchange or the Clearing House shall not be a prerequisite to appointment as an ODC Panellist.

ODC Panellists shall be selected for participation in the ODC by lottery or other means of selection identified by the Clearing House; provided an ODC Panellist may not serve on the ODC if such person has a direct or indirect interest in performance of the delivery obligations in question. Each ODC Panellist shall disclose to the ODC Chairman and the ODC Administrator any such interest or any other interest that might preclude such ODC Panellist from rendering a fair and impartial decision. Any objection raised by a Seller Clearing Member or Buyer Clearing Member to any ODC Panellist being appointed to the ODC shall be determined by the ODC Chairman, at his or her discretion.

- (G) For avoidance of doubt, no person serving on the ODC shall, in the absence of bad faith, incur any liability whatsoever to any Member, Seat Lessee or Guaranteed Customer, or their respective employees, for any decision taken or for any direction and/or fine imposed or for any act or omission of such ODC, whether in contract, in tort or otherwise.
- (H) No member of the ODC shall use or disclose, for any purpose other than the performance of such person's duties relating to such ODC, Confidential Information obtained as a result of such person's participation on such ODC. No person may trade for his own account, or for or on behalf of the account of any other person, in any Exchange Contract on the basis of any Confidential Information that such person knows was obtained in breach of the preceding sentence.
- (I) The ODC Chairman, on behalf of the Clearing House, will have the authority to convene an ODC Hearing. Notice of all ODC Hearings will be distributed by the ODC Administrator in accordance with Rule 10.17(D).. Any one (1) or more members of the ODC may participate in the ODC Hearing by means of a telephone conference or similar communications device allowing all persons participating in the ODC Hearing to hear each other at the same time, and participation by such means shall constitute presence at the ODC Hearing. The presence of at least four (4) out of the five (5) members of the ODC shall be required to form a quorum at the ODC Hearing.
- (J) Any ODC convened for the purposes of an ODC Hearing shall retain jurisdiction over the delivery obligations in question until:
  - (1) the delivery obligations have been performed; or
  - (2) a Buyer Clearing Member or Seller Clearing Member has been found to have Failed to Perform; or
  - (3) the Parties have jointly notified the ODC that they have amicably resolved the issue relating to delivery obligations and the ODC has accepted such resolution, or
  - (4) such time that the decision, direction and/or fine made by the ODC is subject to an ODC Review Hearing in accordance with Rule 10.18(D).

The Exchange's legal counsel shall serve as legal advisor to the ODC or procure legal advice thereto.

- (K) The ODC, in its sole and absolute discretion, may require or permit a Party to an affected Contract (including any relevant Customer) to present written submissions and evidence in support of their position in such form, and by such time, as such ODC may choose. Where the ODC considers it necessary, oral evidence may be given. Where the ODC considers it necessary

to receive oral evidence, a Party to an affected Contract (including any relevant Customer) may appear personally and may be represented by counsel or another representative of its choice at the ODC Hearing. The ODC will determine the matter on such evidence as it may deem relevant, even where such evidence may not be admissible in a court of law.

- (L) The ODC may obtain expert advice from any person it deems as having expertise in the matter in question including, but not limited to, the Terminal Operator and any relevant Ministry of the Oman Government.
- (M) At the ODC Hearing or as expeditiously as practicable thereafter, the ODC shall, by a minimum vote of four (4) out of five (5), make a determination in accordance with Rule 10.17(N) below; provided that if the ODC deadlocks or is otherwise unable to reach a decision by a minimum vote of four (4) out of five (5), the decision shall be made on behalf of the ODC by the ODC Chairman.
- (N) In reaching its determination, the ODC may find either:
  - (1) that a Failure to Perform has occurred, in which case the ODC may take any one (1) or combination of the following actions as it deems suitable:
    - (i) direct the Buyer Clearing Member or Seller Clearing Member as to how the delivery should proceed or to take such other steps as the ODC may deem necessary or appropriate to rectify the Failure to Perform; and/or
    - (ii) direct the Buyer Clearing Member or Seller Clearing Member to pay to the Clearing House its reasonable costs and those of the Exchange and the ODC. Such costs may include: the fees and expenses of the ODC Chairman; the fees and expenses of any ODC Panellist; any legal costs; and the expenses that the Clearing House or the Exchange may incur or be subjected to in respect of the matter; and/or
    - (iii) direct that a fine be paid to the Clearing House, the amount of which will not be less than one thousand dollars (\$1,000) and not more than twenty percent (20%) of the total Contract Value (as determined pursuant to Rule 10.4) of the Contract(s) in respect of which it has Failed to Perform; and

In the event that a fine is directed in accordance with this Rule 10.17(N)(1) above the ODC Administrator shall issue to such failing Party a notice of assessment (**Notice of Assessment**) specifying the fine levied by the ODC with respect to such Failure to Perform.

Or

- (2) that an alleged Failure to Perform is excused because of the occurrence of a Force Majeure Event, in which case the ODC may take any one (1) or combination of the following actions as it deems suitable:
  - (i) direct the Clearing House to reverse one (1) or more of the affected Contracts at a price to be set by the ODC taking into account any information it considers relevant for this purpose, including information supplied by the Clearing House and/or the Exchange; and/or
  - (ii) direct the Buyer Clearing Member and/or the Seller Clearing Member as to what reasonable steps should be taken to mitigate the effects of such Force Majeure Event; and/or
  - (iii) refer the matter to the Clearing House Board for consideration of emergency action pursuant to the Clearing House Rules.



Or

- (3) that an alleged Failure to Perform has not occurred for reasons other than the occurrence of a Force Majeure Event.
- (O) The ODC shall report its decision in writing to the ODC Administrator, who shall in turn provide a copy of the decision to the Exchange (which shall maintain such decision in its records), the Clearing House, and to the Clearing Members, Members, and Customers involved, but need not otherwise make the decision available to the public. The written report of the decision shall include, as appropriate to the decision, whether a Buyer Clearing Member or Seller Clearing Member has Failed to Perform and whether there has been a Force Majeure Event that has affected a Party to an affected Contract (including any relevant Customer) together with any directions and/or fine made pursuant to Rule 10.17(N). The ODC Administrator shall provide such copy by fax or e-mail, and each recipient shall be deemed to have received the same on the day the ODC Administrator dispatched the same; provided that if such day is not a Business Day, then it will be deemed to have received the same on the next following Business Day.
- (P) Upon receipt of a decision of the ODC (whether an ODC Hearing or an ODC Review Hearing as appropriate), the Clearing House shall:
- (1) in the case of a Failure to Perform by a Seller Clearing Member: (a) retain all delivery margins deposited by the Seller Clearing Member for the delivery until any amounts determined to be due to the Clearing House or the Buyer Clearing Member pursuant to Rules 10.17, 10.18 and 10.19 have been paid; and (b) apprise the Buyer Clearing Member of the remedies provided pursuant to Rule 10.19; and
- (2) in the case of a Failure to Perform by a Buyer Clearing Member: (a) retain all delivery margins deposited by the Buyer Clearing Member until any amounts determined to be due to the Clearing House or the Seller Clearing Member pursuant to Rules 10.17, 10.18 and 10.19 have been paid; and (b) apprise the Seller Clearing Member of the remedies provided pursuant to Rule 10.19.
- (Q) The CCO, after consulting the ODC Chairman, shall be entitled to issue supplemental directions to the Buyer Clearing Member and Seller Clearing Member consistent with the ODC's decision, direction and/or fine in order to ensure the proper and effective implementation of that decision, direction and/or fine.
- (R) A Clearing Member, Member, Guaranteed Customer and/or Customer shall comply with any decision, direction and/or fine made by the ODC and delivered by the ODC Administrator under this Rule 10.17 and with any supplemental directions issued by the CCO pursuant to Rule 10.17(Q). The determination of a matter by the ODC and the issuance of any supplemental directions by the CCO shall be without prejudice to the powers of the Clearing House or the Exchange under the Clearing House Rules or the Rules.
- (S) If a Clearing Member, Member, Guaranteed Customer and/or Customer refuses or fails to comply with or perform any decision, direction and/or fine made by the ODC and delivered by the ODC Administrator under this Rule 10.17, or with any supplemental direction issued by the CCO pursuant to Rule 10.17(Q), then without limitation to the application of Chapter 7 of these Rules the CCO may, for the period of non-compliance, impose any or all of the following sanctions:
- (1) immediate suspension of access to the Trading Platform;
- (2) immediate suspension of Membership in the Exchange; and

- (3) monetary fines to be paid to the Clearing House in an amount not to exceed ten thousand dollars (\$10,000) per day.

Where an ODC Review Hearing is held under Rule 10.18 in respect of any decision, direction and/or fine made by the ODC in accordance with Rule 10.17, then any supplemental direction issued pursuant to Rule 10.17(Q) and/or any sanction imposed pursuant to Rule 10.17(S) shall only apply from the date on which the appeal process is concluded under Rule 10.18. Following conclusion of an appeal pursuant to Rule 10.18 the CCO may affirm or modify any directions issued in accordance with Rule 10.17(Q) and/or any sanctions imposed pursuant to Rule 10.17(S).

- (T) The Exchange may act as agent for the Clearing House (on such terms as the Clearing House and the Exchange may agree from time to time) in the exercise of some or all of the duties and responsibilities of the Clearing House under this Rule 10.17 and under Rule 10.18.

### 10.18 Appeals and ODC Review Hearings

- (A) A Buyer Clearing Member or Seller Clearing Member (the **Appellant**) may appeal any decision, direction and/or fine made by the ODC pursuant to Rule 10.17(N) by filing a notice (**Notice of Appeal**) with the CCO and by serving a copy of the same on the other Clearing Member and the ODC Administrator, within ten (10) Business Days following deemed receipt of the ODC's written decision pursuant to Rule 10.17(O) on the grounds that such decision, direction and/or fine was inappropriate on the basis that:

- (1) the decision of the ODC was based on:
  - (i) manifestly flawed findings or considerations; and
  - (ii) such manifestly flawed findings or considerations have had a material impact upon the decision of the ODC; and/or
- (2) the direction of the ODC was based on an inappropriate decision as substantiated under Rule 10.18(A)(1) above, or was otherwise based on a misinterpretation of the Rules or an error of law; and/or
- (3) the fine levied pursuant to Rule 10.17 was based on an inappropriate decision as substantiated under Rule 10.18(A)(1) above, or was otherwise excessive.

- (B) Unless the CCO determines otherwise in his or her sole and absolute discretion, failure by a Party to file a Notice of Appeal in the time specified in this Rule 10.18 shall constitute a waiver of its rights to appeal in respect of the relevant decision, direction and/or fine (as applicable), and the fines set out in the Notice of Assessment shall be paid within five (5) days to the Clearing House. Failure to comply with or perform any decision, direction and/or fine in accordance with this Rule 10.18 shall subject the Party to the sanctions set out in Rule 10.17(S) and, where appropriate, Chapter 7 of these Rules. In the event that a Party fails to appeal, or waives the opportunity to appeal the decision, direction and/or fine (as applicable) of the ODC then such decision, direction and/or fine (as applicable) shall be final and not subject to further appeal.

- (C) The CCO shall determine, in his or her sole absolute discretion, whether any or all of the grounds set out in the Notice of Appeal carry sufficient weight to warrant consideration.

- (D) Should the CCO determine that the grounds set out in the Notice of Appeal do warrant consideration, then the CCO shall instruct the Clearing House and the ODC Administrator to convene a new ODC for the purposes of considering the matters set out in the Notice of Appeal (an **ODC Review Hearing**) and may direct the following:

- (1) that the decision, direction and fine be referred for consideration at the ODC Review Hearing; or
  - (2) that the decision should stand and that the direction or fine or both be referred for consideration at the ODC Review Hearing; and/or
  - (3) any other direction that the CCO deems necessary to ensure that the proper, timely and effective consideration of the issues at the ODC Review Hearing.
- (E) In the event the CCO deems any part or all of a Notice of Appeal to be frivolous, vexatious, or clearly without merit, then the CCO will be entitled to summarily dismiss any such part or all of the Notice of Appeal (as applicable) at any time and impose a fine on the Appellant in an amount not to exceed ten thousand dollars (\$10,000).
- (F) The composition of the ODC for the purpose of the ODC Review Hearing and the procedures for conduct of such ODC Review Hearing shall, to the extent practicable, be consistent with such composition and procedures for conduct as set out in Rule 10.17. For the avoidance of doubt, the ODC Review Hearing shall not consist of any ODC members that were party to the original ODC decision which is subject to review.
- (G) The decision and any subsequent direction and/or fine (as applicable) issued at the ODC Review Hearing shall constitute a final decision, direction and/or fine (as applicable) of the ODC from which there will be no further right of appeal and to the extent of any inconsistency between the decision, direction and/or fine of the original ODC and the decision, direction and/or fine of the ODC Review Hearing, the decision, direction and/or fine of the ODC Review Hearing shall prevail. A fine is payable within fifteen (15) days after a copy of the written decision is sent to the relevant Party by the ODC Administrator or as otherwise required at the ODC Review Hearing. The Exchange will also deliver a copy of the written decision to the DFSA.

#### **10.19 Arbitration Procedure**

- (A) Any claim for damages for loss suffered that arise between the Seller Clearing Member and Buyer Clearing Member as a result of any Failure to Perform (or possible Failure to Perform) shall be settled by arbitration in accordance with this Rule 10.19.
- (B) A notice of intent to arbitrate (a **Notice of Intent to Arbitrate**) must be submitted to the Secretary of the Clearing House within seven (7) Business Days of the occurrence of the events upon which the claim is based, or receipt of the findings of the ODC with respect to a Failure to Perform (or possible Failure to Perform). Unless good cause for delay exists, failure to submit a Notice of Intent to Arbitrate within the prescribed period will be deemed a waiver of a Party's rights to arbitrate such a dispute.
- (C) If the ODC has been convened pursuant to Rule 10.17, in no event shall any Clearing Member commence any proceedings under this Rule 10.19 until such time as the ODC has rendered its decision, direction and/or fine and either (a) the ODC has rendered its decision, direction and/or fine following an ODC Review Hearing held pursuant to Rule 10.18 or (b) the time period for bringing an appeal of such ODC decision, direction and/or fine has expired (and, in the event any arbitration proceedings are commenced before the ODC is convened, such proceedings will be stayed until the foregoing requirements of this Rule 10.19 (C) are satisfied).
- (D) In any arbitration proceedings commenced under this Rule 10.19, the factual findings of the ODC (including the findings in respect of the occurrence or non-occurrence of a Failure to Perform or a Force Majeure Event) will not be subject to dispute, and in considering the matter the arbitration panel will consider such findings to have been agreed and stipulated by the Clearing Members.

- (E) The arbitration will be conducted in accordance with, and governed by, the Clearing House arbitration rules. The chairman of the Clearing House Board, or his designee, shall appoint an arbitration panel composed of three (3) members of the Clearing House, at least one (1) of whom shall be a member of the Clearing House Board. In appointing members of the arbitration panel the chairman of the Clearing House, or his designee, shall have regard to the experience and qualifications required for the ODC Panellist in Rule 10.17(F).
- (F) There shall not be pending simultaneously arbitral proceedings under Rule 10.12(E) and Rule 10.19 with respect to the same underlying claim(s). Accordingly, no Customer shall commence any arbitration proceedings under Rule 10.12(E) if proceedings under this Rule 10.19 in respect of the same underlying claim(s) have already been commenced and in the event that subsequent to the institution of proceedings under this Rule 10.19, proceedings are commenced with respect to the same underlying claim(s), then the proceedings under Rule 10.12(E) will be stayed insofar as they relate to the same underlying claim(s) at issue in the proceedings under this Rule 10.19.
- (G) In the event that proceedings have been commenced with respect to the same underlying claim(s) under Rule 10.12(E) and this Rule 10.19, and those proceedings have been stayed in accordance with either Rule 10.12(E)(3) or Rule 10.19(F), then the decision of the arbitration panel under this Rule 10.19, with respect to the same underlying claim(s), shall be final and following the determination of the arbitration panel under this Rule 10.19, Customers shall be prohibited from commencing or continuing arbitral proceedings in respect to the same underlying claim(s) under 10.12(E).

#### **10.20 Taxes, Duties and Imposts**

- (A) All taxes, duties and other impost (other than those levied on the Vessel) in respect of any Oil sold under this Chapter 10 in the country in which the Loading Port is situated, shall be for the account of the Selling Customer other than value added tax, goods and services tax or similar multi-stage consumption tax as the Buying Customer is able to recover.
- (B) All other such charges shall be for the account of the Buying Customer.

#### **10.21 Applicable Law**

This Contract shall be governed by and construed in accordance with English law.

#### **10.22 Appointment of Experts**

- (A) Where pursuant to any provisions of the Physical Delivery Procedures a matter is required to be determined by an expert, the expert shall be a person qualified by the possession of expert knowledge for the determination of the matter in question. The expert shall be appointed by agreement between the Selling Customer and the Buying Customer, or in default of such agreement, by the president for the time being of the Energy Institute in the United Kingdom.
- (B) The Selling Customer and the Buying Customer shall furnish the expert with all written or oral information that the expert may reasonably require for his determination.
- (C) The cost of the services of the expert, if appointed, shall be shared equally between the Selling Customer and the Buying Customer.

#### **10.23 Limitation of Liability**

Pursuant to this Chapter 10, neither the Clearing House nor the Exchange shall have any liability in respect of or in connection with placing of Oil in Vessels and the transport of Oil in Vessels, howsoever caused. Accordingly, no claim can be made against either the Clearing House or the

Exchange for any loss or damage incurred or suffered by any person in connection with the placing of Oil in Vessels ortaking delivery of the same, whether or not such loss or damage results from any delay in connection with the loading of any Vessel, any spillage of Oil or any other pollution or any other cause whatsoever, and whether or not as a result of the negligence of the Exchange or Clearing House. Nothing in this Rule 10.23 excludes or limits the liability of the Exchange or Clearing House for death or personal injury caused by its negligence.

#### **10.24 Decisions with Respect to the Loading Port**

Any confirmation in writing received from the Oman Ministry of Oil and Gas confirming any decision or action taken by that Ministry or the Terminal Operator shall be conclusive as to the taking of that decision or action by that Ministry or the Terminal Operator as the case may be.



## Appendix A – Physical Delivery Procedures:

In these Physical Delivery Procedures, the following additional definitions shall apply:

**Buyer** means the Buying Customer.

**Cargo** means the total quantity of Oil to be lifted by a Vessel, whether or not it is all for the Buyer.

**Layday Notice** means a notice of the actual Laydays that is to be given by the Seller as provided in Paragraph 3(3).

**Loading Schedule** means the schedule prepared by the Terminal Operator specifying the date on which each Parcel is intended to be made available for delivery at the Loading Port during the Delivery Month and the Parcel Reference Number allocated to each Parcel.

**NOR** means a notice of readiness given by a Vessel that it is ready to take a Parcel from the Loading Port.

**Parcel** means a specified volume of Oil intended to be made available for loading at the Loading Port during the Delivery Month in accordance with the Loading Schedule.

**Parcel Reference Number** means, in relation to each Parcel, the number allocated by the Terminal Operator to that Parcel as shown by the Loading Schedule.

**Primary Supplier** means any person to whom, in relation to a particular Delivery Month, Oil is allocated as that person's equity entitlement under the applicable Oil production allocation.

**Scheduled Day** means, in relation to each Parcel, the day shown in the Loading Schedule as the day on which that Parcel is intended to be made available for loading.

**Seller** means the Selling Customer.

**Seller's Suppliers** means any person being a direct or indirect source of supply for the Seller.

Any reference to a Paragraph is, unless the context otherwise requires, a reference to a paragraph of these Physical Delivery Procedures.

### **1. METHOD AND RATE OF SUPPLY**

The Oil shall be supplied by the Seller to the Buyer, free of any expense, in bulk F.O.B. Vessels provided or procured by the Buyer at the Loading Port.

### **2. MEASUREMENT, SAMPLING AND TESTING**

- (1) The quantity and quality of the Oil in each Cargo shall be determined by measurement, sampling and testing in the manner customary at the Loading Port and shall include testing that enables a net quantity to be calculated. The Seller shall request the Seller's Suppliers to prepare and sign certificates as to the quantity and quality of the Oil loaded upon completion of loading of the Cargo. The Seller shall notify the Buyer by e-mail, telex, cable or fax of the quantity and quality recorded on such certificates as soon as possible after completion of loading of the Cargo.

The results of measurement, sampling and testing shall, for the purposes of this Chapter 10, be treated as conclusive as to the quantity and quality loaded. However, the conclusiveness of the

results so far as they relate to the quantity and quality loaded may be displaced to the extent that it can be reasonably shown that the results are incorrect.

- (2) Where permitted by the Seller's Suppliers, the Buyer may appoint a representative (the **Representative**) acceptable to the Seller and the Seller's Suppliers to assist in the supervision of and to inspect the loading of each Cargo. If such representative is appointed, the quantity and quality of the Oil as jointly ascertained by the Representative and the Seller's Suppliers shall be the quantity and quality for the purpose of the certificate(s). If any difference arises between the Representative and the Seller's Suppliers with regard to the loaded quantity and quality, it shall be settled by an expert appointed under Rule 10.22. The decision of such expert shall be final and binding upon the Parties save for fraud and manifest error; but pending such decision, the quantity and quality as ascertained by the Seller's Suppliers shall be used for the purpose of the e-mail, telex, cable or fax referred to in Paragraph 2(1).
- (3) Unless otherwise specifically agreed, all costs incurred by the Buyer in respect of the Representative shall be borne by the Buyer and demurrage resulting from any delays occasioned by such inspection shall be for the sole account of the Buyer.
- (4) A sufficient quantity of the relevant representative samples shall be correctly taken at the Loading Port and kept in accordance with internationally recognised methodology and practice.

### **3. LAYDAYS AND TANKER NOMINATION PROCEDURE**

#### **(1) Fixing Laydays**

The Laydays applicable to each quantity of Oil which the Seller is to deliver shall be determined as provided under this Paragraph 3. Unless this Paragraph 3 provides otherwise the Laydays shall be:

- (i) the Scheduled Day; and
- (ii) the day after the Scheduled Day.

#### **(2) Buyer's Preferred Laydays**

(i) From the first (1st) Singapore Business Day of the Prior Month, but no later than the tenth (10th) day of the Prior Month (or if the 10th day falls on a non-Singapore Business Day, then by 17:00 (Singapore time) on the preceding Singapore Business Day), the Buyer shall notify the Seller of the dates preferred by the Buyer as Laydays. Thereafter the Buyer may revise its previous notification of preferred dates by so notifying the Seller by not later than the tenth (10th) day of the Prior Month (or if the tenth (10th) day falls on a non-Singapore Business Day, then by 17:00 (Singapore time) on the preceding Singapore Business Day).

(ii) If the Buyer intends to co-load the Oil and other crude oil at the Loading Port into the same Vessel or to split any portion of the matched quantity, the Buyer shall notify the Seller of this when giving notice under Paragraph 3(2)(i) above. The Seller may accept any number of Parcels as notified by the Buyer. However, the Buyer may notify the Seller and the Seller is obliged to accept, without charge, such notifications consistent with the following table:

Matched Quantity/Barrels of Oil	Number of Parcels
1,000 – 500,000	Up to 2
5010,0004 – 1,000,000	Up to 3
1,0010,0004 – 1,500,000	Up to 4
1,5010,0004 – 2,000,000	Up to 5
2,0010,0004 – 2,500,000	Up to 6
2,5010,0004 – 3,000,000	Up to 7
3,0010,0004 – 3,500,000	Up to 8
3,5010,0004 – 4,000,000	Up to 9

This principle shall be applied for any larger positions matched for delivery as per the above table.

(iii) The Seller must promptly notify the Seller's Suppliers of the dates notified by the Buyer under Paragraph 3(2)(i) above and any notification given to the Seller under Paragraph 3(2)(ii) above.

(iv) The Seller shall be obliged to deliver Oil subject only to the acceptance by the Terminal Operator, consistent with the Buyer's notification as per Paragraph 3(2)(i) and Paragraph 3(2)(ii) above.

(v) In the event that the Buyer fails to notify the Seller of any preferred Laydays under Paragraph 3(2)(i) above, the Seller will notify the Buyer of its failure to do so, and the Seller will notify the Seller's Suppliers of its preferred Laydays, in order to fulfil the Seller's obligations to the Seller's Suppliers. Failure of the Buyer to notify any preferred Laydays to the Seller shall not excuse or reduce any of the Buyer's obligations under the Rules.

### (3) Notification or Agreement of Actual Laydays

If the Seller is a Primary Supplier and the Contract is the Seller's first sale of the Oil (a **First Primary Sale**) then the Seller must give the Buyer the Layday Notice by 17:00 (Singapore time) on the next Singapore Business Day following after the Loading Schedule publication date. If the Seller is not a Primary Supplier and the Contract is not a First Primary Sale, then the Seller must give the Buyer the Layday Notice within one (1) business hour after the time the Seller received notice of the Laydays from the Seller's Suppliers and by no later than 18:00 (Singapore time) on the fifteenth (15th) day of Prior Month (or, if that day is not a Singapore Business Day then by 18:00 (Singapore time), on the preceding Singapore Business Day). The Seller must give the Buyer the Layday Notice irrespective of whether the dates to be notified as the actual Laydays are the same as any of the preferred dates notified by the Buyer under Paragraph 3(2)(i) above. If the Seller does not give a Layday Notice in accordance with this Paragraph 3(3), then the Seller must give the Layday Notice within one (1) business hour after the time the Seller received notice of the Laydays from the Seller's Suppliers.

### (4) Late Layday Notice(s): Limitation of Seller's Remedies

If the Layday Notice is received by the Buyer later than the time provided for under Paragraph 3(3), no such losses, costs and expenses as are described in Paragraph 3(10) below shall be reimbursable by or otherwise recoverable from the Buyer (and shall be borne and paid exclusively by the Seller) unless and to the extent that they result from failure by the Buyer to comply with the requirements of the proviso to Paragraph 3(5)(iii) below.

**(5) Continuance of Buyer's Obligations Despite Late Layday Notice(s)**

This Paragraph 3(5) applies if any Layday Notice is received by the Buyer later than the time provided for under Paragraph 3(3) above.

(i) Late receipt by the Buyer of the Seller's Layday Notice shall not constitute or be treated as a breach of the Seller's obligations entitling the Buyer to treat any Physical Contract as having been repudiated by the Seller, and the Buyer expressly waives, relinquishes and foregoes any such entitlement.

(ii) The Buyer further agrees expressly that, subject as provided below, the Buyer will continue to observe and perform all of the Buyer's duties and obligations under this Chapter 10 in the like manner and to the like extent as would be applicable if the Layday Notice had not been given later than required under Paragraph 3(3).

(iii) For the purpose of sub-Paragraph (ii) above, any failure by the Buyer to nominate a Vessel within any of the times provided for under this Paragraph 3, or to procure the Vessel to arrive or tender an NOR within the Laydays shall not constitute and shall not be treated as a breach of the Buyer's duties and obligations in relation to such matters, provided that the Buyer shall have (a) complied with the requirements of Paragraph 3(6) below; (b) nominated a Vessel in the least time reasonably practicable after receipt of the Seller's notification of the Laydays; and (c) taken all steps reasonably practicable in the circumstances to cause the Vessel to proceed to and arrive at Loading Port within, or as close as reasonably practicable to, the time at which it ought to have done so if the Layday Notice had been given within the time provided for under Paragraph 3(3) and thereafter proceed diligently with the receipt and loading of the Oil as provided in sub-Paragraph (iv) below but in any event within the Delivery Month.

(iv) The provisions of sub-Paragraphs (i) and (ii) above shall apply subject to and without prejudice to the Buyer's right and entitlement to exercise all such remedies (if any) as may be or become exercisable by the Buyer in all the circumstances (with the exception of any right or entitlement which may have been available to the Buyer but for the foregoing provisions of this Paragraph 3(5)).

**(6) Duty of Buyer in Absence of Layday Notice**

If, by 18:00 (Singapore time) on the fifteenth (15th) day of Prior Month, the Buyer has not received the Seller's Layday Notice, the Buyer shall forthwith; (a) notify the Seller and (b) notify the Terminal Operator and furnish the Terminal Operator with the name of the Seller (if known).

**(7) Contents of Layday Notices**

Each Layday Notice must specify the following:

- (i) the Parcel Reference Number(s) applicable to the Parcel(s) intended to comprise the Oil;
- (ii) the quantity of each Parcel;
- (iii) the Laydays applicable to each Parcel;
- (iv) except in the case of a First Primary Sale, the date and time of day when the Seller received notice from the Seller's Suppliers; and
- (v) the date and time of day when the Seller's notice was given to the Buyer.

(8) **Communication of Layday Notices, etc.**

(i) All Layday Notices must first be given orally by the Seller to the Buyer and promptly confirmed by e-mail or fax.

(ii) Each Party must ensure that appropriate facilities and sufficient authorized personnel are available and ready to receive and pass Layday Notices and all other pertinent information during business hours on Singapore Business Days.

(iii) Additionally, if the Seller is purchasing the Oil from, or the Buyer is selling the Oil to, a third party, each Party must pass on as expeditiously as possible any communication received by it under this Chapter 10 and which it is contractually bound to communicate to such third party.

(9) **Large Cargoes**

In respect of Cargoes of one million, five hundred thousand and one (1,500,001) Barrels or more, the Parties understand that the Terminal Operator may impose a shorter range of Laydays than Paragraph 3(1) provides and such other special conditions as the Terminal Operator may reasonably require given the size of the Cargo and the loading facilities and conditions at Loading Port, and the Buyer agrees to comply with such shorter range of Laydays and such other special conditions imposed by the Terminal Operator.

(10) **Buyer's Responsibility**

Once a lifting programme has been determined in accordance with Paragraphs 3(1) to 3(9), the Buyer shall be held fully responsible for any problems arising from its failure to take a Parcel on the Laydays or otherwise failing to fulfil its programme or any of these nomination procedures, and shall be liable to compensate the Seller for any loss, cost or expense arising thereby.

(11) **Delivery Month**

For the avoidance of doubt, no change in the price payable for a Parcel of Oil shall result if either the date of the bill of lading is outside the Delivery Month or if any of the Oil in a Parcel is loaded outside the Delivery Month.

(12) **Right to Refuse Nominated Tankers**

The Buyer understands and agrees that the Terminal Operator shall have the right to refuse to accept nominated tankers if, at the Terminal Operator's sole discretion, the Terminal Operator determines that such nominated tanker:

(i) does not comply with the Terminal Operator's tanker safety regulations; or

(ii) is not suitable to load at the Loading Port.

(13) **Buyer's Nomination**

The Buyer's nomination shall be consistent with the Loading Port authority requirements and shall include, but shall not be limited to, the Vessel's name, flag, crew nationality, capacity, length, beam, summer deadweight and draught together with the quantity and quality of the grade(s) of Oil to be loaded inclusive of the operational tolerance requirement, estimated date of arrival of the Vessel at Loading Port, the Vessel's agent, the Parcel Reference Number notified by the Seller to the Buyer as being applicable to the Oil, full instructions regarding the Vessel, the makeup and

disposition of bills of lading and other documents and orders for port(s) of discharge, and the destination of the crude oil Cargo nominated.

(14) **Firm Tanker Nominations**

Nominations quoted (to be nominated) shall be replaced by firm tanker nominations for the same quantities with the same accepted date range not less than five (5) days before the beginning of the first day of the accepted date range (or if the fifth (5th) day falls on a non-Singapore Business Day, then by 17:01 (Singapore time) on the preceding Singapore Business Day).

(15) **Vessel Substitution**

The Buyer, with the Seller's prior agreement, may, or if necessary to perform their obligations hereunder must, substitute any Vessel by another Vessel which is similar in all material respects to the Vessel so replaced and otherwise complies with all requirements of the current tanker nomination procedures issued by the Terminal Operator relating to the lifting of the Cargo. The notice of the substitution and of the estimated time of arrival of the substitute tanker shall be given not less than five (5) days prior to the first day of the accepted date range for the originally nominated tanker (or if five (5) days prior falls on a non-Singapore Business Day, then by 17:01 (Singapore time) on the preceding Singapore Business Day). The Buyer may also, with the Seller's prior written agreement and by giving the Seller reasonable notice, amend in other respects any Vessel nomination or series of Vessel nominations provided that the expected date of arrival of the Vessel remains within the Laydays allocated to the Buyer's nomination in accordance with this Paragraph 3 and such nominations otherwise comply with all requirements of the current tanker nomination procedures issued by the Terminal Operator relating to the lifting of this Cargo. If such amendment is rejected by the Seller, the Parties shall negotiate a mutually acceptable alternative Vessel nomination. The Buyer shall not, unless otherwise agreed, be relieved of their responsibility to perform the agreed lifting within the accepted loading date range.

(16) Any substitution other than as described above shall be considered a new nomination and require fresh acceptance by the Seller. Cancellation of a Vessel shall be notified to the Seller in writing or by telex not less than five (5) days before such Vessel's first day of the accepted date range at Loading Port (or if the fifth (5th) day falls on a non-Singapore Business Day, then by 17:01 (Singapore time) on the preceding Singapore Business Day). Cancellation will require that the Buyer nominate a substitute Vessel. In case of cancellation, if the Buyer fails to nominate a substitute Vessel and, for operational reasons, the Seller has to make alternative arrangements for disposal of the nominated volume, all direct associated costs will be for the Buyer's account provided Seller has made all reasonable efforts to mitigate such costs.

(17) Documentation requirements for each Vessel shall be notified to the Seller in writing or by telex at least five (5) days in advance of the date of arrival (or if the fifth (5th) day falls on a non-Singapore Business Day, then by 17:01 (Singapore time) on the preceding Singapore Business Day) and not later than five (5) days prior to the start of the first day of the accepted date range. In addition, the Seller shall copy the Exchange on these documentation requirements between it and the Seller's Suppliers.

(18) **Buyer's Warranties**

The Buyer hereby warrants and undertakes that:

(i) they are familiar with the latest vessel size restrictions, including but not limited to, deadweight, draught, beam and overall length limitations of the Loading Port and will not nominate a Vessel exceeding such limitations;



(ii) they are familiar with, and shall cause the Vessel to comply with, all applicable regulations in force at the loading port, including, but without limitation, those relating to fires on board vessels; and

(iii) they shall procure that each Vessel nominated hereunder shall, at the time of loading:

(a) comply with all applicable rules, regulations and directions of governmental, local and port authorities (and of the Loading Port) and shall conform in all respects to all relevant international regulations and agreements;

(b) have hull, machinery, boilers, tanks, equipment and facilities which are in good order and condition, in every way fit for the service required and fit to load and carry the Cargo specified; and

(c) have a full and efficient complement of master, officers and crew.

If the Buyer's Vessel does not meet any of the requirements set out in (a), (b) and (c) above, the Buyer recognises that the Terminal Operator may refuse to berth or load or continue to load the Vessel with the scheduled loading.

(19) Should the Buyer fail to load the contractual quantity of the scheduled loading, due to (i) the Buyer's withdrawal of any Vessel, (ii) the arrival of any Vessel at the Loading Port after the last Layday or (iii) rejection of a Vessel by the Terminal Operator as a result of it not meeting the requirements of Paragraph 3(18), the Seller shall be indemnified by the Buyer for any and all costs, damages or expenses incurred by the Seller as a result of the Buyer's failure to load the contractual quantity due to any of the above reasons and for all payments required to be made by the Seller to the Seller's Suppliers for failing to take delivery of the volume of Oil due to any of the above reasons and for all additional costs, damages or expenses incurred by Seller in defending any such claims or in avoiding the requirement to make such payments.

(20) The Buyer warrants and undertakes to the Seller that (for each Vessel nominated to carry a Cargo) the Vessel is owned or demise chartered by a member of the International Tanker Owners Pollution Federation Limited. The Buyer shall exercise reasonable efforts to ensure that:

(i) the Vessel carries on board a valid certificate of insurance as described in the 1969 Civil Liability Convention for Oil Pollution Damage and the International Convention on Civil Liability for Oil Pollution Damage 1992; and

(ii) the Vessel has in place insurance cover for oil pollution no less in scope and amounts than the highest available under the Rules of P&I Clubs entered into the International Group of P&I Clubs.

(21) The Seller and the Buyer shall copy the Exchange and their respective Clearing Members on all notifications and other correspondence pursuant to this Paragraph 3.

#### **4. LOADING CONDITIONS**

(1) The Buyer shall give the Seller, with a copy to the Exchange and the Buyer Clearing Member, not less than five (5) days before the Scheduled Day with respect to the Parcel, full instructions consistent with the Loading Port regulations regarding the loading of each Vessel and the making up and destination of documentation covering the Cargo(s). The Seller shall use reasonable endeavours to arrange for such instructions to be carried out but they shall not be obliged to arrange for an instruction to be carried out which is inconsistent with any provision, expressed or implied, in this Chapter 10. In addition, the Seller shall copy the Exchange on these documentation requirements between it and the Seller's Suppliers.

- (2) The Buyer shall arrange for each Vessel to give to the Seller, any other person nominated by the Seller, and the Exchange its estimated time of arrival at the Loading Port in such manner and at such intervals prior to arrival as required by the Loading Port authorities and the Seller.
- (3) The Seller shall provide or shall cause to be provided, free of charge, a berth or berths that the Vessel can safely reach and leave and at which she can lie and load always safely afloat. All port costs, including the expense, if any, of shifting berth at the Loading Port (unless such shift is for the Seller's purposes), shall be for the Buyer's account.
- (4) The Buyer agrees that it is familiar with the current Crude Lifting Procedures and agrees that these Crude Lifting Procedures, including any subsequent amendments relevant to this Cargo, shall govern the lifting of the Cargo. The Buyer agrees to comply with all of the obligations under the Crude Lifting Procedures related to the Vessel or the obligations of the Buyer thereunder.

## **5. ISPS COMPLIANCE**

- (1) The Buyer shall procure that the Vessel shall comply with the requirements of the ISPS Code.
- (2) The Buyer shall procure that the Vessel shall when required submit a Declaration of Security (DoS) to the appropriate authorities prior to arrival at the Loading Port.
- (3) Notwithstanding any prior acceptance of the Vessel by the Terminal Operator, if at any time before the passing of risk and title the Vessel ceases to comply with the requirements of the ISPS Code:
  - (i) the Terminal Operator shall have the right not to berth such nominated Vessel and no demurrage resulting thereby shall be for the account of the Seller; and
  - (ii) the Buyer shall be obliged to substitute such nominated Vessel with a Vessel complying with the requirements of the ISPS Code.
- (4) The Seller shall procure that the Loading Port shall comply with the requirements of the ISPS Code.

## **6. DESTINATION RESTRICTIONS**

The Buyer recognises that the Seller cannot cooperate with, agree to or comply with any terms or requests, including documentary requests, which are prohibited under the laws applicable to the Seller or under United Nations decisions.

Appendix B – Letter of Indemnity:

FROM: (Seller) [and (Seller's Bank)]

TO: (Buyer)

IN CONSIDERATION of your agreeing to pay for the cargo of

..... Barrels of

..... (type of crude oil and/or product)

which sailed from (Port) .....

on (vessel and date) .....

loaded with such cargo when the (required document(s)) .....

.....

for all required documents in relation to such cargo have not been delivered to you at the time payment is due under our agreements.

The Seller hereby warrants to you that at the time property passed as specified under the terms of the above contract we had the right to sell the said cargo to you and we have unencumbered title to the said cargo.

We [jointly and severally] hereby irrevocably and unconditionally undertake to indemnify you and hold you harmless against any claim made against you by anyone as a result of breach by us of any of our warranties as set out above, and all losses, costs (including, but not limited to costs as between attorney or solicitor and own client), damages, and expenses which you may suffer, incur or be put to which are not too remote as a result of our failure to deliver the above document(s) in accordance with the contract.

This indemnity shall terminate on delivery by the Seller of the aforesaid document(s) and their acceptance by you.

This indemnity shall be governed by and construed in accordance with English law and all disputes, controversies or claims arising out of or in relation to this indemnity or the breach, termination or validity hereof shall be decided by the English courts.