

THE EXCHANGE'S PROCEDURE FOR HANDLING RELEVANT COMPLAINTS

1 Introduction and Policy

- 1.1 The Exchange is required to have a fair, impartial and objective procedure for the handling of complaints.
- 1.2 Investigations into complaints will be carried out by the CCO or a member of the Compliance Department who has no involvement in the subject-matter of the complaint. Where this is not possible because the complaint relates to the Compliance Department or any member of it, or where otherwise a conflict of interest arises, the complaint will be investigated by an independent director with specific responsibility for investigating complaints.
- 1.3 Where a complaint is either rejected or the complainant is not satisfied with the outcome of any investigation, the complainant will be able to refer the complaint to the DFSA.

2 Relevant Complaints

- 2.1 This procedure below governs the way in which the Exchange will handle any complaint made against the Exchange which relates solely to the exercise by the Exchange of any of its regulatory functions (a **Relevant Complaint**).
- 2.2 This procedure does not apply be used in respect of any other complaint, including but not limited to:
 - (1) complaints about actions of Members;
 - (2) complaints relating to the contents of the Exchange's Rules;
 - (3) complaints relating to any decision against which the complainant has the right to appeal under the Exchange's Disciplinary Rules;
 - (4) the decision of any appeal under the Exchange's Disciplinary Rules;
 - (5) complaints relating to the relationship of the Exchange with any of its employees; and
 - (6) complaints relating to or connected with a contractual or commercial dispute involving the Exchange, but not relating to or connected with its regulatory function.

3 Initial handling of the complaint

- 3.1 Any complaint received by the Exchange must be notified immediately to the CCO and a record made in the complaints log. The CCO shall ensure that an official file is opened and the letter of complaint and any supporting documentation placed in it. To this file shall be added any future correspondence or any other material relevant to the complaint. A complete record shall be kept of all subsequent meetings and telephone conversations between the complainant and the Exchange.
 - 3.2 A Relevant Complaint made later than twelve months after the complainant becomes aware of the circumstances giving rise to his complaint, will not be investigated unless the complainant can show that there are reasonable grounds which justify the delay in bringing his complaint.
 - 3.3 Within 5 working days of receiving or being notified of a complaint, the CCO shall acknowledge the complaint and provide a copy of this procedure. The CCO shall inform the complainant that in order for a complaint to be investigated:
 - (1) the complaint must be a Relevant Complaint;
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- (2) if the complaint has made been made orally, it must be recorded by the complainant in writing addressed to the CCO; and
 - (3) if coming from a Member firm, it must be signed by a director or other senior officer of the Member firm.
- 3.4 Upon receipt of a written complaint, the CCO shall initially determine whether the complaint is a Relevant Complaint. If the CCO cannot identify fully the basis of the complaint from the information provided, he shall at this time request further information from the complainant. If the CCO decides that a complaint is not a Relevant Complaint, he will notify the complainant that he does not intend to investigate his complaint, and the reason why, within 15 working days of receiving the complaint or any further information requested in accordance with this paragraph 3.4. At the same time, it will inform the complainant that he may refer the CCO's decision to the Independent Director for review.

4 The initial investigation

- 4.1 If the CCO or the Independent Director decides that the complaint is a Relevant Complaint, the complaint will be thoroughly investigated with a view to resolving it as quickly as possible. Ordinarily, the investigation of any Relevant Complaint shall be carried out by the CCO. The CCO may delegate the handling of the complaint to a member of the Compliance Department although the CCO shall remain in control and responsible for the handling of the complaint at all times. If the matter is delegated to a member of the Compliance Department, the CCO shall hold weekly meetings with that person to determine progress of the investigation. A record of these meetings shall be kept.
- 4.2 Neither the CCO nor any other member of the Compliance Department may investigate a Relevant Complaint if that Relevant Complaint relates to the Compliance Department or any member of the Compliance Department or if the CCO otherwise considers it would be inappropriate for the CCO or any other member of the Compliance Department to investigate because an actual or potential conflict of interest arises. In such circumstance, the Relevant Complaint shall be investigated by an independent director with specific responsibility for investigating complaints (the **Independent Director**).
- 4.3 Whether the complaint is investigated by the CCO or by the Independent Director, the Exchange will aim to conclude its investigation, and to notify the complainant of the outcome, within eight weeks of receiving the complaint. If there is an unavoidable delay in completing the investigation, the complainant shall be informed and given the reasons for the delay and a projected timetable for resolving the complaint. If this initial investigation is not completed after twelve weeks of investigation, the complainant will have the right to refer the complaint to the DFSA.

5 The investigation

- 5.1 In order to determine the validity of a Relevant Complaint, the investigation should address whether the Exchange's performance of, or failure to perform, its regulatory functions amounted to:
- (a) a failure to act fairly;
 - (b) a failure to perform its regulatory functions within a reasonable time;
 - (c) a lack of care or a mistake; or
 - (d) an act of bad faith.

which has had a significant impact upon the complainant.

- 5.2 The Exchange, its Members and the complainant are obliged to co-operate with the CCO or the Independent Director (as the case may be) in the conduct of his investigation and to provide such information, records and staff as the CCO or the Independent Director considers necessary. Such access and co-operation will extend to any relevant staff employed by or seconded from NYMEX, Inc., as well as any relevant records held by NYMEX, Inc.
- 5.3 The CCO or the Independent Director (as the case may be) is entitled to use whatever external resources he considers reasonable to assist in his investigation. The costs of any such external resources will be paid by the Exchange.
- 5.4 The CCO or the Independent Director (as the case may be) shall ensure that complete records of the investigation are kept.

6 Outcome of the investigation

- 6.1 Following investigation of a Relevant Complaint, either the CCO or the Independent Director must prepare a written report of his conclusions and recommendations (if any) (the **Complaint Report**).
- 7.2 The Complaint Report may make recommendations that the Exchange:
- (a) offer an apology to the complainant;
 - (b) make a compensatory payment to the complainant;
 - (c) take steps to remedy the matter complained of,
 - (d) take any combination of those steps.
- 7.3 A copy of the Complaint Report shall be sent to the CCO (if prepared by the Independent Director), the Independent Director (if prepared by the CCO), the CEO, the Chairman and the complainant.
- 7.4 The Complaint Report shall make clear that the complainant may refer his complaint to the DFSA if dissatisfied with the conclusions and/or recommendations it contains and/or the manner in which those recommendations are implemented by the Exchange.
- 7.5 A copy of the Complaint Report shall in any event be provided to the DFSA if it contains a recommendation that the Exchange make a compensatory payment or take steps to remedy the matter complained of.

7 Final decision

- 7.1 The Chairman will decide on how to resolve the complaint, which decision will be entirely at his own discretion. The Chairman's decision will be final and will be communicated to the complainant in writing in a timely manner. Any remedial action will be taken or instigated promptly by the Compliance Department under instruction from the CCO.

8 Record keeping

- 8.1 The Compliance Department will retain copies of all documents and materials relating to the complaint (including the Complaint Report) for a minimum of six years.
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