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**By Electronic Mail**  
September 28, 2012

Mr. David A. Stawick  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**Re: NYSE Liffe U.S. Submission 2012-131– Notice Announcing Amendments to Exchange Rules to Conform to Part 38 of Commission Regulations**

Dear Mr. Stawick:

I am the Chief Regulatory Officer of NYSE Liffe US LLC (“**NYSE Liffe US**” or the “**Exchange**”). Pursuant to Section 5c(c) of the Commodity Exchange Act (the “**Act**”), as amended, and U.S. Commodity Futures Trading Commission (the “**Commission**”) Regulations (the “**Regulations**”) Section 40.6(a), I enclose a Cover Sheet for NYSE Liffe US Submission 2012-131 and NYSE Liffe US Notice 35/2012 which announces amendments to Exchange Rules to conform them to changes made to Part 38 of Commission Regulations (the “**Rule Amendments**”). The Rule Amendments will become effective on October 17, 2012.

NYSE Liffe US hereby certifies that: (i) the Rule Amendments comply with the Act and the regulations thereunder; and (ii) a notice and copy of this submission is being concurrently posted on the Exchange’s web site. Additionally, a concise explanation and analysis of the Rule Amendments and their compliance with applicable provisions of the Act, including core principles and the Commission's regulations thereunder, is attached. No substantive opposing views were expressed by members or others with respect to the Rule Amendments.

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

Respectfully submitted,

A handwritten signature in black ink that reads "Karl D. Cooper".

Karl D. Cooper  
Enclosures

**Concise Explanation and Analysis of the  
Designated Contract Market Core Principles Implicated by  
NYSE Liffe US Submission 2012-131**

**Rule 126 – Exchange Business**

Operation

Added language to extend the definition to non-Members subject to the Exchange’s jurisdiction.

Purpose

Clarifies that Exchange Rules bind all persons that initiate or execute a transaction on or subject to the Rules of the Exchange and aligns the “Exchange Business” definition with new Exchange Rule 403.1 (effective August 20, 2012), which was implemented to conform Exchange Rules to new CFTC Rule 38.151(a).

Effect

Any person, not just members, will be subject to the Exchange’s jurisdiction in accordance with new Exchange Rule 403.1.

Core Principles Implicated

Core Principle 2

**Rule 133 – Member**

Operation

Added language to make clear that Exchange Members, or their affiliates, will not obtain any equity or other interest in the Exchange, solely by their status as a Member of the Exchange.

Purpose

To conform the definition of Member to amendments made in July 2012 to Rule 302.

Effect

Exchange Members, or their affiliates, will not obtain any equity or other interest in the Exchange, solely by their status as a Member of the Exchange.

Core Principles Implicated

Core Principle 2

**Rule 203 – Confidentiality**

Operation

Added provision that requires the Exchange to obtain the consent of any Person to use such Person's proprietary data or personal information for business or marketing purposes.

Purpose

To conform with new CFTC Rule 38.7.

Effect

The Exchange will institute a policy to obtain a Person's consent to use such Person's proprietary data or personal information for business or marketing purposes.

Core Principles Implicated

Core Principle 1

**Rule 407 – Matching of Orders**

Operation

Deleting the express requirement to give Members 10 days' notice of any change in the matching algorithm.

Purpose

This requirement is extraneous given the provisions of new Part 40 of Commission Regulations.

Effect

No effect

Core Principles Implicated:

Core Principle 7

**Rule 409 – Trading Against Customer Orders and Crossing Orders**

**Rule 410 - Good Faith Bids and Offers**

**Rule 412. - Disciplinary Procedures**

**Rule 415. - Limitation of Liability; Legal Proceedings**

**Rule 418. - Errors**

**Rule 419. - Reportable Positions**

**Rule 422. - Exchange for Related Positions**

**Rule 601 – Fraudulent Acts**

**Rule 602 – Fictitious Transactions**

**Rule 603 – Market Manipulation**

**Rule 604 – Adherence to Law**

**Rule 605 – Sales Practice Rules**

**Rule 607 – Cooperation in Investigations and Proceedings**

**Rule 609 - Acts Detrimental to the Exchange; Acts Inconsistent with Just and Equitable Principles of Trade**

**Rule 611 – Priority of Customers' Orders**

**Rule 612 – Trading Against Customers' Orders**

**Rule 613 – Withholding Orders**  
**Rule 614 – Disclosing Orders**  
**Rule 615 – Prearranged Trades**  
**Rule 616 – Simultaneous Buying and Selling Orders**

Operation

Added language to extend the operation of these provisions to non-Members subject to the Exchange’s jurisdiction.

Purpose

Clarifies that Exchange Rules bind all persons that initiate or execute a transaction on or subject to the Rules of the Exchange in accordance with new Exchange Rule 403.1 (effective August 20, 2012), which was implemented to conform Exchange Rules to new CFTC Rule 38.151(a).

Effect

Any person, not just members, will be subject to the Exchange’s jurisdiction in accordance with new Exchange Rule 403.1.

Core Principles Implicated

Core Principle 2

**Rule 419 – Reportable Positions**

Operation

Added provision to require all traders to maintain records of trading activity, including records of activity in the cash and related derivatives underlying Exchange Contracts, and to make such records available to the Exchange upon request.

Purpose

To comply with new CFTC Rule 38.254, which requires an Exchange to have such recordkeeping requirements for all persons trading on its markets.

Effect

All traders will be required to maintain records of trading activity, including records of activity in the cash and related derivatives underlying Exchange Contracts and to make such records available to the Exchange upon request.

Core Principles Implicated

Core Principle 4

**Rule 425 - Emergencies**

Operation

Added provision to provide Exchange with the authority to impose intraday market restrictions, among other things, during a market emergency.

Purpose

To bring Rule 425 up to complete compliance with new CFTC Rule 38.351 which provides for the types of rules an Exchange should have to address emergency situations.

Effect

If an emergency occurs as defined in Exchange Rules, the Exchange can impose intraday market restrictions, among other things.

Core Principles Implicated

Core Principle 6

**Rule 426 – Market Making Programs**

Operation

Clarified that it is the responsibility of all market makers to comply with the provisions of the Commodity Exchange Act or Rules or Regulations of the Commodity Futures Trading Commission, unless exempted by the Commission.

Purpose

To extend this responsibility to non-member market makers.

Effect

Although all Exchange market making agreements require adherence to all applicable laws and rules, including the Commodity Exchange and Commission Regulations, such an obligation is now codified in Exchange Rules.

Core Principles Implicated

Core Principles 2, 4, and 9.

**Rule 617 – Disruptive Practices Prohibited**

Operation

New Rule that prohibits any trading, practice, or conduct on the Exchange that: 1) violated bids and offers; 2) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; and 3) Is, is of the character, or is commonly known to the trade as “spoofing.”

Purpose

To implement the amendment made by Congress in the Dodd-Frank Act to Section 4c(a) of the Commodity Exchange Act.

## Effect

Although such practices have always been prohibited by Exchange Rules, especially in that such practices have always been considered acts detrimental to the Exchange and/or conduct inconsistent with just and equitable principles of trade (conduct prohibited by Exchange Rule 609), and represent orders not placed in good faith to enter into bona fide transactions as required by Rule 410, new Rule 617 expressly prohibits such conduct in compliance with the Congressional mandate.

## Core Principles Implicated

Core Principle 2

## **Rule 701 - General**

### Operation

Rule 701 sets forth the general procedures for the Exchange's disciplinary procedures. The Exchange proposes to amend certain subsections of Rule 701 in order to make disciplinary proceedings fair and impartial. Rule 701 subsection (e) is amended to make clear that a Member or person under investigation by the Exchange is entitled to counsel, subject to certain limitations intended to prevent conflicts of interest. Rule 701 subsection (g) is amended to make clear that members of the Market Regulation Department are prohibited from serving on a review panel or disciplinary panel. Rule 701 subsection (j) is amended to require that any disciplinary panel must be chaired by a public panelist.

### Purpose

The purpose of these changes is to ensure that any Person subject to disciplinary proceedings by the Exchange is entitled to the same due process protections as afforded in other venues, such as the right to counsel and the right to impartial fact finders, and implement new Regulations 38.702, 38.704 and 40.9(c)(3)

### Effect

The effect of these amendments will be that Persons subject to disciplinary procedures by the Exchange will receive a fair and impartial hearing.

## Core Principles Implicated

Core Principle 13 – Disciplinary Proceedings:

“The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.”

## **Rule 702 – Inquiries and Investigation**

### Operation

Rule 702 subsection (a) is amended to make clear that the Exchange is obligated to initiate an investigation pursuant to CFTC request, or if the Exchange has a reasonable basis for believing that a violation has occurred or will occur. Rule 702 subsection (b) is amended to make clear that the Exchange may issue a warning letter in cases where a violation is found, but disciplinary proceedings are unwarranted. The Rule is also amended to limit warning letters to one per rolling twelve-month period for the same violation by the same Member. Rule 702 subsection (c) is amended to make clear that the Exchange has the authority to gather information regarding all persons subject to the Exchange’s jurisdiction, including those subject to investigation by the Exchange.

### Purpose

The purpose of these changes is to make clear that the Exchange has the authority to initiate investigations and issue warning letters on its own, even where the violation is committed by a non-Member. By limiting warning letters to one per rolling twelve-month period to the same Member for the same violation, the Exchange makes clear that repeated violations of the same rules are not acceptable and will be dealt with more severely. Changes to Rule 702 are designed to implement new Regulations 38.151, 38.158 and 38.159.

### Effect

The effect of these amendments will be that suspected violations are found and addressed in a timely fashion, and that repeat violations will be minimized.

### Core Principles Implicated

Core Principle 13 – Disciplinary Proceedings:

## **Rule 703 – Reports of Investigations**

### Operation

Rule 703 subsection (b) is amended to include the information required in an investigative report where the Exchange has determined to close a file. This Rule is also amended to make clear that the issuance of a warning letter does not necessarily constitute violation, and that only one warning letter may be issued to the same Member for the same conduct. In addition, the reference to “informal dispositions” has been removed.

### Purpose

The purpose of these changes is to make clear that the Exchange has to justify its decision to close an investigation, and to clarify the effect of a warning letter. This implements Regulation 38.158(d) and (e).

### Effect

The effect of these amendments will be that Persons subject to Exchange jurisdiction are given clear parameters on what constitutes a violation of Exchange Rules.

## Core Principles Implicated

Core Principle 13 – Disciplinary Proceedings:

### **Rule 705 – Review of Investigative Reports**

#### Operation

Rule 705 is amended to delete the term “informal” modifying the word dispositions in order to harmonize it with Rules 702 and 703 in terms of whether a warning letter constitutes a penalty or violation.

#### Purpose

The purpose of this change is to eliminate any confusion caused by referring to an informal disposition, since the issuance of a warning letter may or may not constitute a determination that a violation of Exchange Rules has occurred. This implements Regulation 38.158(e).

#### Effect

The effect of this amendment will be that Persons subject to Exchange jurisdiction are given clear parameters on what constitutes a violation of Exchange Rules.

## Core Principles Implicated

Core Principle 13 – Disciplinary Proceedings:

### **Rule 707 – Answer to Notice of Charges**

#### Operation

Rule 707 has been amended to make clear that a respondent’s failure to answer charges will result in the charges being deemed as admitted. The Rule is further amended to allow the Hearing Panel to direct the Market Regulation Department to issue sanctions where a respondent is deemed to have committed a violation by virtue of his failure to answer the allegations against him.

#### Purpose

The purpose of these changes is to make clear that respondent’s failure to answer an allegation is deemed admission of that allegation by a Hearing Panel. As a result, the Market Regulation Department may issue sanctions on the advice of the Hearing Panel. This will help streamline the disciplinary process by allowing the disciplinary process to move forward absent an answer from the respondent. This implements Regulation 38.708 and Part 38 Appendix B, Core Principle 13, Acceptable Practices, Section 2.

#### Effect

The effect of these amendments will be that Persons subject to Exchange jurisdiction will be aware of the serious implications of not answering allegations against them. Therefore, they are more likely to answer and a fair hearing may be held.



### Core Principles Implicated

Core Principle 13 – Disciplinary Proceedings:

#### **Rule 712 – Respondent Review of Evidence**

##### Operation

Rule 712 has been amended to include attorney work product as materials that are protected from disclosure to the respondent.

##### Purpose

Prior to this amendment, attorney work product was not specifically excluded from discovery by the respondent. The purpose of this change is to protect attorney work product from discovery. This implements Regulation 38.707(a)(2).

##### Effect

The effect of this amendment will be that both the Exchange and the respondent will be able to have more effective counsel, since attorney work product will not have to be disclosed.

### Core Principles Implicated

Core Principle 13 – Disciplinary Proceedings:

#### **Rule 715 - Sanctions**

##### Operation

Rule 715 has been amended to make clear that where a violation is found, and a warning letter is issued, that no more than one warning letter may be issued to the same Member for the same violation during a rolling twelve-month period.

##### Purpose

The purpose of this change is to make clear that repeated violations of Exchange Rules will not be tolerated. Escalating sanctions for repeated violations will serve to deter such conduct. This implements Regulation 38.158(e).

##### Effect

The effect of this amendment will be that repeated violations of Exchange Rules will be minimized.

### Core Principles Implicated

Core Principle 13 – Disciplinary Proceedings:

## **Rule 717 – Appeal from Disciplinary Panel Decision**

### Operation

Rule 717 has been amended to include a right by the Exchange to appeal the decision of a Hearing Panel. The Rule is also being amended to make clear that further disciplinary procedures upon appeal be held “promptly.”

### Purpose

Prior to this Rule change, the Exchange was not entitled to appeal the decision of a Hearing Panel, even though the respondent had this privilege. The purpose of this change is to make the disciplinary process fair to both the Exchange and the respondent. In addition, the Rule provides for a prompt resolution on appeal. This implements Part 38 Appendix B Core Principle 13, Acceptable Practices, Section 5.

### Effect

The effect of these amendments will be that the Exchange will have recourse where it disagrees with the decision of a Hearing Panel, and that the parties will receive a prompt resolution of the matter.

### Core Principles Implicated

Core Principle 13 – Disciplinary Proceedings:



## NYSE LIFFE U.S. NOTICE No. 35/2012

ISSUE DATE: September 28, 2012  
EFFECTIVE DATE: October 17, 2012

### Summary

This Notice provides information regarding amendments to the NYSE Liffe US Rulebook: Rules 126, 133, 203, 407, 409, 410, 412, 419, 422, 425, 426, 601 through 605, 607, 609, 611 through 617, 701, 702, 703, 705, 707, 712, 715 and 717.

### 1. Introduction

On June 19, 2012, the U.S. Commodity Futures Trading Commission promulgated final regulations to implement amendments made by the Dodd Frank Act to the Core Principles set forth for Designated Contract Markets in the Commodity Exchange Act.<sup>1</sup> As summarized below, and set forth in the attached appendix, the Exchange is amending its Rules to comply with the Commission's new regulations.

- Rule 126 is amended to extend the definition to non-Members subject to the Exchange's jurisdiction. The amendment is recognition that all persons that initiate or execute a transaction on or subject to the Rules of the Exchange are subject to Exchange jurisdiction in accordance with new Exchange Rule 403.1, which was implemented to conform Exchange Rules to new CFTC Rule 38.151(a).
- Rule 133 is amended to make clear that Exchange Members, or their affiliates, will not obtain any equity or other interest in the Exchange, solely by their status as a Member of the Exchange to conform the definition of Member to amendments made in July 2012 to Rule 302.

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<sup>1</sup> 77 Fed. Reg. 36612 (CFTC June 19, 2012).

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

NYSE Euronext's U.S. Futures Market, NYSE Liffe U.S., is a U.S. Commodity Futures Trading Commission designated contract market.

NYSE Liffe US LLC | 20 Broad Street, 10<sup>th</sup> Floor | New York | NY 10005 York | USA

- Rule 203 is amended to require the Exchange to obtain the consent of any Person to use such Person's proprietary data or personal information for business or marketing purposes to conform with new CFTC Rule 38.7.
- Rule 407 is amended to delete the express requirement to give Members 10 days' notice of any change in the matching algorithm since it is extraneous given the provisions of new Part 40 of Commission Regulations.
- Rules 409, 410, 412, 415, 418, 419, 422, 601-605, 607, 609, 611, and 613-616 are amended to extend the operation of those provisions to non-Members subject to the Exchange's jurisdiction in recognition that Exchange Rules bind all persons that initiate or execute a transaction on or subject to the Rules of the Exchange in accordance with new Exchange Rule 403.1 (effective August 20, 2012), which was implemented to conform Exchange Rules to new CFTC Rule 38.151(a).
- Rule 419 is amended to require all traders to maintain records of trading activity, including records of activity in the cash and related derivatives underlying Exchange Contracts, and to make such records available to the Exchange upon request to comply with new CFTC Rule 38.254, which requires an Exchange to have such recordkeeping requirements for all persons trading on its markets.
- Rule 425 is amended to provide the Exchange with the authority to impose intraday market restrictions, among other things, during a market emergency to bring Rule 425 up to complete compliance with new CFTC Rule 38.351, which provides for the types of rules an Exchange should have to address emergency situations.
- Rule 426 is amended to clarify that it is the responsibility of all market makers to comply with the provisions of the Commodity Exchange Act or Rules or Regulations of the Commodity Futures Trading Commission, unless exempted by the Commission.
- Rule 617 is amended to prohibit any trading, practice, or conduct on the Exchange that: 1) violates bids and offers; 2) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period; and 3) Is, is of the character, or is commonly known to the trade as "spoofing" to implement the amendment made by Congress in the Dodd-Frank Act to Section 4c(a) of the Commodity Exchange Act.
- Rule 701subsection (e) is amended to make clear that a Member or person under investigation by the Exchange is entitled to counsel, subject to certain limitations intended to prevent conflicts of interest, implementing Regulation 38.704
- Rule 701subsection (g) is amended to make clear that members of the Market Regulation Department are prohibited from serving on a review panel or disciplinary panel, in keeping with Regulation 38.702
- Rule 701subsection (j) is amended to require that any disciplinary panel must be chaired by a public panelist, in accordance with Regulation 40.9(c)(3).

- Rule 702 subsection (a) is amended to make clear that the Exchange is obligated to initiate an investigation pursuant to CFTC request, or if the Exchange has a reasonable basis for believing that a violation has occurred or will occur, and that it is authorized to initiate an investigation based on a request for information received through an information sharing agreement. This implements Regulations 38.158(a) and 38.159
  - Rule 702 subsection (b) is amended to make clear that the Exchange may issue a warning letter in cases where a violation is found, but disciplinary proceedings are unwarranted. The Rule is also amended to limit warning letters to one per rolling twelve-month period for the same violation by the same Member. This aligns Rule 702(b) with Regulation 38.158(e).
  - Rule 702 subsection (c) is amended to make clear that the Exchange has the authority to gather information regarding all persons subject to the Exchange’s jurisdiction, including those subject to investigation by the Exchange. This amendment further implements the Exchange’s addition of Rule 403.1 effective August 20, 2012 pursuant to Regulation 38.151(a).
  - Rule 703 subsection (b) is amended to include the information required in an investigative report where the Exchange has determined to close a file. This Rule is also amended to make clear that the issuance of a warning letter does not necessarily constitute violation, and that only one warning letter may be issued to the same Member for the same conduct. In addition, the reference to “informal dispositions” has been removed. This implements Regulation 38.158(d) and (e).
  - Rule 705 is amended to delete the term “informal” modifying the word dispositions in order to harmonize it with Rules 702 and 703 in terms of whether a warning letter constitutes a penalty or violation in accordance with Regulation 38.158(e)
  - Rule 707 has been amended to make clear that a respondent’s failure to answer charges will result in the charges being deemed as admitted. The Rule is further amended to allow the Hearing Panel to direct the Market Regulation Department to issue sanctions where a respondent is deemed to have committed a violation by virtue of his failure to answer the allegations against him, in keeping with Part 38 Appendix B, Core Principle 13, Acceptable Practices, Section 2.
  - Rule 712 has been amended to include attorney work product as materials that are protected from disclosure to the respondent, as authorized by Regulation 38.707(a)(2).
  - Rule 715 has been amended to make clear that where a violation is found, and a warning letter is issued, that no more than one warning letter may be issued to the same Member for the same violation during a rolling twelve-month period as required by Regulation 38.158(e).
  - Rule 717 has been amended to include a right by the Exchange to appeal the decision of a Hearing Panel. The Rule is also being amended to make clear that further disciplinary procedures upon appeal be held “promptly.” This change is in keeping with Part 38 Appendix B, Core Principle 13, Acceptable Practices, Section 5.
- 2. Text of Rules 701, 702, 703, 705, 707, 712, 715, and 717 as amended.**

**2.1** For Members' convenience, the text of the amendments to Rules 701, 702, 703, 705, 707, 712, 715 and 717 are set forth in the attached appendix.

\* \* \* \*

Members who have questions or seek additional information in respect of this Notice should contact:

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Chicago Office

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## Appendix to NYSE Liffe US Notice 35/2012

Deleted language is shown in ~~strikeout~~ and added language is underscored

### 126. Exchange Business

The term “Exchange Business” means any business with respect to which a Member or any other Person is subject to the Rules of the Exchange, which is purportedly conducted subject to the Rules of the Exchange, or which should have been conducted subject to the Rules of the Exchange.

### 133. Member

The term “Member” means any Person authorized in accordance with Rule 305 to access the NYSE Liffe US Trading Platform. Members will be deemed to be members of the Exchange for purposes of the CEA and Commission Regulations thereunder. A Member, solely by virtue of his, her or its status as an Exchange Member, will not be a limited liability company member and will not obtain any equity or other interest in the Exchange, including voting rights or rights to receive any dividends or other distributions, whether arising from a dissolution, merger or consolidation involving the Exchange or otherwise.

### 203. Confidentiality

(a) No member of the Board or any committee established by the Board or by or pursuant to the Rules of the Exchange will use or disclose any material non-public information obtained in connection with such member’s participation in the Board or such committee, for any purpose other than the performance of his or her official duties as a member of the Board or such committee.

(b) No officer, employee or agent of the Exchange will (i) trade in any commodity interest if such officer, employee or agent has access to material non-public information concerning such commodity interest or (ii) disclose to any other Person material non-public information obtained in connection with such employee’s, officer’s or agent’s employment, if such employee, officer or agent could reasonably expect that such information may assist another Person in trading any commodity interest.

(c) The Exchange may not use for business or marketing purposes any proprietary data or personal information it collects or receives, from or on behalf of any Person, for the purpose of fulfilling its regulatory obligations; provided however, that the Exchange may use such data or information for business or marketing purposes if the Person from whom it collects or receives such data or information clearly consents to the Exchange’s use of such data or information in such manner.

(d) For purposes of this Rule 203, the terms “employee,” “material information,” “non-public information” and “commodity interest” have the meanings ascribed to them in Commission Regulation § 1.59.

#### **407. Matching of Orders**

Except as otherwise provided in these Rules, following the application of the uncrossing algorithm at Market Open, Orders entered into the NYSE Liffe US Trading Platform will be matched in accordance with one or more algorithms, depending on the Contract<sup>2</sup>, the detailed operation of which shall be set out in a notice issued by the Exchange, as amended from time to time. Market on Open Orders may take priority over Limit Orders submitted during the Pre-Open period, by trading with other Market on Open Orders, where such Limit Orders cannot be executed during the opening algorithm.

~~The Exchange may at any time use a different matching algorithm for a particular Contract by giving notice of such algorithm to all Members at least 10 days before such algorithm is implemented.~~

#### **409. Trading Against Customer Orders and Crossing Orders**

(a) **Trading Against Customer Orders** – During a trading session, a Member, ~~or~~ Registered User, or other Person within the Exchange's jurisdiction shall not knowingly cause to be entered or knowingly enter into a transaction in which he takes the opposite side of an Order entered on behalf of a customer, for the Member's or Registered User's or such Person's own account or his employer's proprietary account unless the customer Order has been entered immediately upon receipt and has first been exposed on the platform for a minimum 5 seconds for futures contracts and a minimum of 15 seconds for options contracts. Such transactions that are unknowingly consummated shall not be considered to have violated this regulation.

#### **410. Good Faith Bids and Offers**

A Member, ~~or~~ Registered User, or other Person within the Exchange's jurisdiction shall not knowingly enter, or cause to be entered, bids or offers into the system other than in good faith for the purpose of executing bona fide transactions.

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<sup>2</sup> Amendment effective November 3, 2008, pursuant to CFTC Rule 40.6 filing with the CFTC by NYSE Liffe US dated October 10, 2008. *See* Notice 11/2008.



#### **412. Disciplinary Procedures**

All access denials, suspensions, expulsions and other restrictions imposed by the Exchange upon a Member, or Registered User, or other Person within the Exchange's jurisdiction by the Exchange pursuant to Exchange disciplinary procedures shall restrict with equal force and effect, access to, and use of, the system.

#### **415. Limitation of Liability; Legal Proceedings**

...

NO MEMBER, OR PERSON ASSOCIATED WITH A MEMBER, OR ANY OTHER PERSON WILL INSTITUTE A LAWSUIT OR OTHER LEGAL PROCEEDING AGAINST THE EXCHANGE OR ANY DIRECTOR, COMMITTEE MEMBER, OFFICER, EMPLOYEE, AGENT OR CONTRACTOR OF THE EXCHANGE (INCLUDING ITS AFFILIATES), FOR ACTIONS TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH THE OFFICIAL BUSINESS OF THE EXCHANGE (INCLUDING ITS AFFILIATES). THIS PROVISION WILL NOT APPLY TO APPEALS OF DISCIPLINARY ACTIONS OR OTHER ACTIONS BY THE EXCHANGE AS PROVIDED FOR IN THESE RULES.

ANY MEMBER, OR PERSON ASSOCIATED WITH A MEMBER, OR ANY OTHER PERSON WHO FAILS TO PREVAIL IN A LAWSUIT OR OTHER LEGAL PROCEEDING INSTITUTED BY SUCH PERSON AGAINST THE EXCHANGE (INCLUDING ITS AFFILIATES) OR ANY OF ITS DIRECTORS, COMMITTEE MEMBERS, OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS, AND RELATED TO THE BUSINESS OF THE EXCHANGE, WILL PAY TO THE EXCHANGE ALL REASONABLE EXPENSES, INCLUDING ATTORNEYS' FEES, INCURRED BY THE EXCHANGE IN THE DEFENSE OF SUCH PROCEEDING TO THE EXTENT THAT SUCH EXPENSES EXCEED FIFTY THOUSAND DOLLARS (\$50,000.00). THIS PROVISION WILL NOT APPLY TO DISCIPLINARY ACTIONS BY THE EXCHANGE, ADMINISTRATIVE APPEALS OF EXCHANGE ACTIONS OR IN ANY SPECIFIC INSTANCE WHERE THE BOARD HAS GRANTED A WAIVER OF THIS PROVISION.

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#### **418. Errors of Members**

If a Member or any other Person within the Exchange's jurisdiction discovers an error in the handling of an Order for a Customer after the relevant trade is completed, and the Order cannot be executed in the market at a price which is better than or equal to that at which the Order should have been executed, such Member/Person will make cash payments or other adjustments as are appropriate to rectify the error. Any violation of this Rule 418 for the purpose of taking advantage of an Order or Orders will constitute conduct which is inconsistent with just and equitable principles of trade.

#### 419. Reportable Positions

(a) Each Member or any other Person within the Exchange's jurisdiction required to file any report, statement, form or other information with the Commission pursuant to Commission Regulations Part 15, 17, 18 or 19 concerning any Contract or Commodity underlying a Contract must simultaneously file a copy of such report, statement, form or other information with the Market Regulation Department. Each Member or any other Person within the Exchange's jurisdiction must submit the report, statement, form or other information to the Market Regulation Department in the form and manner designated by the Exchange.

(b) For purposes of filings made or information provided to the Market Regulation Department pursuant to Commission Regulations Part 15, 17 and 18, each Member or any other Person within the Exchange's jurisdiction must report such open contract positions at levels as the Exchange establishes from time to time.

(c) Any Person subject to the Exchange's jurisdiction must maintain records of activity in any Contracts, including records of activity in the cash and related derivatives markets underlying such Contracts and make such records available upon request of the Exchange.

#### 422. Exchange for Related Positions

...

(c) Additional Requirements

(i) For purposes of this Rule, a position is considered a Related Position if it is a cash, securities, swap or derivative position that bears a relationship to the Contract involved in the EFRP. In cases other than cash positions, the position must be derivative, a by-product or related product whose price bears a readily ascertainable relationship to the Contract involved in the EFRP. From time to time, the Exchange may issue guidance on factors that tend to indicate that a position is a Related Position. Notwithstanding, it is ~~a Member's~~ the obligation of the Persons that are parties to the EFRP to ensure that the Related Position involved in an EFRP submitted to the Exchange bears an appropriate relationship.

...

#### 425. Emergencies

(d) **General.** If the President, or any individual designated by the President and approved by the Board, determines that an Emergency exists, the President or such designee, as the case may be, may take or place into immediate effect a temporary emergency action or Rule. Any such Rule may remain in effect for up to 30 Business Days, after which time it must be approved by the Board to remain in effect. Any such action or Rule may provide for, or may authorize the Exchange,

the Board or any committee thereof to undertake actions necessary or appropriate to respond to the Emergency, including such actions as:

- (i) limiting trading to liquidation only, in whole or in part;
- (ii) changing the Delivery Month or extending or shortening the term of any Contract;
- (iii) changing delivery points or the means of delivery provided in the Rules governing any Contract;
- (iv) imposing or modifying position limits, ~~or price limits or intraday market restrictions~~ with respect to any Contract;
- (v) ...

#### **426. Market Making Programs**

Exchange Staff shall approve the implementation of market maker programs, pursuant to which market makers would be authorized to maintain two-sided markets in those products designated by the Exchange. To the extent that the terms of any such market maker program may be in conflict with any Rules of the Exchange, such terms shall supersede such Rules. Nothing in this Rule shall alter or waive a ~~Member's~~ market maker's responsibility to comply with provisions of the Commodity Exchange Act or Rules or Regulations of the Commodity Futures Trading Commission unless exempted by the Commission.

### **CHAPTER 6 BUSINESS CONDUCT**

#### **601. Fraudulent Acts**

Neither a Member, any of its Registered Users, nor other Persons within the Exchange's jurisdiction may engage in any fraudulent act or engage in any scheme to cheat, defraud or deceive, in connection with or related to any trade on or other activity related to the Exchange or the Clearing Service Provider.

#### **602. Fictitious Transactions**

Neither a Member, any of its Registered Users, nor other Persons within the Exchange's jurisdiction may create fictitious transactions or execute any Order for a fictitious transaction with knowledge of its nature.

#### **603. Market Manipulation or Demoralization**

Any manipulation of the market in any Contract is prohibited. Orders entered into the NYSE Liffe US Trading Platform for the purpose of upsetting the equilibrium of the market in any Contract or creating a condition in which prices do not or will not reflect fair market values are prohibited and any Member (including its Registered Users) or any other Person within the Exchange's jurisdiction who makes or assists in entering any such Order with knowledge of the purpose thereof or who, with such knowledge, in any way assists in

carrying out any plan or scheme for the entering of any such Order, will be deemed to have engaged in an act detrimental to the Exchange.

#### **604. Adherence to Law**

Neither a Member, any of its Registered Users, nor other Persons within the Exchange's jurisdiction may engage in conduct in violation of Applicable Law, the Rules of the Exchange or the Rules of the Clearing Service Provider (insofar as the Rules of the Clearing Service Provider relate to the reporting or clearance of any transaction in Contracts).

#### **605. Sales Practice Rules**

Without limiting the generality of Rule 604, each Member (including its Registered Users) and any other Person subject to the Exchange's jurisdiction must comply with any and all sales practice rules in the conduct of customer business (including those relating to bunched orders, opening and approval of accounts, suitability, use of discretion, supervision of accounts, risk disclosure document delivery, communications, monthly statements and confirmations, registration, qualification and continuing education, customer complaints, prohibition against guarantees and profit sharing and money laundering) from time to time promulgated by NFA (or similar foreign Governmental Authority to which such Member is subject), which rules are hereby incorporated by reference into this Rule 605.

#### **607. Cooperation in Investigations and Proceedings**

Each Member (including its Registered Users) and any other Person subject to the Exchange's jurisdiction shall cooperate promptly and fully with the Exchange in any investigation, inquiry, audit, examination or proceeding regarding compliance with Exchange Rules or any Exchange disciplinary or arbitration proceeding. Each Member (including its Registered Users) and any other Person subject to the Exchange's jurisdiction shall comply with any order issued by the Exchange.

#### **609. Acts Detrimental to the Exchange; Acts Inconsistent with Just and Equitable Principles of Trade**

It will be an offense to violate any Rule of the Exchange or Rule of the Clearing Service Provider regulating the conduct or business of a Member (including its respective Registered Users) or any other Person subject to the Exchange's jurisdiction or any agreement made with the Exchange, or to engage in any act detrimental to the Exchange or in conduct inconsistent with just and equitable principles of trade.

#### **611. Priority of Customers' Orders**

(a) No Member (including its Registered Users) or other Person subject to the Exchange's jurisdiction may knowingly buy a Contract for a personal or proprietary account of such Member, ~~or Registered Users,~~ or such other Person or for an account in which such Member, ~~or Registered Users,~~ or such other Person has a proprietary interest, when such Member, ~~or Registered Users,~~ or such other Person has in hand Orders to buy the same Contract for any other Person at the same price or at the market price. No Member (including its Registered Users) or other Person subject to the Exchange's jurisdiction may knowingly sell a Contract for a personal or proprietary account (including a Noncustomer account) of such ~~Member or Registered Users~~ Person (including a Noncustomer account of such Member, ~~or Registered User,~~

or such other Person or for an account in which such Member, ~~or Registered Users,~~ or such other Person has a proprietary interest (including a Noncustomer account), when such Member, ~~or Registered Users,~~ or such other Person has in hand Orders to sell the same Contract for any other Person at the same price or at the market price.

(b) No Member (including its Registered Users) or other Person subject to the Exchange's jurisdiction may knowingly execute a discretionary Order for any Contract, including an Order allowing such Member (including its ~~Related Parties Registered Users~~) or such other Person discretion as to time and price, for an immediate family member or for a personal or proprietary account of any other Member, ~~or Registered Users,~~ or such other Person (including Noncustomer accounts), when such Member, ~~or Registered Users,~~ or such other Person has in hand any Customer market Order for the same Contract open as to time and price.

(c) A Registered User entering Orders into the NYSE Liffe US Trading Platform must enter all Customer Orders that the NYSE Liffe US Trading Platform is capable of accepting before entering an Order for a personal or proprietary account of such Registered User or the related Member (including a Noncustomer account), an account in which such Registered User or Member has a proprietary interest (including a Noncustomer account) or an Order for a discretionary account, including an Order allowing such Registered User or Member discretion as to time and price, for an immediate family member or for a personal or proprietary account of any other Member or Registered Users (including a Noncustomer account).

(d) For purposes of this Rule 611, no ~~Member that consists of more than one individual~~ Person subject to the Exchange's jurisdiction, including Members, will be deemed to knowingly buy or sell a Contract or execute a discretionary Order if (i) such Person is a corporate entity consisting of more than one individual trader, (ii) such Member Person has in place appropriate "firewall" or separation of function procedures and (ii) the individual buying or selling the Contract or executing the discretionary Order in question has no direct knowledge of the Order to buy or sell the same Contract for any other Person at the same price or at the market price or of the Customer Order for the same Contract, as the case may be. Nothing in this Rule 611 limits the ability of an "eligible account manager" to bunch Orders in accordance with Commission Regulation § 1.35(a-1)(5).

## **612. Trading Against Customers' Orders**

No Member (including its Registered Users) or any other Person subject to the Exchange's jurisdiction may enter into a transaction on behalf of a Customer in which such Member, ~~or Registered Users,~~ or such other Person or any Person trading for an account in which such Member, ~~or Registered Users,~~ or such other Person has a financial interest (including a Noncustomer account), intentionally assumes the opposite side of the transaction. The foregoing restriction does not prohibit pre-execution discussions conducted in accordance with procedures established by the Exchange from time to time, and does not apply to any Exchange for Physical, any Block Trade or any transaction meeting all of the following criteria (or such other criteria as may be established by the Exchange from time to time):

(a) the Customer has previously consented in writing to such transactions, which consent must have been given or renewed within 12 months of the transaction at issue and may not have been revoked prior thereto;

(b) the Member, ~~or Registered Users,~~ or Person has waited for a reasonable period of time, as determined by the Exchange, after first entering the Order received from the Customer into the NYSE Liffe US Trading Platform before taking the opposite side of the transaction;

(c) the Member or Person maintains a record that clearly identifies, by appropriate descriptive words, all such transactions, including the time of execution, Commodity, date, price, quantity and delivery month; and

(d) the Member or Person provides a copy of the record referred to in clause (c) above to the Exchange.

### **613. Withholding Orders**

No Member (including its Registered Users) or other Person subject to the Exchange's jurisdiction may withhold or withdraw from the market any Order or any part of an Order placed by any Customer, unless expressly instructed or authorized to do so by such Customer.

### **614. Disclosing Orders**

Except in accordance with any policies or procedures for pre-execution discussions from time to time adopted by the Exchange, no Member (including its Registered Users) or other Person subject to the Exchange's jurisdiction may disclose to any Person any Order placed by any other Person, except to the Exchange, the Commission or the United States Department of Justice.

### **615. Pre-Arranged Trades**

No Member (including its Registered Users) or other Person subject to the Exchange's jurisdiction may enter any Order into the NYSE Liffe US Trading Platform which has been pre-arranged, except as expressly permitted by Rules 422 and 423 or in accordance with any policies or procedures for pre-execution discussions from time to time adopted by the Exchange.

### **616. Simultaneous Buying and Selling Orders**

(a) No Member (including its Registered Users) or other Person subject to the Exchange's jurisdiction may accept simultaneous buy and sell Orders from the same Customer for the same delivery month of a particular Future.<sup>3</sup>

(b) A Member (including its Registered Users) or other Person subject to the Exchange's jurisdiction holding Orders to buy and sell at the same time from different Customers for the same month of a particular Future may enter both Orders into the NYSE Liffe US Trading Platform.

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<sup>3</sup> Related information regarding the application of Rule 616(a) to the activities of designated market makers available at CFTC Rule 40.6 filing by NYSE Liffe US dated March 9, 2011. *See* Notice 4/2011.

## **617. Disruptive Practices Prohibited**

No Member (including its Registered Users) or Person subject to the Exchange's jurisdiction may engage in any trading, practice or conduct on or subject to the Rules that:

- (a) Violates bids or offers;
- (b) Demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period;or
- (c) Is, is of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution).

## **701. General**

(a) All Members, Registered Users and other Persons within the Exchange's jurisdiction are subject to this Chapter 7 if they are alleged to have violated, to have aided and abetted a violation, to be violating, or to be about to violate, any Rule of the Exchange or any provision of Applicable Law for which the Exchange possesses disciplinary jurisdiction.

(b) Except when the Board reserves responsibility for an inquiry or investigation to itself or delegates its responsibility to a committee of the Board, the Exchange will conduct inquiries, investigations, disciplinary proceedings and appeals from disciplinary proceedings, summary impositions of fines, summary suspensions or other summary actions in accordance with this Chapter 7.

(c) The Exchange may delegate any or all of its powers or responsibilities under this Chapter 7 to the Market Regulation Department, which may take any actions on behalf of the Exchange that the Exchange is permitted to take hereunder. In the event of any such delegation, references to the Exchange in this Chapter 7 shall be construed to be references to the Market Regulation Department.

(d) No member of the staff of the Exchange who is not a member of the Market Regulation Department will interfere with or attempt to influence the process or resolution of any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action. No member of the Board will interfere with or attempt to influence the process or resolution of any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action with respect to which the Board member is not a member of the relevant Appeals Panel or Summary Review Panel.

(e) Any Member, Registered User or other Person within the Exchange's jurisdiction may be represented by counsel, or any other representative of its choosing, during any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary actions pursuant to this Chapter 7. Such representative may not be any

member of the Exchange's board of directors or disciplinary panel, any employee of the Exchange, or any person substantially related to the underlying investigations, such as a material witness or respondent.

- (f) Pursuant to this Chapter 7, the Exchange may hold:
- (i) a Member liable for, and impose sanctions against such Member, for such Member's own acts and omissions that constitute a violation;
  - (ii) a Member liable for, and impose sanctions against such Member, for the acts and omissions of each Registered User authorized by, and each other agent or representative of, such Member that constitute a violation as if such violation were that of the Member;
  - (iii) a Registered User liable for, and impose sanctions against him or her, for such Registered User's own acts and omissions that constitute a violation; and
  - (iv) a Registered User liable for, and impose sanctions against him or her, for the acts and omissions of each agent or representative of such Registered User that constitute a violation as if such violation were that of the Registered User.

(g) The Board shall appoint individuals at the recommendation of the Chief Regulatory Officer to serve as participants on Review Panels, Summary Review Panels, Hearing Panels and Appeal Panels as set forth in Chapter 7 of the Rules. The individuals so appointed shall constitute the Disciplinary Panel and be Disciplinary Panel Members ("DPMs"), and shall serve for a one year term from appointment. The Chief Regulatory Officer shall assign DPMs to either industry participant pools or to a public DPM pool, in the case of DPMs who would qualify as public directors, as defined in Subsections 2(ii) and 2(iii) of the Commission's Acceptable Practices found in its *Guidance On, and Acceptable Practices In, Compliance with Core Principle 15* in Appendix B to Part 38 of the Commission's Regulations, 17 C.F.R. Part 38 Appendix B. No member of the Market Regulation Department may be a DPM. The Board may re-appoint DPMs to subsequent terms following the expiration of their initial term. The terms of DPMs serving on an active panel do not expire until the panel's proceedings are completed. The Chief Regulatory Officer shall exercise complete discretion in defining the industry participant pools and the assignment of non-public DPMs to such pools. In forming a Review Panel, Summary Review Panel, Hearing Panel or Appeals Panel, the Chief Regulatory Officer shall draw DPMs randomly from the industry participant pools as set forth in Chapter 7 so that any group or class of industry participants is precluded from dominating or exercising disproportionate influence on the panel being formed, and so that at least one person drawn from the public DPM pool is included on the panel.<sup>4</sup>

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<sup>4</sup> Amendment to Rule 701 adding subsection (g). Effective November 20, 2009 pursuant to CFTC Rule 40.6 filing by NYSE Liffe US dated November 17, 2009. See Notice 27/2009.



(h) Exchange disciplinary proceedings will be conducted as set forth in this Chapter 7 by the following panels, which shall be formed in accordance with Rule 701(i):

(i) Appeals Panel

The term “Appeals Panel” means a panel comprised of three individuals, two of whom shall be Members (or officers of Members or affiliates of Members). The Chief Regulatory Officer shall form an Appeals Panel upon the filing of one or more notices of appeal pursuant to Rule 717. The Appeals Panel will consider the appeal or appeals for which it was formed in accordance with Chapter 7, and determine whether offers of settlement shall be accepted or rejected in matters pending before the Appeals Panel pursuant to Rule 709.<sup>5</sup>

(i) Hearing Panel

The term “Hearing Panel” means a panel consisting of five individuals. The Chief Regulatory Officer shall form a Hearing Panel upon the service of an answer to the Notice of Charges or upon a default pursuant to Rule 707(c). The Hearing Panel will conduct hearings in connection with any disciplinary proceedings, and make findings and impose sanctions pursuant to Chapter 7 and determine whether offers of settlement shall be accepted or rejected in matters pending before the Hearing Panel pursuant to Rule 709.<sup>6</sup>

(ii) Review Panel

The term “Review Panel” means a panel comprised of three individuals, two of whom shall be Members (or officers of Members or affiliates of Members). The Chief Regulatory Officer shall form a Review Panel upon his or her determination to initiate one or more disciplinary proceedings pursuant to Rule 703(b). The Review Panel will commence its deliberations and take the actions it deems appropriate as set forth in Rules 704 and 705 to review investigation reports submitted to it by the Market Regulation Department to determine (a) whether a reasonable basis exists to believe that a violation of a Rule of the Exchange has occurred or will occur and (b) whether commencing disciplinary proceedings in respect of such violation or potential violation is warranted. In addition, the Review Panel will determine whether offers of settlement shall be accepted or rejected pursuant to Rule 709 unless an answer to the Notice of Charges has been served on the Exchange, in which case such determination shall be made by the Hearing Panel.<sup>7</sup>

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<sup>5</sup> Amendments to the text of subsections (h)(i),(ii),(iii) and (iv) of Rule 701 effective November 10, 2010, pursuant to CFTC Rule 40.6 filing by NYSE Liffe US dated November 8, 2010. *See* Notice 27/2010.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

(iii) Summary Review Panel

The term “Summary Review Panel” means a panel comprised of three individuals, two of whom shall be Members (or officers of Members or affiliates of Members). The Chief Regulatory Officer shall form a Summary Review Panel upon the President or his or her designee’s determination to initiate one or more summary actions pursuant to Rule 719. The Summary Review Panel will commence its deliberations and take the actions it deems appropriate as set forth in Rule 719 to conduct a hearing concerning the summary action.<sup>8</sup> In addition, the Summary Review Panel will determine whether offers of settlement shall be accepted or rejected pursuant to Rule 709.<sup>9</sup>

(j) (i) In forming a Review Panel, Summary Review Panel, Hearing Panel or Appeals Panel, the Chief Regulatory Officer shall draw panel members from the DPMs appointed by the Board. In drawing the individuals to participate on a panel, the Chief Regulatory Officer shall draw individuals randomly from those pools of DPMs that the Chief Regulatory Officer shall create in his or her discretion, so that any group or class of industry participants is precluded from dominating or exercising disproportionate influence on the panel, and so that at least one person drawn from the public DPM pool is included on the panel. If a member randomly drawn (i) has one or more of the prohibited conflicts of interest set forth in Rule 204 based on information available to the Chief Regulatory Officer, (ii) is affiliated with a Member who or whose officers or employees or affiliate’s officers and employees have been or are likely to be witnesses in the proceeding or prior panel proceeding, (iii) is affiliated with the same Member as, or closely related to (e.g. spouse, parent or child of), another individual previously selected and serving on the panel, (iv) is ineligible to serve on the panel, or (v) in the case of a Hearing Panel or Appeals Panel, participated on a prior panel proceeding in the same matter, the Chief Regulatory Officer will draw randomly again from the same pool of DPMs. If after being seated, a panel member recuses him or herself or is disqualified, the Chief Regulatory Officer shall randomly draw a replacement panel member from the same pool to which the recused or disqualified panel member is assigned in the manner set forth above, except as otherwise provided in Rule 711(d). If there are no more DPMs eligible to serve on the panel assigned to an industry participant pool, the Chief Regulatory Officer may, in his or her discretion, choose to draw randomly from another industry participant pool or the public pool. A public panelist who recuses him or herself or is disqualified may only be replaced by another DPM drawn from the public DPM pool. After being formed, the members of a panel shall select a public panelist ~~one member~~ to act as chairman and a panelist ~~one of whom~~ will serve as vice-chairman.<sup>10</sup>

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<sup>8</sup> Amendment to Rule 701 adding subsection (h). Effective November 20, 2009 pursuant to CFTC Rule 40.6 filing by NYSE Liffe US dated November 17, 2009. See Notice 27/2009.

<sup>9</sup> Amendments to the text of subsections (h)(i),(ii),(iii) and (iv) of Rule 701 effective November 10, 2010, pursuant to CFTC Rule 40.6 filing by NYSE Liffe US dated November 8, 2010. See Notice 27/2010.

<sup>10</sup> Amendment to Rule 701 adding subsection (i). Effective November 20, 2009 pursuant to CFTC Rule 40.6 filing by NYSE Liffe US dated November 17, 2009. See Notice 27/2009.

## 702. Inquiries and Investigation

(a) The Market Regulation Department will investigate any matter within the Exchange's disciplinary jurisdiction (i) that is brought to such Department's attention; (ii) upon receipt of information that indicates a reasonable basis for finding that a violation may have occurred or will occur; (iii) upon CFTC request; or (iv) inquiries initiated pursuant to any information-sharing agreement. The Market Regulation Department will determine the nature and scope of its inquiries and investigations within its sole discretion and will function independently of any commercial interests of the Exchange.

(b) The Market Regulation Department has the authority to:

(i) initiate and conduct inquiries and investigations;

(ii) prepare investigative reports and make recommendations concerning initiating disciplinary proceedings;

(iii) issue warning letters if disciplinary proceedings are unwarranted, or no reasonable basis exists to believe that a violation has occurred;

(iv) prosecute alleged violations within the Exchange's disciplinary jurisdiction; and

(v) represent the Exchange on appeal from any disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.

(c) Each Person, ~~(including where applicable a Member's officers, employees or agent subject to the Member's control), Registered Users and other Person~~ including those subject to the Exchange's jurisdiction and those subject to Exchange investigation:<sup>11</sup>

(i) is obligated to appear and testify and respond in writing to interrogatories within the time period required by the Market Regulation Department in connection with: (A) any Exchange Business or Rule of the Exchange; (B) any inquiry or investigation; or (C) any preparation by and presentation during a disciplinary proceeding or appeal from a decision in a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action by the Exchange;

(ii) is obligated to produce books, records, papers, documents or other tangible evidence in its, his or her possession, custody or control within the time period required by the Market Regulation Department in connection with: (A) any Exchange Business or Rule of the Exchange; (B) any inquiry or

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<sup>11</sup> Amendment to text of subsection (c) of Rule 702. Effective November 20, 2009 pursuant to CFTC Rule 40.6 filing by NYSE Liffe US dated November 17, 2009. See Notice 27/2009.

investigation; or (C) any preparation by and presentation during a disciplinary proceeding or appeal from a decision in any disciplinary proceeding, summary imposition of fines, summary suspension or other summary action by the Exchange; and

(iii) may not impede or delay any inquiry, investigation, disciplinary proceeding, appeal from a disciplinary proceeding, summary imposition of fines, summary suspension or other summary action.

### **703. Reports of Investigations**

(a) The Market Regulation Department will maintain a log of all investigations and their disposition. The Market Regulation Department will prepare a written report of investigation when the evidence gathered during any inquiry or investigation forms a reasonable basis to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur.

(b) Any written report of investigation will include the reasons for initiating the investigation (including a summary of the complaint, if any), all relevant facts and evidence gathered, the Market Regulation Department staff's analysis and conclusions, and the recommendation of the Market Regulation Department.

(c) For each potential respondent, the Market Regulation Department will recommend either:

(i) closing the investigation without further action;

(ii) resolving the investigation through ~~an informal disposition (including the issuance of a warning letter)~~, because disciplinary proceedings are unwarranted, or no reasonable basis exists to believe that a violation has occurred, or

(iii) initiating disciplinary proceedings.

~~An informal disposition (including the issuance of a warning letter) will not constitute a finding of a violation or a sanction.~~

### **705. Review of Investigative Reports<sup>12</sup>**

(a) The Review Panel will review promptly each completed investigation report (together with any response submitted by a potential respondent to a notice issued pursuant to Rule 704 of the Market Regulation Department's determination to recommend that a Review Panel authorize the commencement of formal disciplinary proceedings against the potential respondent) to determine whether a reasonable basis exists to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur.

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<sup>12</sup> Text of subsection (c) amended effective July 30, 2012, pursuant to CFTC Rule 40.6 filing by NYSE US dated July 13, 2012.

(b) If the Review Panel determines that additional investigation or evidence is needed to decide whether a reasonable basis exists to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur, the Review Panel will direct the Market Regulation Department to conduct further investigation.

(c) After receiving notice of completion of an investigation, the Review Panel will determine for each potential respondent whether to authorize:

(i) the commencement of disciplinary proceedings because a reasonable basis exists to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur;

(ii) the ~~informal~~ disposition of the investigation (by issuing a warning letter or otherwise) because disciplinary proceedings are unwarranted or because no reasonable basis exists to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur; or

(iii) the closing of the investigation without any action because disciplinary proceedings are not warranted or no reasonable basis exists to believe that a violation within the Exchange's jurisdiction has occurred or is about to occur.

(d) Any member of the Review Panel must promptly recuse himself or herself and notify the Chief Regulatory Officer of the recusal if such member has a relationship of a type listed in Rule 204(a)(i) with a potential respondent in an investigative report.<sup>13</sup>

#### **707. Answer to Notice of Charges**

(a) If the respondent determines to answer a notice of charges, the respondent must file answers within 20 days after being served with such notice, or within such other time period determined appropriate by the Chairman of the Hearing Panel,<sup>14</sup> unless such time is tolled by the operation of Rule 709(a).<sup>15</sup>

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<sup>13</sup> All references in the Rules to the term "General Counsel" have hereinafter been replaced with the term "Chief Regulatory Officer". Effective November 20, 2009 pursuant to CFTC Rule 40.6 filing by NYSE Liffe US dated November 17, 2009. *See* Notice 27/2009.

<sup>14</sup> All references in the Rules to the term "Director of Hearings" have hereinafter been replaced with the term "Chairman of the Hearing Panel". Effective November 20, 2009 pursuant to CFTC Rule 40.6 filing by NYSE Liffe US dated November 17, 2009. *See* Notice 27/2009.

<sup>15</sup> Amendments to the text of subsection (a) of Rule 707 effective November 10, 2010, pursuant to CFTC Rule 40.6 filing by NYSE Liffe US dated November 8, 2010. *See* Notice 27/2010.

- (b) To answer a notice of charges, the respondent must in writing:
- (i) specify the allegations that the respondent denies or admits;
  - (ii) specify the allegations that the respondent does not have sufficient information to either deny or admit;
  - (iii) specify any specific facts that contradict the notice of charges;
  - (iv) specify any affirmative defenses to the notice of charges; and
  - (v) sign and serve the answer on the Chief Regulatory Officer.

(c) Any failure by the respondent to timely serve an answer to a notice of charges will be deemed to be an admission to the allegations in such notice. Any failure by the respondent to answer one or more allegations in a notice of charges will be deemed to be an admission of that allegation or those allegations. Any allegation in a notice of charges that the respondent fails to expressly deny will be deemed to be admitted. A general denial by the respondent, without more, will not satisfy the requirements of paragraph (b) above.

(d) The Hearing Panel may impose a sanction for each violation found to have been committed as a result of the failure of the respondent to answer or expressly deny an allegation or allegations in a notice of charges, pursuant to paragraph (c), above. The Hearing Panel shall direct the Market Regulation Department to promptly notify the respondent in writing of any sanction to be imposed pursuant to this paragraph (d) and shall advise respondent that he or she may request a hearing on such sanction within 20 days. If the respondent fails to request a hearing within 20 days, the respondent will be deemed to have accepted the sanction.

## 712. Respondent Review of Evidence

(a) Prior to the commencement of a hearing, each respondent will be given the opportunity to review all books, records, documents, papers, transcripts of testimony and other tangible evidence in the possession or under the control of the Exchange that the Market Regulation Department will use to support the allegations and proposed sanctions in the notice of charges or which the chairman of the Hearing Panel deems relevant to the disciplinary proceedings. Notwithstanding the foregoing, no respondent will have the right to review, and the Exchange will have no obligation to disclose, any information protected by attorney-client privilege or attorney work product, as defined by Rule 26(b)(3) of the Federal Rules of Evidence. This includes documents that were prepared by an employee of the designated contract market but will not be offered in evidence in the disciplinary proceedings, documents that may disclose a technique or guideline used in examinations, investigations, or enforcement proceedings, and documents that disclose the identity of a confidential source.

(b) If any books, records, documents, papers, transcripts of testimony, or other tangible evidence contain information that could adversely affect the competitive position of the Person providing the information or if such information might compromise other investigations being conducted by the Market Regulation Department, the Market Regulation Department may redact, edit or code such information before furnishing it to the respondent.

(c) Notwithstanding anything in paragraph (b) above to the contrary, the Market Regulation Department:

(i) will not redact, edit or code competitive or investigative information contained in documents in a manner that would impair the respondent's ability to defend against the allegations or proposed sanctions in the notices of charges, and

(ii) will provide the respondent with access to the information and portions of the documents that the Market Regulation Department intends to rely on to support the allegations or proposed sanctions in the notice of charges.

(d) For purposes of this Rule 712, information that could adversely affect competitive positions include positions in Contracts currently held, trading strategies employed in establishing or liquidating positions, the identity of Customers, and the personal finances of the Person providing the information.

## 715. Sanctions

(a) After notice and opportunity for hearing in accordance with these Rules, the Exchange will impose sanctions if a Member, Registered User or other Person within the Exchange's jurisdiction is found to have violated a Rule of the Exchange or provision of Applicable Law for which the Exchange possesses disciplinary jurisdiction. The Exchange may impose one or more of the following sanctions or remedies: (i) censure; (ii) limitation on the Member's right to access the NYSE Liffe US Trading Platform, association with a Member or other activities, functions or operations; (iii) suspension of the Member's right to access the NYSE Liffe US Trading Platform or association with a Member for a period not to exceed 12 months; (iv) fine (subject to paragraph (b) below); (v) restitution or disgorgement; (vi) expulsion or termination of a Member, Registered User or other Person within the Exchange's jurisdiction; or (vii) any other sanction or remedy deemed to be appropriate. If the Exchange determines to suspend or expel a Member that is registered with the Commission as a futures commission merchant, the Exchange shall assure that any customer accounts and customer funds carried by such Member are first transferred to another futures commission merchant, as appropriate and Member shall fully cooperate with the Exchange in effecting any transfers.<sup>16</sup>

(b) The Exchange may impose a fine of up to \$500,000 for each violation. If a fine or other amount is not paid within 30 days of the date that it becomes payable, then interest will accrue on the sum from the date that it became payable at the quoted prime rate plus three percent. The Exchange has sole discretion to select the bank on whose quotations to base the prime rate. Each Member will be responsible for paying any fine or other amount imposed on, but not paid by, any Registered User authorized by, or other agent or representative of, such Member.

(c) A warning letter may or may not constitute a finding of a violation or a sanction. If the finding is that a violation has occurred and a warning letter is issued pursuant to the provisions of this rule, no more than one warning letter may be issued to the same entity for the same violation in a rolling 12-month period.

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<sup>16</sup> Text of subsection (a) of Rule 715 amended. Effective November 20, 2009, pursuant to CFTC Rule 40.6 filing by NYSE Liffe US dated November 17, 2009. See Notice 27/2009.



## 717. Appeal from Disciplinary Panel Decision

(a) Each respondent found by a Hearing Panel to have violated a Rule of the Exchange or a provision of Applicable Law, or the Exchange may appeal the decision of the Hearing Panel within 20 days of receiving the order of the disciplinary proceedings by filing a notice of appeal with the Chief Regulatory Officer. While an appeal is pending, the effect of the order of disciplinary proceedings (including any sanctions, remedies or costs imposed thereby) is suspended.

(b) In a notice of appeal, the appellant must state in writing the grounds for appeal, including the findings of fact, conclusions or sanctions to which the respondent objects. An appellant may appeal the order of disciplinary proceedings on the grounds that:

(i) the decision was arbitrary, capricious, an abuse of discretion, or not in accordance with the Rules of the Exchange;

(ii) the decision exceeded the authority or jurisdiction of the Hearing Panel or the Exchange;

(iii) the decision failed to observe required procedures;

(iv) the decision was unsupported by the facts or evidence; or

(v) the imposed sanctions, remedies or costs are inappropriate or unsupported by the record.

(c) **In the case of a respondent's appeal,** ~~the~~ Chief Regulatory Officer will forward copies of any notice of appeals received by it to all parties to the disciplinary proceedings in question, except the appellant. On or before the 20th day after filing a notice of appeal or such later date as mutually agreed by the parties to the appeal, the appellant must file with the Chief Regulatory Officer and serve on the Market Regulation Department a brief supporting the notice of appeal and documents supporting the brief. On or before the 20th day after the date on which the appellant served its, his or her brief or such later date as mutually agreed by the parties to the appeal, the appellee must file and serve its brief in opposition. On or before the 10th day after the date on which the appellee served its, his or her brief in **opposition or such later date as mutually agreed by the parties to the appeal,** the appellant must file and serve a brief in reply.

(d) In the case of the Exchange's appeal, copies of any notice of appeals shall be sent to all parties to the disciplinary proceedings, except the Chief Regulatory Officer. On or before the 20<sup>th</sup> day after filing a notice of appeal, or such later date as mutually agreed by the parties to the appeal, the Chief Regulatory Officer will serve on the parties a brief supporting the notice of appeal and documents supporting the brief. On or before the 20<sup>th</sup> day after the date to which the Chief Regulatory Officer served his or her brief or such later date as mutually agreed by the parties to the appeal, the appellee or appellees must file and serve its or their brief(s) in opposition. On or before the 10<sup>th</sup> day after the date on which the appellee or appellees served its

or their brief(s) in opposition or such later date as mutually agreed by the parties to the appeal, the Chief Regulatory Officer must file and serve a brief in reply.

(e) Within 30 days after the last submission filed pursuant to paragraph (c) or (d) above, the Market Regulation Department will appoint, pursuant to Rule 701(i), an Appeals Panel to consider and determine the appeal.<sup>17</sup>

(f) Within 10 days of being notified of the appointment of an Appeals Panel, the appellant may seek to disqualify any individual named to the Appeals Panel for the reasons listed in Rule 204 or for any other reasonable grounds, by serving written notice on the Chief Regulatory Officer. If the appellant is the Exchange, the Chief Regulatory Officer shall serve written notice seeking disqualification on the appellee. By not timely filing a request for disqualification, the appellant will be deemed to have waived any objection to the composition of the Appeals Panel. The Chief Regulatory Officer will decide the merits of any such objection in his or her sole discretion. Any such decision will be final and not subject to appeal.

(g) An Appeals Panel may hold a hearing to allow parties to present oral arguments. Any hearing held under this subsection must be conducted before the entire panel, and will be conducted privately and confidentially unless the Appeals Panel decides that the hearing, or any part of it, should be held in public after giving each appellant the opportunity to present its, his or her views on holding a public hearing. Notwithstanding the confidentiality of hearings, an Appeals Panel may appoint individuals to attend any hearing and assist in the deliberations if such individuals agree to be subject to appropriate confidentiality agreements. In determining procedural and evidentiary matters, the Appeals Panel will not be bound by any evidentiary or procedural rules or law.

(h) The Appeals Panel will only consider on appeal the record before the Hearing Panel, the notice of appeal, the briefs filed in support and opposition of the appeal, oral or written exceptions, and any oral arguments of the parties. The Appeals Panel may only consider new evidence when the Panel is satisfied that good cause exists on why the evidence was not introduced during the disciplinary proceedings.

(i) After completing its review, the Appeals Panel may affirm, modify or reverse any order of disciplinary proceedings under appeal in whole or in part, including increasing, decreasing or eliminating any sanction or remedy imposed, imposing any other sanction or remedy authorized by the Rules of the Exchange, or remanding the matter to the same or a different Hearing Panel for further prompt disciplinary proceedings. The Appeals Panel may order a new hearing for good cause or if the Panel deems it appropriate for prompt, further disciplinary proceedings.

(j) As promptly as reasonably possible following its review, the Appeals Panel will issue a written decision on appeal rendering its decision based on the weight of the evidence before the Appeals Panel. A decision by a majority of the Appeals Panel will constitute the decision of the Appeals Panel. The decision of the Appeals Panel will include a statement of findings of fact and conclusions for each finding, sanction, remedy and cost reviewed on appeal, including each specific Rule

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<sup>17</sup> Subsection (d) of Rule 204 deleted. Text of prior subsection (e) amended and renumbered. Effective November 20, 2009 pursuant to CFTC Rule 40.6 filing by NYSE Liffe US dated November 17, 2009. See Notice 27/2009.

of the Exchange and provision of Applicable Law that the respondent is found to have violated, if any, and the imposition of sanctions, remedies and costs, if any, and the effective date of each sanction, remedy or cost.

(k) An Appeals Panel's written order on appeal (including findings of fact and conclusions and the imposition of sanctions, remedies and costs, and the effective date of any sanction, remedy cost) will be the final action of the Exchange and will not be subject to appeal within the Exchange.