NYSE Liffe U.S.



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**By Electronic Mail**

June 14, 2011

Mr. David A. Stawick
Office of the Secretariat
U.S. Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

**Re: NYSE Liffe US Submission 2011-118 – Responsibilities of Clearing Members, Members and Registered Users for Treasury Futures Deliveries**

Dear Mr. Stawick:

I am the Chief Regulatory Officer of NYSE Liffe US LLC ("NYSE Liffe US"). Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended (the "Act"), and U.S. Commodity Futures Trading Commission Regulations (the "Regulations") Section 40.6, I enclose a Cover Sheet for NYSE Liffe US Submission 2011-118 and NYSE Liffe US Notice 20/2011. Notice 20/2011 clarifies the responsibilities of Clearing Members, Members and Registered Users to make available an adequate amount of the securities nominated for delivery of Treasury Futures and announces that the Exchange's Department of Market Regulation will be conducting random and triggered reviews of Clearing Members' deliveries of Treasury Futures. It explains that Clearing Members that do not have an adequate amount of a security or securities available for delivery will face fines and potentially additional Exchange disciplinary sanctions.

NYSE Liffe US herby certifies that Notice 20/2011 complies with the Commodity Exchange Act and the Regulations promulgated thereunder.

If you have any questions, please call me at (212) 656-4568.

Respectfully,

Karl D. Cooper

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Enclosures

# NYSE LIFFE U.S. NOTICE No. 20/2011

ISSUE DATE: June 14, 2011
EFFECTIVE DATE: July 7, 2011

**NYSE Liffe U.S. – Responsibilities of Clearing Members, Members and Registered Users for Treasury Futures Deliveries and Reviews and Penalties for Not Making Nominated Securities Available for Delivery**


**Summary**

This Notice clarifies the responsibilities of Clearing Members, Members and Registered Users to make available an adequate amount of the securities nominated for delivery of Treasury Futures and announces that the Exchange's Department of Market Regulation will be conducting random and triggered reviews of Clearing Members' deliveries of Treasury Futures. Clearing Members that do not have an adequate amount of a security or securities available for delivery will face fines and potentially additional Exchange disciplinary sanctions.


## 1. Introduction

1.1 NYSE Liffe US Notice 5/2011 announced the launch of Two Year Treasury Note, Five Year Treasury Note, Ten Year Treasury Note, U.S. Treasury Bond and Ultra Long U.S. Treasury Bond Futures ("Treasury Futures") on NYSE Liffe US (the "Exchange").[1] This notice (this "Notice") clarifies that Clearing Members must ensure that a house proprietary desk or a customer electing to deliver a security or securities pursuant to a Treasury Futures delivery obligation must make available a sufficient amount of the security or securities nominated for delivery to be included in the Clearing Member's Fixed Income Clearing Corporation ("FICC") net settlement on the day of settlement of the Treasury Futures delivery.

1.2 This Notice also announces that the Exchange's Department of Market Regulation (the "Department") will conduct random and triggered reviews of deliveries of Treasury Futures by Clearing Members.

1.3 When the Department's review demonstrates that a Clearing Member did not make available an adequate amount of the security or securities nominated for delivery to satisfy a Treasury Futures delivery obligation, the Clearing Member involved, along with

[1] Any capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term as set forth in the Exchange's Rules.

any Member or Registered User responsible for the Treasury Futures delivery, will be referred to a Review Panel for the initiation of disciplinary proceedings pursuant to Chapter 7 of the Exchange's Rules.

## 2. Responsibilities of Clearing Members, Members and Registered Users for Deliveries of Treasury Futures

2.1 Clearing Members making delivery pursuant to Treasury Futures obligations are responsible to make available an adequate amount of the security or securities nominated for delivery. This responsibility applies to both Treasury Futures going to delivery held by customers or by house proprietary trading desks. These securities must be made available to be included in the Clearing Member's FICC net settlement on the day the Treasury Futures delivery settles.

2.1.1 *House Activity*: A Clearing Member's house proprietary trading desk making a delivery of Treasury Futures must have records showing that it had available in an account attributed to that desk an adequate amount of the security or securities nominated for delivery of the Treasury Futures on the day of settlement of the Treasury Futures delivery. Records should also show that such securities were made available for the Clearing Member's net FICC settlement on the day of the settlement of the Treasury Futures delivery.

2.1.2 *Customer Activity*: In general, the agreement between the Clearing Member and its customer should require that a customer going to delivery make available to the Clearing Member an adequate amount of the security or securities nominated for delivery of Treasury Futures. Where a Clearing Member's customer has failed to make an adequate amount of nominated securities available, however, it is the Clearing Member's responsibility to make an adequate amount of the securities available for settlement in the Clearing Member's net settlement at FICC on the day of the settlement of the Treasury Futures delivery. In such an instance, the Clearing Member should have records showing that it made available an adequate amount of the security or securities nominated for delivery of Treasury Futures on behalf of the customer who failed to make such securities available for delivery. The Clearing Member's records should also show that such securities were made available for the Clearing Member's net FICC settlement on the day of the settlement of the Treasury Futures delivery.

2.2 For the avoidance of doubt, in no case should a Treasury Futures delivery decrease the available amount of securities being made available to meet a Clearing Member's FICC net delivery obligation, and should never increase a Clearing Member's net fail to deliver at FICC of a security that was nominated for delivery of a Treasury Futures by the Clearing Member.

2.3 Non-clearing Members and Registered Users are responsible to make available to their Clearing Member an adequate amount of securities nominated by them for delivery of Treasury Futures to satisfy a delivery obligation.

2.4 Failure to make an adequate amount of the security or securities nominated for delivery of Treasury Futures available for delivery as set forth above will be deemed an act detrimental to the Exchange in violation of Rule 609.

## 3. Department of Market Regulation Reviews

3.1 To ensure that Clearing Members, Members and Registered Users are meeting the responsibilities set forth in Section 2 above, the Department will conduct both random and triggered reviews of Clearing Members' deliveries.

3.2 Based on the level of delivery activity during a Delivery Month, the Department will conduct a review of all of the Treasury Futures deliveries of enough randomly selected Clearing Members such that the Department has reviewed at least twenty percent of the deliveries in each Treasury Futures Contract.

3.3 When during any Delivery Month any Clearing Member's net fail to deliver in a security that it has nominated for delivery of a Treasury Futures Contract reaches a significant percentage of its net delivery obligation at FICC, the Department will conduct a triggered review of the Clearing Member's books and records relating to the Clearing Member's deliveries in that security.

3.4 In all cases where an adequate amount of the security or securities nominated for delivery of Treasury Futures was not made available for delivery, the Department will refer the matter to a Review Panel for initiation of disciplinary proceedings pursuant to Chapter 7 of the Exchange's Rules.

**4. Fines and other Sanctions**

4.1 Under Chapter 7 of the Exchange's Rules, disciplinary proceedings may result in the imposition of fines and other sanctions, which are ultimately determined by the Hearing or Review Panel involved. The following factors, among others, are relevant to the Hearing or Review Panel's determination of the amount of any fine to be imposed:

- Prices in the cash Treasury market on the day of, and the days leading up to, the settlement of the Treasury Futures delivery, specifically the price of the cheapest-to-deliver of the securities deliverable under the terms of the Treasury Futures and the difference in prices between the cheapest-to-deliver security and the next two cheapest-to-deliver securities;
- Whether the Clearing Member was charged a fail charge at FICC in the security or securities nominated for delivery of the Treasury Futures;[2]
- Whether the respondent has been found to have previously failed to make available an adequate amount of the security or securities nominated for delivery of Treasury Futures as set forth in Section 2 above; and
- Commodity Futures Trading Commission staff's guidance that fines have to be more than just the "cost of doing business" so as to deter future violations.[3]

4.2 For the avoidance of doubt, each Treasury Futures contract for which a respondent fails to make an adequate amount of securities available for delivery will be considered a separate violation of Rule 609.

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For further information, please contact Karl Cooper at 212-656-4300 or Matthew Lisle at 312-442-7984.

[2] *See*, FICC Government Securities Clearing Division Rules at Rule 11 Section 14 (May 16, 2011); *see also* Treasury Market Practices Group Endorse Several Measures to Address Widespred Settlement Fails (Nov. 12, 2008).

[3] *See*, *e.g.*, CFTC Rule Enforcement Review of the Minneapolis Grain Exchange (Aug. 27, 2009) at 54-55.