



Complaints Resolution Procedures

ICE Futures Europe

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Complaints Resolution Procedures

1. General Introduction

- 1.1 As a recognised investment exchange under the Financial Services and Markets Act 2000 (“FSMA”), ICE Futures Europe (the “Exchange”) must put in place effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or its failure to perform, any of its regulatory functions (any such matter, a “Complaint”). These arrangements must include procedures for a Complaint to be fairly and impartially investigated by a person independent of the Exchange (the “Investigator”) and for the Investigator to report on the result of his investigation to both the Exchange and the person making the Complaint (“Complainant”). The arrangements must also confer on the Investigator the power to recommend, if appropriate, that the Exchange: (i) makes a compensatory payment to the Complainant; and/or (ii) remedies the matter complained of.

As the administrator of a registered commodity benchmark under Regulation (EU) 2016/1011 (the “Benchmarks Regulation” / “BMR”) the Exchange must have in place and publish and complaints handling policy setting out procedures for receiving, investigating and retaining records concerning complaints made about an administrator’s calculation process.

- 1.2 The Exchange has adopted these Complaint Resolution Procedures. In General terms, the key stages of the Complaints Resolution Procedures are:
- (a) an Eligible Complaint (as defined in section 2) must be submitted in writing;
 - (b) at first instance, the Exchange will investigate the Complaint and attempt to resolve it. If the Complainant is dissatisfied with the Exchange’s response or proposals to redress the Complaint, the Complainant may request that the Exchange refer the Complaint to an independent Complaints Commissioner (the “Commissioner”) appointed by the Exchange;
 - (c) the Commissioner, if he determines that the referral is of an Eligible Complaint, will investigate the matter in accordance with the Commissioner’s Terms of Reference;
 - (d) following due consideration, the Commissioner will produce a report outlining his recommendations which will be copied to the Exchange and the Complainant; and

- (e) if the Commissioner recommends a compensatory payment and/or remedial action, the Exchange will consider and may act upon such recommendation.
- 1.3 There is no restriction on who can bring a Complaint, although any Complaint must be an Eligible Complaint in order to be capable of being handled in accordance with these Complaints Resolution Procedures.
- 1.4 These Complaints Resolution Procedures apply in relation to ICE Futures Europe Members.
- 1.5 These Complaints Resolution Procedures constitute the “Complaints Resolution Procedure” as defined in the ICE Futures Europe Regulations (the “Regulations”) and are subject to the Regulations. These Complaints Resolution Procedures, and all non-contractual obligations arising out of or in connection with them, are governed by and will be construed in accordance with English law.

2. Eligible Complaints

“**Eligible Complaints**” are Complaints against the Exchange arising in connection with:

- (a) the manner in which it has performed, or its failure to perform, any of its regulatory functions as defined by s.291(3) of FSMA or any relevant succeeding legislation; or
- (b) whether a specific ICE Futures Brent Index benchmark calculation is representative of market value, proposed benchmark calculation changes, applications of methodology in relation to a specific benchmark calculation and other editorial decisions in relation to the benchmark calculation processes, pursuant to the BMR or any relevant succeeding legislation.

2.1 A Complaint will not be an Eligible Complaint if it

- (a) relates to:
 - i. the Exchange’s relationship with its employees;
 - ii. the content or drafting of the Exchange’s Regulations; or
 - iii. a decision against which the Complainant has the right to appeal under Rule E.4.14 – E.4.18 of the Regulations;
- (b) is in any way connected with or arising out of a contractual or commercial dispute involving the Exchange and is not connected in any way with the manner in which the Exchange has performed or its failure to perform any of its regulatory functions;
- (c) is made outside the period of 12 months from the date on which the Complainant becomes aware of the circumstances giving rise to the Complaint unless the Complainant can show reasonable grounds for delay; or
- (d) is of a frivolous or vexatious nature or amounts to an abuse of process.

2.2 A Complaint connected with, or which arises out of, any form of continuing action by the Exchange under Section E of the Regulations will not be investigated by the Commissioner until the action has been completed.

3. Making a Complaint

- 3.1 A Complaint must be made in writing, marked “Complaint Resolution Procedure” and shall be sent only to:

Complaints Handling Officer
2nd Floor
Sancroft
Rose Street
Paternoster Sq.
London
EC4M 7DQ
United Kingdom

or by email to ICEFuturesEurope-Complaints@theice.com

- 3.2 The Complaint must be signed on behalf of the Complainant, and in any case where it is made by a company, partnership or other body corporate, must be signed by a director or equivalent officer with appropriate authority.
- 3.3 If a Complaint is made orally, the Complainant will be required to put its Complaint in writing. The Exchange will not be obliged to investigate any Complaint unless and until the Complainant has submitted a written Complaint in accordance with these Complaints Resolution Procedures.
- 3.4 The written Complaint should include sufficient information to allow the Exchange to identify properly the Contracts or other matters to which the Complaint relates, the activities complained of, and the basis for any alleged loss or other detriment caused to the Complainant. If insufficient information is provided, the Exchange may request further information and the Complaint will not be investigated further until such information is provided.
- 3.5 The Exchange’s and Commissioner’s costs and expenses in relation to any Complaint will be paid by the Exchange. The Exchange will not seek to recover any costs and expenses from Complainants in relation to any Complaint unless it can be shown that the Complaint was frivolous and vexatious.
- 3.6 If the Exchange considers, at its discretion, that the issues raised by any Eligible Complaint could be resolved through an alternative process to an investigation including, mediation or among other things, conducting meetings or corresponding with the Complainant and providing further information, assurances or undertakings, the Exchange will have four weeks from the date of receipt of the Eligible Complaint to see if the Complaint can be resolved by that approach. If the Complaint has not been resolved within those four weeks, then the Eligible Complaint will proceed as set out in 4 below.

4. Investigation of Complaints by the Exchange

- 4.1 The Exchange will acknowledge the Complaint within 5 Business Days of receipt (other than in the cases where the process described in 3.6 takes place when the period will end 5 Business Days after the end of the 4 week period specified in 3.6) and include a copy of these Complaints Resolution Procedures and details of the Commissioner in its acknowledgement.
- 4.2 Where the Exchange considers it has received a Complaint which is not an Eligible Complaint it will inform the Complainant that it proposes not to investigate the Complaint for the reason specified as soon as possible and in any event within 15 Business Days other than in the cases where the process described in 3.6 takes place when the period will end 15 Business Days after the end of the 4 week period specified in 3.6). Within 15 Business Days of receiving such notification, the Complainant may require the Exchange to refer the Complaint to the Commissioner. If the Commissioner considers the Complaint to be an Eligible Complaint, he will require the Exchange to investigate the matter.
- 4.3 Having received an Eligible Complaint, the Exchange will appoint as Investigator a suitably senior member of staff who has not previously been involved in the matter and who is not the subject of the Complaint. The Exchange will notify the Complainant of that appointment, including the name and job title of the Investigator, within 15 Business Days of receiving the Eligible Complaint (other than in the cases where the process described in 3.6 takes place when the period will end 15 Business Days after the end of the 4 week period specified in 3.6).
- 4.4 In considering whether a Complaint made against the Exchange is upheld, the Investigator must consider whether the Exchange's conduct, in relation to its regulatory functions as defined by s.291(3) of FSMA, amounted to:
 - (a) a failure to act fairly;
 - (b) a failure to perform its regulatory functions having regard to all the circumstances of the case;
 - (c) a lack of care or a mistake; or
 - (d) an act of fraud, bad faith or negligence.

If the Investigator finds that the Exchange's conduct did amount to one of the behaviours listed at (a) to (d) above, the Complaint will be upheld in part or in whole. However, if the Investigator does not find that such conduct took place, the Complaint will be rejected.

- 4.5 Where, in the opinion of the Exchange, any Eligible Complaint is connected with or arises out of the same or similar facts or circumstances in respect of which an outstanding or otherwise unresolved Complaint has been made under these Complaints Resolution Procedures, the Exchange may, in its discretion and upon giving notice in writing to any Complainant or Complainants so concerned, join such Eligible Complaints so that they may be addressed in the same investigation and/or any final response. The Exchange will not in such circumstances be required to disclose the identity of a Complainant or facts that in its opinion would be likely to reveal such a person's identity when notifying any individual

Complainant of such a joinder or in the Investigator drafting his report. This paragraph shall not restrain any disclosure by the Exchange under any applicable law.

- 4.6 Where, in the opinion of the Exchange, any Eligible Complaint is connected with or arises out of the same or similar facts or circumstances in respect of which there is an on-going or otherwise unresolved disciplinary matter, investigation, arbitration or court proceedings, the Exchange may, in its discretion and upon giving notice in writing to any Complainant or Complainants, delay consideration of the Complaint until the relevant matter is completed. Within 15 Business Days of any such matter being completed, the Exchange will send written notification to the Complainant that the matter has been completed so that the Complainant can decide whether it wishes the investigation of the Complaint to proceed. The Complainant must notify the Exchange in writing within 15 Business Days of receipt of that notification if it wishes the investigation of the Complaint to proceed.
- 4.7 The Investigator will carry out an initial assessment of the time period that the Investigator considers will be required to complete his investigation. That assessment will consider, inter alia, the scope and complexity of the Complaint, the number of witnesses involved and the scale of any document collection and review. It is expected that the Investigator will produce a report on most Complaints within 12 weeks of the date of the notice of appointment of the Investigator having been sent to the Complainant. Where the Investigator determines that a longer period is required to complete the investigation, the Investigator will notify the Complainant of that longer period within 10 Business Days of the date of the notice of appointment of the Investigator having been sent to the Complainant.
- 4.8 Where the Investigator is not able to complete his investigation within the relevant period of either: (i) 12 weeks; or (ii) any such longer period notified pursuant to paragraph 4.7, he will notify the Complainant no later than two weeks before the expiry of the relevant period and state when he expects to complete his investigation. Upon such notification, the period for the Investigator to complete his investigation may be extended by up to a maximum of a further eight weeks before any Complaint can be referred to the Commissioner.
- 4.9 If the investigation has not been resolved within the relevant period of either: (i) 12 weeks; (ii) any such longer period notified pursuant to paragraph 4.7; or (iii) any period for investigation extended pursuant to paragraph 4.8, the Complainant may request that the Complaint be referred to the Commissioner. The Complainant may either refer the Complaint to the Commissioner directly or require the Exchange to do so. The Complainant's request for referral must include the reasons for requesting referral of the Complaint to the Commissioner, a copy of which must be provided to the Exchange. Within 10 Business Days of being provided with the Complainant's request for referral, the Exchange must either (i) make submissions to the Commissioner, with a copy provided to the Complainant, as to whether the Exchange should be permitted to conclude its own investigation of the Complaint before the Commissioner accepts the referral of the Complaint; or (ii) notify the Commissioner that it does not oppose the referral of the Complaint. Within 10 Business Days of receipt of submissions or notification from the Exchange, the Commissioner will inform the Complainant and the Exchange in writing whether he accepts the referral of the Complaint or defers it to allow the Investigator to complete his investigation, together with the reasons for that decision. Where the Commissioner defers acceptance of the referral, he will designate a date by which the

investigation must be completed. If the investigation is not completed by the designated date, the Complainant may make a further request for referral of the Complaint to the Commissioner which will be subject to the procedure set out in this paragraph 4.9.

- 4.10 Where the Complainant requests that the Complaint is referred to the Commissioner pursuant to paragraph 4.9, the Commissioner will delay consideration of the Complaint for a defined period in order to allow the Investigator to complete his investigation, if informed by the Exchange that: (i) the Complaint arises from any form of continuing action by the Exchange under Section E of the Regulations; (ii) the Complaint shares its subject matter with an investigation, arbitration or disciplinary proceeding which could affect the outcome of the Complaint; [or (iii) the Investigator will be able to complete his report within two weeks of the Complainant exercising its right to require referral of the Complaint to the Commissioner; or (v) it relates to an Event of Default. The Commissioner will notify the Complainant in writing in any case where consideration of the Complaint is to be delayed.
- 4.11 Where the Commissioner does investigate a Complaint in respect of which the Investigator has not completed his report, the Investigator will provide the Commissioner with any existing draft of his report and will cooperate with the Commissioner on the terms of paragraph 7.6.
- 4.12 The Exchange or the Investigator may obtain professional advice in assisting and advising with any Complaint as appropriate. That advice will be solely for the benefit of the Exchange and the Exchange will not be required to waive any legal privilege over that advice.

5. Result of the Investigation

- 5.1 The Investigator will send the Exchange and the Complainant a copy of his report outlining his conclusions, together with any recommendations for remedial action. The remedial action taken may include, but is not be limited to, offering an apology, taking steps to rectify the error, the offer of a compensatory payment on an ex gratia basis, or a combination of the above. If a Complaint is rejected, the Investigator will give his reason for doing so.

6. Referral to the Commissioner

- 6.1 The Complainant must notify the Exchange in writing within 15 Business Days of receipt of the Investigator's report whether the Complainant rejects the Investigator's report and requires that the Complaint be referred to the Commissioner. If the Complainant wishes to refer the Complaint to the Commissioner, the Complainant must state the reason in writing for its continued dissatisfaction and rejection of the Investigator's report.
- 6.2 Failure by the Complainant to make such notification to the Exchange within 15 Business Days will result in the Complaint not being referable to the Commissioner and ceasing to be an Eligible Complaint.
- 6.3 In requiring the Exchange to refer any Eligible Complaint to the Commissioner pursuant to these Complaints Resolution Procedures, the Complainant will be deemed to agree to be bound by and be subject to these Complaints Resolution Procedures and, as a result, accepts that any recommendation made by the Commissioner to the Exchange, if adopted by the Exchange, will be in full and final resolution and settlement of the Complaint and all associated rights and claims. The Complainant therefore accepts and agrees that he cannot use any other dispute resolution procedure whether by arbitration, mediation or court process as provided in any other part of the Rules or Electronic User Agreement.

7. The Commissioner's Investigation

- 7.1 The Commissioner will acknowledge receipt of any Complaint referred to him within 15 Business Days of receipt, giving a proposed timetable for the completion his investigation other than as provided in paragraph 7.2.
- 7.2 Where a Complaint has been referred to the Commissioner pursuant to paragraph 4.2, the Commissioner must determine as soon as practicable, and in any event within 15 Business Days of the referral of the Complaint, whether the Complaint is an Eligible Complaint. If the Commissioner determines that a Complaint is not an Eligible Complaint, he will give notice to the Complainant(s) and the Exchange of his determination.
- 7.3 The Commissioner will produce a final response to the Complaint within 12 weeks of the date of the acknowledgement of receipt of the Complaint having been sent to the Complainant. However, where the Commissioner is unable to complete his investigation within that 12 week period, he will notify the Complainant and state when he expects the investigation will be completed.
- 7.4 In considering whether a Complaint made against the Exchange is upheld, the Commissioner must consider whether the Exchange's conduct, in relation to its regulatory functions as defined by s.291(3) of FSMA, amounted to:
- (a) a failure to act fairly;
 - (b) a failure to perform its regulatory functions having regard to all the circumstances of the case;
 - (c) a lack of care or a mistake; or
 - (d) an act of fraud, bad faith or negligence.

If the Commissioner finds that the Exchange's conduct did amount to one of the behaviours listed at (a) to (d) above, the Complaint will be upheld in part or in whole. However, if the Commissioner does not find that such conduct took place, the Complaint will be rejected.

- 7.5 Where, in the opinion of the Commissioner, any Eligible Complaint referred to him is connected with or arises out of the same or similar facts or circumstances as another Eligible Complaint already referred to him, he may, in his discretion and upon giving notice in writing to any Complainants so concerned, join such Eligible Complaints so that they may be addressed in the same investigation and/or any final response. The Commissioner will not disclose the identity of a Complainant or facts that would be likely to reveal such a person's identity when notifying any individual Complainant of such a joinder or in his drafting of a final response.
- 7.6 The Exchange and the Complainant will each make every effort to provide the Commissioner with all reasonable cooperation, including access to its staff, documents, records and information except where to do so would jeopardise any legal privilege. However, the Exchange and Commissioner will have regard to the confidentiality of information (such as that given to the Exchange under confidentiality arrangements) as outlined in paragraph 11.

- 7.7 The Exchange is not prevented from taking or continuing to take such action, or further action, as it considers appropriate during the investigation by the Commissioner in relation to any matter which is related in any way to a Complaint or Complainant.
- 7.8 If the appointed Commissioner is unable to consider the Complaint due to a conflict of interest, illness or other unavoidable commitments, the Commissioner must nominate an alternate, appointment of which alternate Commissioner is subject to the /Exchange's prior written approval. The Complainant will be informed of any such appointment.
- 7.9 Any alternate Commissioner must himself meet the requirements for being the Commissioner and will be required to be bound by these Complaints Resolution Procedures and to conduct the investigation on behalf of the Commissioner. The alternate Commissioner will have the same powers and rights as the Commissioner and must conduct the investigation in accordance with these Complaints Resolution Procedures.
- 7.10 During the course of his investigation, the Commissioner may:
- (a) permit and/or request both the Complainant and the Exchange to provide appropriate documentation, evidence as well as oral or written submissions in relation to any specific matters that arise in relation to the Complaint;
 - (b) make further requests of all relevant parties and/or take whatever action is considered appropriate which might assist in considering the Complaint and confirming its factual accuracy including, where reasonable and at the /Exchange's expense, appointing or seeking the advice of independent external advisers or experts;
 - (c) require the parties to co-operate; and
 - (d) otherwise, conduct the investigation as he sees fit.
- 7.11 The Commissioner may appoint a person to conduct any part of an investigation on his behalf, but subject to his direction. That person must be independent of the Exchange and Complainant.
- 7.12 The Commissioner will ensure that, before he concludes an investigation and makes a report, any person who may be the subject of criticism in it is given notice of, and the opportunity to respond to, that criticism. The Commissioner must take account of any representations made by such person.

8. Result of the Investigation

- 8.1 The Commissioner must prepare a report on his investigation and send it to both the Exchange and the Complainant, giving reasons for any recommendations made. The Commissioner can recommend that the Exchange takes remedial action including, but not limited to, offering an apology, taking steps to rectify the error, the offer of a compensatory payment on an ex gratia basis, or a combination of the above. The Exchange must inform the Commissioner and the Complainant in writing, within 15 Business Days of receipt of the Commissioner's report, either of any steps it proposes to take in response to the report or giving reasons why it is not carrying out any recommended remedial action.
- 8.2 If the Commissioner upholds the Complaint, the Exchange may, in its discretion, publish part or all of the Commissioner's report on its website or send it to all Members by Circular. Where the Exchange decides to publish part or all of the Commissioner's report, it may, at its discretion, publish only an anonymised version of that report.
- 8.3 The Exchange may, where it considers appropriate to do so, disclose to third parties, such as other Regulatory Authorities, any information which it receives in connection with the Complaint or which is obtained from the Complainant in the course of a subsequent investigation. Such disclosures are subject to Rule A.4 of the Exchange's Regulations.
- 8.4 The Exchange may instigate disciplinary proceedings at any time as a result of the Exchange investigation or matters surrounding any Complaint.

9. Record-Keeping

- 9.1 A copy of all documents and materials relating to Complaints must be sent by the Investigator and the Commissioner to the Exchange. The Exchange will retain such documents and materials for a minimum of ten years.

10. Exclusion of Liability

- 10.1 The Commissioner will not be liable to the Exchange or any Complainant for any loss (direct or otherwise), damage or injury arising from any act, omission or negligence on his part, save in the case of fraud, death, personal injury or any other liability which by law cannot be excluded.

11. Confidentiality

- 11.1 Subject to paragraph 8.3 of the Complaints Resolution Procedures, the Commissioner, the Exchange and any Complainant must each observe the strict confidentiality of the investigation of any Complaint, all information provided (to the extent it has not been made public in the Commissioner's report) and all communications made for the purpose of the investigation subject to Rule A.4 of the Exchange Regulations.