

## **LONDON NOTICE No. 3414**

ISSUE DATE: 30 March 2011  
EFFECTIVE DATE: 1 April 2011

### **LIFFE COMPLAINTS PROCESS**

### **NEW COMPLAINTS OMBUDSMAN ARRANGEMENTS**

#### **Executive Summary**

This Notice informs Members of the appointment of a panel of four LIFFE Complaints Ombudsmen under the auspices of the Centre for Effective Dispute Resolution.

#### **1. Introduction**

- 1.1 Members will be aware that, as part of its process for the investigation of any complaint arising in connection with the performance of, or failure to perform, any of its regulatory functions (“a Complaint”), a Recognised Investment Exchange (“RIE”) such as LIFFE Administration and Management is required by the Financial Services and Markets Act 2000 to make arrangements for Complaints to be investigated by a person independent of the RIE. In the case of LIFFE Administration and Management, that independent person is known as the LIFFE Complaints Ombudsman (“LCO”).
- 1.2 The tenure of the current LCO, Brian Hilton CB, ends on 31 March 2011. This Notice informs Members of the new LCO arrangements, and a small number of consequential, minor amendments to the Complaints Procedures and LIFFE Rules.

#### **2. Appointment of a Panel of Four LIFFE Complaints Ombudsmen**

- 2.1 Following a review of its Complaints process, the Exchange entered into discussions with the Centre for Effective Dispute Resolution (“CEDR”)<sup>1</sup> in order to make use of their expertise in this area. As a result of these discussions, the Exchange has appointed a panel of four LCOs under the auspices of CEDR for the 12 month period from 1 April 2011 to 31 March 2012. The four LCOs are:

Sir Henry Brooke

Dr Karl Mackie

Patrick Sherrington

Lord Woolf

<sup>1</sup> Established in 1990, CEDR is the largest independent, non-profit, alternative dispute resolution organisation in Europe.

Web site: [www.nyx.com/liffe](http://www.nyx.com/liffe)

The **Euronext Derivatives Markets** comprise the markets for derivatives operated by Euronext Amsterdam, Euronext Brussels, Euronext Lisbon, Euronext Paris and LIFFE Administration and Management, referred to respectively as the Amsterdam, Brussels, Lisbon, Paris and London markets. Euronext is part of the NYSE Euronext group.

- 2.2 Only one LCO will be selected to consider a particular complaint, or to consider a particular matter in the case of more than one complaint about a single incident, and the LCO will be chosen from the panel by CEDR. In selecting the appropriate LCO for any given complaint, CEDR will have regard to the LCOs' other commitments and to any potential conflicts of interest as well as to the subject matter of the complaint.

### **3. Amendments to formal documentation**

- 3.1 The revisions to the arrangements for complaints described above require a small number of amendments to the Complaints Procedures and Section 11 of the LIFFE Rules (Rules, Book II) in respect of Complaints, which are detailed in Attachments 1 and 2 respectively.

### **4. Summary of the Complaints process**

- 4.1 Members should note that the revised arrangements described in this Notice do not represent any material change to either the scope or operation of the complaints process. In summary, the process remains as follows:

- (a) a complaint must be submitted in writing by a Member, whether on his own behalf or on behalf of a client, or by the complainant directly if the complainant desires. In communicating a complaint to the Exchange, the complainant should set out the matter in as much detail as possible;
- (b) the Exchange will seek to resolve the complaint without recourse to the LCO. If the complainant is dissatisfied with proposals by the Exchange to resolve the complaint, he may request the Exchange to refer the complaint to the LCO for consideration;
- (c) the LCO will determine whether the complaint concerns a "regulatory function" (complaints in respect of other matters are outside the scope of the LCO scheme) and, if so, will consider the matter. This consideration will be in as much detail as the LCO deems appropriate, and he has powers to require the complainant, the Member and the Exchange to provide such information and attend any hearing as the LCO considers appropriate;
- (d) following the LCO's consideration, he will produce a Report with his recommendations, copies of which will be provided to the Exchange, the complainant and the FSA. The LCO may recommend a compensatory payment and/or remedial action. Thereafter, it rests with the Exchange whether or not to accept the LCO's recommendations; and
- (e) any information provided to the LCO during the process and the subsequent Report of the LCO must remain confidential.

### **5. Additional Information**

- 5.1 Additional information in respect of the four individuals appointed as LCO can be found on the CEDR website at [www.cedr.com/solve/](http://www.cedr.com/solve/).

For further information in relation to this Notice, Members should contact:

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**Amendments to the Complaints Procedures**  
**Additions shown underlined/deletions ~~struck through~~**

## **Complaints Procedures**

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# **LONDON INTERNATIONAL FINANCIAL FUTURES AND OPTIONS EXCHANGE**

## **COMPLAINTS PROCEDURES**

### **1. Introduction**

- 1.1 Regulations made pursuant to the Financial Services and Markets Act 2000 (the “Act”) require the Exchange to maintain effective arrangements for the investigation and resolution of complaints arising in connection with the performance, or failure to perform, any of its regulatory functions.
- 1.2 The Complaints Ombudsman Scheme (the “Scheme”) is set out in section 11 of the Rules. The Scheme has effect from 1 December 2001.
- 1.3 For any complaints in respect of events prior to 1 December 2001, section 11 of the Rules and these procedures shall apply save as for Rule 11.3.6 (a) and procedure 11.2 (a) respectively.
- 1.4 These procedures lay out in more detail the manner in which section 11 will be operated and are promulgated by the Board pursuant to Rule 11.6.1.
- 1.5 With the exception of those terms defined in the Rules from time to time in force which are stated herein to have different meanings for the purposes of these procedures, nothing herein contained shall override any term (expressed or implied) of the Rules and, in the case of any conflict between any provisions of these procedures and the Rules, the Rules shall prevail.

### **2. Scope of the Scheme**

- 2.1 A party directly affected by the way in which the Exchange has carried out, or failed to carry out, its regulatory functions, as defined in section 291(1) of the Act, may bring a complaint under the Scheme.
- 2.2 The Exchange will consider any complaint that meets the requirements of the Scheme and take whatever action to resolve the matter that it thinks appropriate. If the complaint cannot be resolved to the mutual satisfaction of the complainant and the Exchange, the complainant may request that the Membership, Rules and Trading Committee (“MR&T”) refer the complaint to the Complaints Ombudsman. The Complaints Ombudsman will investigate the complaint and, wherever he finds for the complainant, will recommend to MR&T the form of redress that he considers to be appropriate in the circumstances.

### 3. The Complaints Ombudsman

- 3.1 The Exchange has appointed a panel of Complaints ~~Ombudsman~~ ~~Ombudsmen~~ to carry out the functions conferred by the Rules, which have been nominated for the purpose by CEDR. Only one Complaints Ombudsman will assume responsibility in respect of a specific complaint. The Complaints ~~Ombudsman~~ ~~Ombudsmen~~ ~~is-are~~ not ~~an~~ employees of the Exchange and ~~is-are~~ required to act independently of, and without favouring, either the complainant or the Exchange.
- 3.2 The Complaints ~~Ombudsman~~ ~~Ombudsmen~~ ~~is-are~~ appointed for a period of ~~three-one~~ years and may be dismissed from office only if:
- (a) incapacitated by physical or mental illness; or
  - (b) otherwise unfit to discharge the functions of ~~his~~ the office.
- 3.3 In respect of any particular complaint, ~~t~~The Exchange will remunerate the Complaints Ombudsman and will provide him with sufficient resources to equip him with suitable facilities and staff, if so desired by the Complaints Ombudsman. No member of the Complaints Ombudsman's team may be an employee of the Exchange.

### 4. Coverage and scope of the Scheme

- 4.1 The Scheme provides a procedure for enquiring into and, if necessary, addressing complaints arising from the way in which the Exchange has performed, or failed to perform, its regulatory functions. In considering a complaint, the Complaints Ombudsman must consider whether the Exchange's conduct amounted to:
- (a) a failure to act fairly;
  - (b) a failure to perform its regulatory functions within a reasonable time;
  - (c) a lack of reasonable care; or
  - (d) bad faith,
- which has had a significant impact upon the complainant.
- 4.2 To be eligible to make a complaint under the Scheme a person must be seeking a remedy (which, for this purpose, may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the Exchange's actions or inaction.

### 5. Complaints in writing

- 5.1 Complaints shall be submitted to the Market Secretary by a member, whether on his own behalf or on behalf of his client, or by the complainant directly if

the complainant desires. Any complainant complaining orally will be required to confirm the complaint in writing and the Exchange will not normally investigate a complaint until the complainant has done so.

5.2 In submitting a complaint, the complainant shall explain:

- (a) how the alleged misconduct by the Exchange arose from the way in which the Exchange has performed, or failed to perform, its regulatory functions;
- (b) why the alleged misconduct amounts to one of the four categories in procedure 4.1 above; and
- (c) how it has resulted in a significant impact upon the complainant.

6. **Time limit**

- 6.1 Complaints should be made within twelve months of the date of the occurrence of the circumstances giving rise to the complaint. Complaints made later than this will only be investigated under the Scheme if the complainant can show reasonable grounds for the delay.

7. **Cost**

- 7.1 The Exchange will not make any charge to complainants in relation to the Scheme, and the Complaints Ombudsman's costs will be paid by the Exchange.

8. **The Exchange's initial response to complaints**

- 8.1 The Exchange will acknowledge a written complaint within five working days of receipt. Where the complainant is not a member, the Exchange will communicate with the complainant through the complainant's member unless the complainant specifically requests otherwise in writing to the Market Secretary.

9. **Consideration of complaints by the Exchange**

- 9.1 The Exchange will consider the complaint in a timely manner. If the Exchange, through MR&T where relevant, concludes that a complaint is well-founded, it will inform the complainant what it proposes to do to remedy the complaint.
- 9.2 Complainants who have failed to have their complaint resolved to the mutual satisfaction of themselves and the Exchange may request in writing to the Market Secretary within 90 days of the Exchange's determination that the complaint be referred by MR&T to the Complaints Ombudsman in accordance with section 11 of the Rules and these procedures.

9.3 The Exchange will send the complainant under a covering letter a copy of section 11 of the Rules and these procedures explaining how the Scheme works. The complainant must sign and return the covering letter, agreeing to be bound by section 11 of the Rules and these procedures, before MR&T refer the complaint to the Complaints Ombudsman. The Complaints Ombudsman will be selected by CEDR for this purpose from the panel of persons appointed by the Board.

9.4 Where a complaint is referred to ~~the~~ the Complaints Ombudsman by MR&T, the Exchange will ensure that the Complaints Ombudsman, the complainant and the member (as appropriate) receive a copy of:

- (a) the written complaint; and
- (b) any other correspondence or other material exchanged between the Exchange and the member or complainant after the written complaint was made.

#### 10. Conduct of investigations by the Complaints Ombudsman

10.1 The Complaints Ombudsman shall not investigate any complaint which is outside the scope of the Scheme (for example, because it does not arise in connection with the Exchange's regulatory functions). After considering any representations from the complainant, the member and the Exchange, the Complaints Ombudsman shall determine in his absolute discretion whether the complaint falls within the scope of the Scheme and, if so, whether to conduct an investigation.

10.2 CEDR will select the ~~Where the~~ Complaints Ombudsman ~~having regard to any potential conflicts of interest and his other commitments.~~ However, in the event that the Complaints Ombudsman becomes ~~is~~ unable to consider a complaint adequately because of a conflict of interest ~~that arises~~, illness or other commitments, CEDR will select an alternative Complaints Ombudsman. MR&T will appoint a person, independent of the Exchange, to perform the functions of the Complaints Ombudsman pursuant to section 11 of the Rules in connection with the complaint in question.

10.3 Subject to the Rules and these procedures, the Complaints Ombudsman may conduct an investigation in whatever manner he thinks appropriate including obtaining, at the Exchange's expense, such external resources as the Complaints Ombudsman considers reasonable. In considering what is appropriate, the Complaints Ombudsman will take into account the need to ensure that complaints are dealt with fairly, quickly and cost effectively. In performing his functions in accordance with the Scheme, the Complaints Ombudsman must at all times act independently of the Exchange.

10.4 The Complaints Ombudsman may appoint a person to conduct any part of an investigation on his behalf, but subject to his direction. That person must not be an officer or employee of the Exchange and must be independent of the Exchange.



- 10.5 Under Rule 11.3.3, both the Exchange and the complainant must co-operate with the Complaints Ombudsman and provide information requested by the Complaints Ombudsman. In particular, the Exchange will deal with the Complaints Ombudsman in an open and co-operative manner including giving access to its staff and relevant information where requested. However, the Exchange may, in giving the Complaints Ombudsman access to relevant information, have regard to the need to maintain the confidentiality of certain kinds of information. This would include, for example, taking appropriate steps to ensure that the identity of an informant is not disclosed or withholding market sensitive information concerning certain trading activity/participants. In any case where the Exchange decides that it should withhold information, it will inform the Complaints Ombudsman of the nature of that information and its reasons for withholding it.
- 10.6 The Complaints Ombudsman may fix a reasonable time limit (which he may extend) for any aspect of the consideration of a complaint by him.
- (a) If the Exchange fails to comply with a time limit, the Complaints Ombudsman may nonetheless proceed, without delay, with consideration of the complaint.
  - (b) If the complainant fails to comply with a time limit, the Complaints Ombudsman may:
    - (i) nonetheless proceed, without delay, with consideration of the complaint; or
    - (ii) dismiss the complaint in whole or in part.
- 10.7 The Exchange is not, because of any investigation being conducted by the Complaints Ombudsman, prevented from continuing to take such action, or such further action, as it considers appropriate in relation to any matter related to a complaint or a complainant.
- 10.8 The Complaints Ombudsman 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. In addition, the Complaints Ombudsman will give the Exchange and the complainant a reasonable opportunity to comment on any draft report before it is finalised.
11. **Reports on investigations**
- 11.1 The Complaints Ombudsman must report to MR&T, the Financial Services Authority and to the complainant on the results of his investigation, giving reasons for any recommendations he makes.

11.2 The Complaints Ombudsman may, only if the Complaints Ombudsman has found conduct on the part of the Exchange which falls within procedure 4.1, recommend that the Exchange takes either or both of the following steps:

- (a) makes a compensatory payment to the Complainant;
- (b) remedies the matter of complaint.

In deciding whether to make such a recommendation, the Complaints Ombudsman shall consider whether such compensatory payment or remedy is appropriate in the circumstances, including the nature of the Exchange's regulatory functions, the complexity of the subject matter involved at the time of the Exchange's relevant conduct (and hence the reasonableness of the Exchange's performance), any delays that the Complaints Ombudsman considers have been caused by the Exchange or the complainant to his consideration of the complaint, and the Exchange's statutory responsibility to maintain a fair and orderly market.

11.3 The Exchange must, in any case, where the Complaints Ombudsman has recommended that the Exchange takes either of these steps, inform the complainant, within 45 days of the date of the report, of the actions which it proposes to take by way of response.

## 12. **Compensatory payments**

12.1 In deciding how it should respond to any such recommendation, the Exchange will, as well as having regard to those objectives and considerations, normally take into account, inter alia, the following:

- (a) the gravity of the conduct the subject of the complaint and its consequences for the complainant;
- (b) the nature of the Exchange's relationship with the complainant and the extent to which the complainant has been adversely affected in the course of his direct dealings with the Exchange;
- (c) whether the conduct the subject of the complaint is at the operational or administrative level (rather than in relation to matters of policy or where the Exchange's actions have necessarily had to reflect a balancing of conflicting interests and complex issues); and
- (d) the impact of the cost of compensatory payments on members, their clients and, indirectly, consumers.

## 13. **Confidentiality**

| 13.1 The Complaints Ombudsman, [CEDR](#), the Exchange and any complainant and/or member must each observe the strict confidentiality of the investigation of any complaint, all information provided (including the Complaints

Ombudsman's report) and all communications made for the purpose of the investigation, subject to Rule 11.4.

## Amendments to LIFFE Rules

### Additions shown underlined/deletions ~~struckthrough~~

#### SECTION 11 – COMPLAINTS

##### 11.1 Definitions and interpretation

11.1.1 In this Section 11 of the *LIFFE Rules*, unless the context otherwise requires:

**CEDR**

means the body who will select the Complaints Ombudsman to consider a particular complaint, from a panel of persons appointed by the Board;

***complaint***

means, subject to LIFFE Rule 11.1.2, a complaint arising in connection with the *Exchange*'s performance of, or failure to perform, any of its *regulatory functions*;

***Complaints Ombudsman***

means any person or persons who ~~is~~ are independent of the *Exchange* and who ~~is—~~are for the time being appointed by the *Board* as eligible to perform the function of complaints ombudsman pursuant to this Section 11 of the *LIFFE Rules*;

***regulatory functions***

-

has the meaning attributed to it in Section 291(3) of the Financial Services and Markets Act 2000 as amended from time to time.

11.1.2 For the purposes of this Section 11 of the *LIFFE Rules*, the following do not constitute *complaints*:

- (a) complaints about the contents of any rules (including without limitation the *LIFFE Rules* or *Contract Terms* or *Administrative Procedures* made by the *Exchange* pursuant to the *LIFFE Rules*) or about the contents of the *Procedures of the CSP*;
- (b) decisions against which the complainant has a right to appeal to a Disciplinary Panel or an Appeal Panel and complaints about a decision of such panels;
- (c) complaints about a decision of the *Board* or a commissioner made pursuant to Section 8 of the *LIFFE Rules*; and

- (d) complaints covered by specific contractual agreements between the *Exchange* and third parties in which alternative dispute resolution arrangements are provided.

## **11.2 Complaints procedure**

- 11.2.1 Any *complaint* must be submitted by a *Member*, whether on his own behalf or on behalf of his client, or by the complainant directly if the complainant desires to the *Market Secretary* in writing in accordance with procedures prescribed by the *Board* from time to time pursuant to LIFFE Rule 11.6.1.
- 11.2.2 Where the complainant is not a *Member*, the *Exchange* and the *Complaints Ombudsman* shall communicate with the complainant through the complainant's *Member* unless the complainant specifically requests otherwise in writing to the *Market Secretary*.
- 11.2.3 The *complaint* shall be considered by or on behalf of the *Market Secretary*. If the *complaint* cannot be resolved to the mutual satisfaction of the *Market Secretary* and the complainant, the *Market Secretary* shall refer the matter to the Membership, Rules & Trading Committee.
- 11.2.4 The Membership, Rules & Trading Committee shall consider the complaint, but if it concludes that it cannot be resolved to the mutual satisfaction of the *Exchange* and the complainant, the complainant may request in writing to the *Market Secretary* that the chairman or the deputy chairman of the Membership, Rules & Trading Committee refer the complaint to the *Complaints Ombudsman*.
- 11.2.5 The *Exchange* shall bear the costs of the *Complaints Ombudsman* in considering the *complaint*.
- 11.2.6 In requesting that the *complaint* be referred to the *Complaints Ombudsman*, the complainant agrees that any recommendation made by the *Complaints Ombudsman* to the *Exchange* shall, if adopted by the *Exchange*, be a full and final resolution of the *complaint* and all associated rights and claims.

## **11.3 Complaints Ombudsman**

- 11.3.1 The *Complaints Ombudsman* shall consider a *complaint* referred to him in accordance with procedures prescribed by the *Board* from time to time pursuant to LIFFE Rule 11.6.1.
- 11.3.2 In considering the *complaint*, the *Complaints Ombudsman* shall consider whether or not the performance of, or failure to perform, the specified *regulatory functions* by the *Exchange* amounts to:
  - (a) a failure to act fairly; and/or
  - (b) a failure to perform its *regulatory functions* within a reasonable time; and/or
  - (c) a lack of reasonable care; and/or
  - (d) bad faith,

which has had a significant impact upon the complainant.

11.3.3 The *Exchange*, the *Member* or the complainant, as the case may be, shall deal with the *Complaints Ombudsman* in an open and co-operative manner and provide such information as the *Complaints Ombudsman* may consider necessary for consideration of the *complaint*. Such information shall be provided in such form and by such date as the *Complaints Ombudsman* may require. The *Exchange* may, however, in giving the *Complaints Ombudsman* access to such information have regard to the need to maintain the confidentiality of certain kinds of information in accordance with procedures prescribed by the *Board* from time to time pursuant to LIFFE Rule 11.6.1.

11.3.4 The *Complaints Ombudsman* may refuse to accept a referral of a *complaint* from the Membership, Rules & Trading Committee, or reject a *complaint* (in full or in part) without full consideration, if he considers, in his absolute discretion, that such *complaint* (or part thereof) does not arise in connection with the *Exchange's* performance of, or failure to perform, any of its *regulatory functions* or is unfounded, unreasonable, frivolous or otherwise without merit or it is otherwise inappropriate for the *Complaints Ombudsman* to consider the *complaint* or the complainant has failed to comply with LIFFE Rule 11.3.3.

11.3.5 If the *Complaints Ombudsman* accepts a referral of a *complaint*, he shall give the complainant, the *Member* (where the complainant is not a *Member* and the *Member* is submitting the complaint on his behalf) and the *Exchange* the opportunity, or require them, to make written representations and to attend (with such other parties as is appropriate) and to give evidence to the *Complaints Ombudsman*. If the complainant, the *Member* (where relevant) or the *Exchange* (and such other parties as is appropriate) are given the opportunity, or required, to attend they shall be given reasonable notice, confirmed in writing, specifying the date and place of the meeting.

11.3.6 Once the *Complaints Ombudsman* has concluded his consideration of a *complaint* pursuant to this LIFFE Rule 11.3 and to procedures prescribed by the *Board* from time to time pursuant to LIFFE Rule 11.6.1, he shall report his findings, in writing, to the complainant, the chairman or deputy chairman of the Membership, Rules & Trading Committee and the Financial Services Authority. Such report shall be confidential and may include, if the *Complaints Ombudsman* thinks it appropriate, having concluded in his considerations pursuant to LIFFE Rule 11.3.2 that there has been a significant impact upon the complainant, recommendations that the *Exchange*:

(a) makes a compensatory payment to the complainant; or

(b) remedies the matter complained of;

or takes both of those steps.

11.3.7 Upon receipt of the report referred to in LIFFE Rule 11.3.6, the Membership, Rules & Trading Committee shall, in its absolute discretion, determine what course of action to take and shall communicate its decision in writing to the complainant. Such decision shall be the final decision of the *Exchange*.

| 11.3.8 If the *Complaints Ombudsman* ~~is~~becomes unable to consider the *complaint* adequately because of:

(a) a conflict of interest (for example, where he has or has had some connection with the complainant);

(b) illness; or

- (c) other unavoidable commitments

the *Complaints Ombudsman* shall notify the Membership, Rules & Trading Committee. On receiving such notification, the Membership, Rules & Trading Committee shall request that CEDR select an alternative Complaints Ombudsman, appoint a person, independent of the Exchange, to perform the function of Complaints Ombudsman pursuant to this Section 11 of the LIFFE Rules. A person appointed in this way shall have all the rights, powers and obligations of the Complaints Ombudsman and shall perform the functions of Complaints Ombudsman in accordance with this Section 11 of the LIFFE Rules for the purpose of considering such complaint.

#### **11.4 Disclosure of information**

11.4.1 Subject to LIFFE Rule 11.4.2 and LIFFE Rule 11.4.3, all information provided to CEDR and the *Complaints Ombudsman* in respect of a *complaint* shall be confidential, unless otherwise agreed.

11.4.2 The *Complaints Ombudsman* may at any time disclose such information as he thinks fit to *Exchange Officials* or to the chairman or deputy chairman of the Membership, Rules & Trading Committee.

11.4.3 The *Complaints Ombudsman* may at any time disclose to any person or body referred to in LIFFE Rule 2.4 such information concerning or associated with a complainant, a *Member*, a person connected to a *Member* or a client of a *Member* as he thinks fit, whether or not a formal arrangement governing such disclosure exists or a request in respect of such information has been made.

#### **11.5 Exclusion of liability**

11.5.1 Neither CEDR nor ~~the~~ *Complaints Ombudsman* shall ~~not~~ be liable to any complainant, *Member* or other person for loss (including indirect or consequential loss including, without limitation, loss of profit), damage, injury, whether direct or indirect, arising from any act, omission or negligence on his part or that of his officers, employees, agents or representatives under the *LIFFE Rules*, save where there is bad faith or a breach of the Human Rights Act 1998 as amended from time to time.

#### **11.6 General**

11.6.1 The *Board* may from time to time implement such procedures in respect of the handling of *complaints* as it deems fit.