

## (VI) COMPLAINT RESOLUTION PROCEDURES

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## 1. GENERAL INTRODUCTION

- 1.1 As an authorised central counterparty under EMIR, the Clearing House is required to have accessible, transparent and fair rules for the prompt handling of complaints. These Complaint Resolution Procedures include procedures for a complaint to be fairly and impartially investigated by a Person independent of the Clearing House (the “**Commissioner**”) and for the Commissioner to report on the result of his investigation to both the Clearing House and the Person making the complaint (“**Complainant**”). These Complaint Resolution Procedures also confer on the Commissioner the power to recommend, if appropriate, that the Clearing House: (i) makes a compensatory payment to the Complainant; and/or (ii) remedies the matter complained of.
- 1.2 The Clearing House has adopted these Complaint Resolution Procedures. In general terms, the key stages of the Complaint Resolution Procedures are:
- (a) a complaint must be submitted in writing;
  - (b) if the complaint is an Eligible Complaint (as defined in paragraph 2.1), at first instance, the Clearing House will appoint an investigator in accordance with paragraph 4.5 (the “**Investigator**”) to investigate the Eligible Complaint and attempt to resolve it. If the Complainant is dissatisfied with the Investigator’s response or proposals to redress the Eligible Complaint, the Complainant may request that the Clearing House refer the Eligible Complaint to the Commissioner, who will be appointed by the Clearing House;
  - (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 Clearing House and the Complainant; and
  - (e) if the Commissioner recommends a compensatory payment and/or remedial action, the Clearing House 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 Complaint Resolution Procedures. These Complaint Resolution Procedures do not limit the Clearing House from considering or refraining from considering at its discretion any complaint which is not an Eligible Complaint pursuant to either these Complaint Resolution Procedures or any such other procedures as it may determine.
- 1.4 These Complaint Resolution Procedures apply in relation to complaints made by Clearing Members.
- 1.5 These Complaint Resolution Procedures are 'Procedures' as defined in the Rules and are subject to the Rules, including, without limitation, Rule 102. These Complaint 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 and any Dispute under these Complaint Resolution Procedures will be subject to arbitration under Rule 117.

## 2. ELIGIBLE COMPLAINTS

- 2.1 “**Eligible Complaints**” are complaints against the Clearing House or any of its Directors, officers, employees, agents or committees (or any individual committee member) arising in connection with: (i) the manner in which the Clearing House has performed; or (ii) the failure of the Clearing House to perform; or (ii) the manner in which the Clearing House has failed to perform, any of its regulatory functions as defined by section 291(3) of FSMA.
- 2.2 A complaint will not be an Eligible Complaint if it:

- (a) relates to:
  - (i) the Clearing House's relationship with its Directors, officers, employees or committees (or any individual committee member);
  - (ii) the content of the Rules; or
  - (iii) a decision against which the Complainant has the right to appeal under Part 10 of the Rules;
- (b) is in any way connected with or arising out of a contractual or commercial dispute involving the Clearing House and is not connected in any way with the manner in which the Clearing House has performed or failed 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.

2.3 A complaint connected with, or which arises out of, any form of continuing action by the Clearing House under Part 10 of the Rules or in relation to an Event of Default 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 Procedures" and shall be sent only to:

Complaints Handling Officer  
 ICE Clear Europe Limited  
[2nd Floor Milton Gate](#)  
[Sancroft 60 Chiswell Street](#)  
[Rose Street Moorgate](#)  
[Paternoster Sq.](#)  
[London LONDON](#)  
[EC4M 7DQ](#)  
[United Kingdom +44 20 7593 672](#)

or by e-mail to: [icecleareurope-complaints@theice.com](mailto:icecleareurope-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 Clearing House will not be obliged to investigate any complaint unless and until the Complainant has submitted a written complaint in accordance with these Complaint Resolution Procedures.

3.4 The written complaint should include sufficient information to allow the Clearing House 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 Clearing House may request further information and the complaint will not be investigated further until such information is provided.

3.5 The Clearing House's and Commissioner's costs and expenses in relation to any complaint will be paid by the Clearing House. The Clearing House 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 Clearing House 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 Clearing House will have four weeks from the date of receipt of the Eligible Complaint to see if the Eligible Complaint can be resolved by that approach. If the Eligible Complaint has not been resolved within those four weeks, then the investigation of the Eligible Complaint will proceed as set out in paragraph 4 below.

#### **4. INVESTIGATION OF COMPLAINTS BY THE CLEARING HOUSE**

- 4.1 The Clearing House will acknowledge the complaint promptly and in any case within 5 Business Days of receipt (other than in the cases where the process described in paragraph 3.6 takes place when the period will end 5 Business Days after the end of the four week period specified in paragraph 3.6) and include a copy of these Complaint Resolution Procedures and details of the Commissioner in its acknowledgement.

- 4.2 Where the Clearing House considers that another recognised body or authorised person (as each such term is defined in the Financial Services and Markets Act 2000) is entirely or partly responsible for the subject matter of a complaint, the Clearing House may refer the complaint, or the relevant part of it, to that recognised body or authorised person pursuant to Rule 115 and in accordance with the process set out in paragraph 4.3.

- 4.3 Where the Clearing House decides to refer a complaint to another recognised body or authorised person, it must:

- (a) inform the Complainant in writing promptly and in any case within 5 Business Days that it would like to refer all or part of the complaint to another recognised body or authorised person and obtain the Complainant's written consent to do so;
- (b) if the Complainant consents to the referral, refer the complaint to that other recognised body or authorised person in writing promptly and in any case within 5 Business Days of receipt of consent;
- (c) inform the Complainant in writing promptly and in any case within 5 Business Days that the complaint has been referred and include adequate contact details of any individual responsible for handling the complaint at the other recognised body or authorised person; and
- (d) continue to deal with any part of the complaint not referred to the other recognised body or authorised person, in accordance with these Complaint Resolution Procedures.

- 4.4 Where the Clearing House considers that 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 paragraph 3.6 takes place, when the period will end 15 Business Days after the end of the four week period specified in paragraph 3.6). Within 15 Business Days of receiving such notification, the Complainant may require the Clearing House to refer the complaint to the Commissioner. If the Commissioner considers the complaint to be an Eligible Complaint, he will require the Clearing House to investigate the matter.

- 4.5 Having received an Eligible Complaint, the Clearing House 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 Eligible Complaint and who has had no personal interest or involvement in the matter (other than as a result of he or she being an employee or appointee of the Clearing House), who is not otherwise

conflicted. The Clearing House 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 paragraph 3.6 takes place, when the period will end 15 Business Days after the end of the four week period specified in paragraph 3.6).

- 4.6 In considering whether an Eligible Complaint made against the Clearing House is upheld, the Investigator must consider whether the Clearing House'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 Clearing House's conduct did amount to one of the behaviours listed at (a) to (d) above, the complaint must be upheld in part or in whole. However, if the Investigator does not find that such conduct took place, the Eligible Complaint must be rejected.

- 4.7 Where, in the opinion of the Clearing House, 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 Complaint Resolution Procedures, the Clearing House 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 Clearing House 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. The Investigator will similarly not be required to disclose any such information when drafting his report. This paragraph 4.7 shall not restrain any disclosure by the Clearing House under Rule 106.
- 4.8 Where, in the opinion of the Clearing House, any Eligible Complaint is connected with or arises out of the same or similar facts or circumstances in respect of which there is an ongoing or otherwise unresolved disciplinary matter, delivery dispute, investigation, appeal, arbitration or court proceeding, the Clearing House may, in its discretion and upon giving notice in writing to any Complainant or Complainants, delay consideration of the Eligible Complaint until the relevant matter is completed. Within 15 Business Days of any such matter being completed, the Clearing House 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 Eligible Complaint to proceed. The Complainant must notify the Clearing House in writing within 15 Business Days of receipt of that notification if it wishes the investigation of the Eligible Complaint to proceed.
- 4.9 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 Eligible 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 Eligible 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.
- 4.10 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 4.9, 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.

- 4.11 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 4.9; or (iii) any period for investigation extended pursuant to paragraph 4.10, the Complainant may request that the complaint be referred to the Commissioner. The Complainant's request for referral must include the reasons for requesting referral of the Eligible Complaint to the Commissioner, a copy of which must be provided to the Clearing House. Within 10 Business Days of being provided with the Complainant's request for referral, the Clearing House must either (i) make submissions to the Commissioner, with a copy provided to the Complainant, as to why the Clearing House should be permitted to conclude its own investigation of the Eligible Complaint before the Commissioner accepts the referral of the Eligible Complaint; or (ii) notify the Commissioner that it does not oppose the referral of the Eligible Complaint. Within 10 Business Days of receipt of submissions or notification from the Clearing House, the Commissioner will inform the Complainant and the Clearing House in writing whether he accepts the referral of the Eligible 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 Eligible Complaint to the Commissioner which will be subject to the procedure set out in this paragraph 4.11.
- 4.12 Where the Complainant requests that the Eligible Complaint is referred to the Commissioner pursuant to paragraph 4.11, the Commissioner will delay consideration of the Eligible Complaint for a defined period in order to allow the Investigator to complete his investigation, if informed by the Clearing House that: (i) the Eligible Complaint arises from any form of continuing action, disciplinary proceedings, delivery dispute, investigation, appeal or other process under Part 10 of the Rules; (ii) the Eligible Complaint shares its subject matter with a disciplinary proceeding, delivery dispute, investigation, appeal, arbitration, court proceeding or other process under Part 10 of the Rules which could affect the outcome of the complaint; (iii) the Investigator will be able to complete his report within two weeks of the Complainant exercising its right to require referral of the Eligible Complaint to the Commissioner; or (iv) the Eligible Complaint relates to an Event of Default where default proceedings remain ongoing. The Commissioner will notify the Complainant in writing in any case where consideration of the Eligible Complaint is to be delayed.
- 4.13 Where the Commissioner does investigate an Eligible 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.
- 4.14 The Clearing House or the Investigator may obtain professional advice in assisting with and advising on any Eligible Complaint as appropriate. That advice will be solely for the benefit of the Clearing House and the Clearing House will not be required to waive any legal privilege over that advice.

## **5. RESULT OF THE INVESTIGATION**

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

## **6. REFERRAL TO THE COMMISSIONER**

- 6.1 The Complainant must notify the Clearing House 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 Eligible Complaint be referred to the Commissioner. If the Complainant wishes to refer the Eligible 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 Clearing House within 15 Business Days will result in the Eligible Complaint not being referable to the Commissioner and ceasing to be an Eligible Complaint.

6.3 In requiring the Clearing House to refer any Eligible Complaint to the Commissioner pursuant to these Complaint Resolution Procedures, the Complainant will be deemed to agree to be bound by and be subject to these Complaint Resolution Procedures and, as a result, accepts that any recommendation made by the Commissioner to the Clearing House, if adopted by the Clearing House, will be in full and final resolution and settlement of the Eligible Complaint and all associated rights and claims. The Complainant therefore accepts and agrees that he cannot use any other dispute resolution procedure, appeal process, arbitration or court process as provided in any other part of the Rules or the Clearing Membership 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 of his investigation other than as provided in paragraph 7.2.

7.2 Where a complaint has been referred to the Commissioner pursuant to paragraph 4.4, 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 Clearing House of his determination and will not be obliged to continue investigating the complaint.

7.3 Where the Commissioner has determined a complaint to be an Eligible Complaint, the Commissioner will produce a final response to the Eligible Complaint within 12 weeks of the date of the acknowledgement of receipt of the Eligible 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 an Eligible Complaint made against the Clearing House is upheld, the Commissioner must consider whether the Clearing House'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 Clearing House's conduct did amount to one of the behaviours listed at (a) to (d) above, the Eligible 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 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 when drafting his final response.

- 7.6 The Clearing House and the Complainant will each make every effort to provide the Commissioner with all reasonable cooperation, including access to its directors, officers, committees, employees and any other staff (including, where appropriate, suppliers, contractors or other Persons to whom any function has been outsourced and their staff), documents, records and information except where to do so would jeopardise any legal privilege. However, the Clearing House and Commissioner will have regard to the confidentiality of information (such as that given to the Clearing House under confidentiality arrangements) as outlined in paragraph 11.
- 7.7 The Clearing House 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 Clearing House's prior written approval. The Clearing House will inform the Complainant of any such appointment in writing as soon as possible and in any event no later than 5 Business Days from the date of appointment.
- 7.9 Any alternate Commissioner must himself meet the requirements for being the Commissioner and will be required to be bound by these Complaint 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 Complaint Resolution Procedures.
- 7.10 During the course of his investigation, the Commissioner may:
- (a) permit and/or request both the Complainant and the Clearing House to provide appropriate documentation, evidence as well as oral or written submissions in relation to any specific matters that arise in relation to the Eligible Complaint;
  - (b) make further requests of all relevant parties and/or take whatever action is considered appropriate which might assist in considering the Eligible Complaint and confirming its factual accuracy including, where reasonable and at the Clearing House'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 Clearing House 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 into account 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 Clearing House and the Complainant, giving reasons for any recommendations made. The Commissioner can recommend that the Clearing House takes remedial action including, but not limited to, offering an apology, taking steps to rectify the error, offering a compensatory payment on an *ex gratia* basis, or a combination of the above. The Clearing House must consider the Commissioner's report and recommendations and 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 of the reasons as to why it is not carrying out any recommended remedial action.



- 8.2 If the Commissioner upholds the Eligible Complaint, the Clearing House may, in its discretion, publish part or all of the Commissioner's report on its website or send it to all Clearing Members by Circular. Where the Clearing House chooses 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 Clearing House 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 it obtained from the Complainant in the course of a subsequent investigation. Such disclosures are subject to Rule 106 of the Rules.
- 8.4 The Clearing House may instigate disciplinary proceedings at any time as a result of the Clearing House's investigation or matters surrounding any complaint.

## **9. RECORD-KEEPING**

A copy of all documents and materials relating to complaints must be sent by the Investigator and the Commissioner to the Clearing House. The Clearing House will retain such documents and materials for a minimum of ten years.

## **10. EXCLUSION OF LIABILITY**

The Commissioner will not be liable to the Clearing House 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**

Subject to paragraph 8.3, the Investigator, the Commissioner, the Clearing House 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 will be subject to Rule 106.