

**Date**

21 May 2007

**Recipients**

All DME Members

**From**

Sarah Watts, Chief Compliance Officer

**Category**

Membership

**Summary of Content**

Data Protection

During the course of its operations and in the monitoring of those operations, the DME will gather information relating to trading, Members, their representatives and their customers. Such information may sometimes contain data relating to an identified or identifiable natural person (**Personal Data**). Accordingly, in its Membership Agreement with each Member<sup>1</sup>, DME seeks permission from the Member and its Authorised Terminal Users to enable it to make disclosure in such circumstances.

This Notice clarifies and confirms the limited circumstances in which DME as a regulated and self-regulatory body may disclose information relating to Members and their trading activities. This Notice also explains the DME's purpose in seeking consent from Members and their Authorised Terminal Users in order to permit disclosure of Personal Data to persons out of the Dubai International Financial Centre (**DIFC**) for such purposes.

**General position on DME gathering and disclosure of information**

In principle, the exchange of information between Members and the DME will remain confidential. DME may however disclose, and in certain circumstances would be required to disclose, information it holds in relation to Members, their directors, officers, employees and representatives and/or information in relation to their trading activities (including trading on behalf of Customers) if such disclosure is necessary or appropriate to enable DME properly to discharge either its legal and regulatory obligations, to enable DME to discharge its self-regulatory responsibilities as an Authorised Market Institution in the DIFC and/or to enable NYMEX, Inc., as Clearing House in respect of DME trading, to meet its legal and regulatory obligations.

DME Rules 4.3 requires Members to make prompt disclosure to DME of certain matters, including refusal or withdrawal of membership in a self-regulatory organisation, regulatory enforcement action against the Member or its employees or representatives and any conviction by a Member or any of its director, officer or partner of a serious financial crime. DME Rule 4.6 requires Members, among other things, to maintain all records relating to orders and market contracts to which the Member is a party or which they have executed, forwarded for

<sup>1</sup> See: Floor Membership Agreement, Clauses 6 and 9; Off-Floor Membership Agreement, clauses 6 and 8; Clearing Membership Agreement, Clauses 6 and 7; the Annexure to each Membership Agreement.

execution, transferred or assigned. Under DME Rule 4.6(D) all such records must be open to inspection by the Exchange, the Clearing House, the Dubai Financial Services Authority (DFSA) and any other regulator which is responsible for the regulation of the Exchange's activities or the Member's activities on the Exchange. This would include the Commodity Futures Trading Commission (CFTC), a regulator established in the United States. All trades matched on DME Direct™ are, in accordance with DME Rules, required to be submitted to NYMEX, Inc. for clearing. The clearing activities of NYMEX, Inc. and the DME Clearing Members (which are required to be NYMEX, Inc. Clearing Members) are subject to regulation by the CFTC.

DME Rule 2.27 requires DME to keep confidential all information which it receives or obtains under the DME Rules. This requirement is subject to such disclosure as is required to ensure compliance with all applicable laws, regulations and rules and, in particular, to ensure the maintenance of DME's status as an Authorised Market Institution under the DIFC Regulatory Law.

To maintain its status as an Authorised Market Institution, DME is required to comply with the obligations imposed upon it by the Authorised Market Institution Module of the DFSA Rulebook (the **AMI Module**). The AMI Module requires DME, among other things:

- to maintain systems and controls in relation to the supervision and monitoring of transactions on its facilities;
- to maintain rules, procedures and an effective surveillance programme to ensure that business conducted in or through the Exchange is conducted in an orderly manner so as to afford proper protection to investors;
- to monitor for conduct which may amount to Market Misconduct, financial crime or money laundering; and
- to report to the DFSA any market misconduct, financial crime or money laundering;
- to ensure satisfactory arrangements for recording the activity and transactions effected on or through the DME facilities and to provide those records to the DFSA in a timely manner if required.

DME must also demonstrate a continuing ability and willingness to promote and maintain high standards of integrity and fair dealing in the carrying on of business on or through its facilities and co-operation with the DFSA and other appropriate regulatory authorities with regard to regulatory matters, as required.

Accordingly, DME Rule 4.7(F) permits the DME's Chief Compliance Officer (or her designate) to disclose any information held by DME in relation to a Member's financial condition or trading activity to the DFSA, AMLSCU and any other governmental or international agency, other exchanges, NYMEX Inc. and other clearing houses and any self-regulatory or other regulatory or enforcement organisation. This would include the CFTC.

#### **Disclosure of Personal Data relation to natural persons**

DME recognises that certain of the data which it will receive in accordance with DME Rules will be Personal Data, for example, it will gather certain routine data relating to Members'

Authorised Terminal Users and will receive trading (and possibly other) data relating to Customers who are natural persons. This Personal Data may also contain matters of sensitivity, for example an individual's criminal record, and therefore for the purposes of the DP Law **Sensitive Personal Data**. DME considers however that instances in which it will receive Sensitive Personal Data will be rare.

The processing (including disclosure) by DME of Personal Data, including Sensitive Personal Data, is governed by the DIFC Personal Data Law No. 1 of 2007 (the **PD Law**) and the DIFC Personal Data Regulations (the **PD Regulations**) made under the PD Law. The PD Law and PD Regulations can be accessed in full via the following link: <http://www.dp.difc.ae/legislation>. The DP Law and the DP Regulations deal with disclosure of Personal Data and Sensitive Personal Data to persons out of the DIFC. The PD Law provides a number of gateways to enable DME to make such disclosure. These include where the relevant individual has given his or her written consent. Other gateways which would permit such disclosure, in the absence of written consent, include:

- where disclosure is necessary or legally required under grounds important in the interest of the DIFC, or for the establishment, exercise or defence of legal claims;
- where disclosure is necessary to uphold a legitimate interest of the DME recognised in the international financial markets, provided that such disclosure is in accordance with the international financial standards and is not overridden by legitimate interests of the individual concerned; and
- where disclosure is necessary to comply with any regulatory requirements, auditing, accounting, anti-money laundering or counter terrorist financing obligations or the prevention or detection of any crime that apply to the DME.

Each prospective Member, when applying for Membership, gave specific written consent to permit the DME to disclose Personal Data out of the DIFC. Clause 8 of each Membership Agreement affirms such written consent. Each Membership Agreement also provides for such written consent from the Member's Authorised Terminal Users, as natural persons.

For the avoidance of doubt, this consent is permissive only. It does not prejudice the general framework of the DME Rulebook. DME is generally required to keep confidential all of the information it receives under the DME Rules. Disclosure (within or out of the DIFC) must be justified as above, either as required by law or regulation or as required or appropriate to maintain DME's status as an Authorised Market Institution or to ensure the proper regulation of DME's Members and trading activities on the DME.

Signed



Sarah Watts

Chief Compliance Officer

For more information please contact:

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