

## SECTION E – DISCIPLINARY\*

- E.0 Introduction<sup>1</sup>
- E.1 Notification of Breach, Breaches of Regulations and Acts of Misconduct<sup>2</sup>
- E.2 Summary Enforcement<sup>3</sup>
- E.3 Investigations<sup>4</sup>
- E.4 ARC Hearings<sup>5</sup>
- E.5 Sanctions<sup>6</sup>
- E.6 Appeals and Appeal Panel<sup>7</sup>
- E.7 Emergency Suspension<sup>8</sup>
- E.8 Loss or Damage to Trading Facilities<sup>9</sup>
- E.9 Other Offences<sup>10</sup>
- E.10 Interaction with Clearing House Rules and Other Processes<sup>11</sup>

\*Please be aware that this version of Section E applies from 21 October 2020. For the previous version, please see pages 12-27 below.

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<sup>1</sup> Inserted 21 October 2020

<sup>2</sup> Amended IPE ETS implementation date 2002, 27 April 2006, 21 October 2020

<sup>3</sup> Amended IPE ETS implementation date 2002, 27 April 2006, Launch of ICE Clear 2008, Amended 15 October 2012, 16 January 2015, 15 July 2016, 21 October 2020

<sup>4</sup> Amended IPE ETS implementation date 2002, 27 April 2006, Launch of ICE Clear 2008, 21 October 2020

<sup>5</sup> Amended 17 July 2003, 8 April 2005, 29 March 2006, 27 April 2006, Launch of ICE Clear 2008, 21 October 2020

<sup>6</sup> Amended 20 May 2011, 21 October 2020, 17 December 2020

<sup>7</sup> Amended 1 February 2001, 21 October 2020

<sup>8</sup> Amended 23 September 2003, 8 April 2005, 25 October 2005, 29 March 2006, 27 April 2006, Launch of ICE Clear 2008, Amended 16 November 2016, 21 October 2020

<sup>9</sup> Amended 23 September 2003, 8 April 2005, 25 October 2005, 29 March 2006, 21 October 2020

<sup>10</sup> Amended 27 February 2003, 25 October 2005, 21 October 2020

<sup>11</sup> Amended 23 September 2003, 27 April 2005, 7 December 2005, 7 February 2006, 29 March 2006, 12 May 2006, Launch of ICE Clear 2008, Amended 05 January 2015, 17 March 2015, 21 October 2020

**E.0 INTRODUCTION<sup>12</sup>**

This Section E sets out the provisions and processes governing disciplinary measures which may be taken against Members and Persons Subject to the Regulations. The following types of disciplinary proceedings may arise:

- (a) Summary Enforcement Proceedings taken by the Exchange (including, without limitation, the Compliance Officer) or such other Persons as may be duly authorised by the ARC Committee; and
- (b) disciplinary proceedings held by ARC Disciplinary Panels, which will take the form of either a Sub-ARC Panel holding a Summary Hearing or a Full-ARC Panel holding a Full Hearing.

Further details on each proceedings are set out in Rule E.2 for Summary Enforcement Proceedings, and Rule E.4 for disciplinary proceedings held by ARC Disciplinary Panels.

**E.1 NOTIFICATION OF BREACH, BREACHES OF REGULATIONS AND ACTS OF MISCONDUCT<sup>13</sup>**

E.1.0 All Members shall immediately notify the Exchange of any breach of the Regulations (including those prescribed under Rule A.9) or of any financial or commercial difficulty on the part of themselves or any Member or Person Subject to the Regulations and, as soon as practicable thereafter, give the Exchange full particulars of the breach or difficulty.

**Bringing the Exchange into disrepute**

- E.1.1
- (a) No Member and no other Person Subject to the Regulations shall (or shall permit any Member's Representatives to) take any action or be guilty of any omission, which in the opinion of the Exchange:
    - (i) is likely to bring the Exchange or its Members into disrepute;
    - (ii) is likely to impair the dignity or degrade the good name of the Exchange;
    - (iii) is likely to create or maintain or exacerbate manipulations (or attempted manipulations) or corners (or attempted corners) or violations of the Regulations (or arrangements, provisions or directions made or given thereunder); or
    - (iv) is likely to otherwise be substantially detrimental to the interests or welfare of the Exchange.
  - (b) For the purposes of paragraph (a) above, an act which may bring the Exchange into disrepute may include, but are not limited to:
    - (i) fraud or dishonesty;
    - (ii) physical or verbal abuse of an Exchange official in the course of his or her duties;
    - (iii) abusive and/or disorderly behaviour; and
    - (iv) any act or conduct which, in the opinion of the Exchange, may reflect adversely upon the Exchange or be prejudicial to the good reputation and best interests of the Exchange.

**Conduct in relation to trading**

- E.1.2
- (a) No Member (or other Person Subject to the Regulations) shall in relation to Contracts or Corresponding Contracts entered into, or orders placed, on the Market or otherwise in accordance with the Regulations:
    - (i) commit any act of fraud or bad faith;
    - (ii) act dishonestly;
    - (iii) engage or attempt to engage in extortion;
    - (iv) continue (otherwise than to liquidate existing positions) to trade or enter into such Contracts or Corresponding Contracts or provide margin to or accept margin from the Clearing House when not in compliance with the minimum financial requirement currently in force in relation to the category of membership to which it belongs;

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<sup>12</sup> Inserted 21 October 2020

<sup>13</sup> Amended 1 February 2001, IPE ETS implementation date 2002, 27 April 2006, 21 October 2020

- (v) knowingly disseminate false, misleading or inaccurate reports concerning any Product or market information or conditions that affect or tend to affect prices on the Market;
- (vi) manipulate or attempt to manipulate the Market, nor create or attempt to create a disorderly Market, nor assist its clients, or any other Person to do so;
- (vii) make or report a false or fictitious trade;
- (viii) enter into any Contract or Corresponding Contract or fail to close out the same either intending to default in performance of the same or having no reasonable grounds for thinking that it would be able to avoid such default (provided that it shall not be sufficient to have intended to comply with any contractual or other provision governing the consequences of default);
- (ix) [Not used];
- (x) enter an order or market message or cause an order or market message to be entered which is then cancelled or modified before execution, for the purposes of misleading market participants, for his or her own benefit, or the benefit of any other Person;
- (xi) mislead other market participants;
- (xii) overload, delay or disrupt the systems of the Exchange or other market participants;
- (xiii) disrupt the orderly conduct of trading or the fair execution of transactions
- (xiv) engage in any malpractice involving options; or
- (xv) enter an order or market message or cause an order or market message to be entered with reckless disregard for the adverse impact of the order or market message.

#### **Market Abuse Regulation**

E.1.2A Members and other Persons Subject to the Regulations whose behaviour, in the judgement of the Compliance Officer, is likely to amount to market abuse as set out in the Market Abuse Regulation (EU) No 596/2014 and any other applicable European Directives or Regulations, including, to the extent applicable, Articles 3 and 5 of Regulation (EU) No 1227/2011; Articles 37 to 41 of Regulation (EU) No 1031/2010, or insider dealing under the Criminal Justice Act 1993 shall be in breach of the Regulations.

#### **Other acts of misconduct**

- E.1.3 No Member or other Person Subject to the Regulations shall carry out an act of misconduct, including, but not limited to, the following:
- (a) any conduct contrary to Rule A.2.1;
  - (b) participation in conduct by a third party which would be a violation or attempted violation of these Regulations if that third party were subject to these Regulations;
  - (c) a failure to pay a fine or order for costs imposed pursuant to Summary Enforcement Proceedings or by an ARC Hearing that had not been overturned by an Appeal Panel;
  - (d) any other event or practice which has developed or is developing on the Exchange and is thought to be capable of impairing the orderly conduct of business on the Exchange or affecting the due performance of contracts;
  - (e) provision to the Exchange of information (including information for the purpose of obtaining membership) which is false, misleading or inaccurate in a material respect;
  - (f) ceasing to meet eligibility criteria for membership as set out in the Regulations without notifying the Exchange;
  - (g) use or reveal any information confidential to the Exchange or another Person obtained by reason of participating in any investigation or disciplinary proceedings; or
  - (h) any other matter of which the Exchange may, from time to time, notify Members through administrative notices issued to Members.

## E.2 SUMMARY ENFORCEMENT<sup>14</sup>

- E.2.1 Without prejudice to the powers of investigation and discipline contained in Rules E.3 and E.4, the Exchange (including, without limitation, the Compliance Officer) or such other Persons as may be duly authorised by the ARC Committee may take summary disciplinary measures ("**Summary Enforcement Proceedings**") against a Member or other Person Subject to the Regulations in relation to a breach or contravention of or a failure to observe or comply with:
- (a) Rule E.1.2(a);
  - (b) any provision of Section G;
  - (c) any provision of Section P;
  - (d) any provision of the Regulations and Trading Procedures relating to EFPs, EFSs, EFRPs, Basis Trades, Block Trades and Asset Allocations; or
  - (e) any provision of the Regulations as determined by the Exchange from time to time and notified by Circular or other written notice.
- E.2.2 The Exchange, either of itself or under the authority of the ARC Committee, may from time to time by Circular or other written notice to Members and other Persons Subject to the Regulations prescribe any procedures to govern the Summary Enforcement Proceedings commenced under this Rule, any procedure for appeal and any other matter incidental thereto.

## E.3 INVESTIGATIONS<sup>15</sup>

- E.3.1 Investigations into breaches or alleged breaches of the Regulations may be authorised and conducted by the Compliance Officer or delegated by the Compliance Officer to other Exchange staff. In the event that the Compliance Officer is conflicted from authorising or conducting an investigation, the powers of the Compliance Officer set out in this Rule E.3.1 shall be vested in any such individual as the chairperson of the ARC Committee may deem appropriate in the circumstances.
- E.3.2 Once determined that a complaint, matter or concern requires investigation, the Compliance Officer shall issue a Notice of Investigation ("**NoI**") notifying the Member or Person concerned that an investigation has been commenced. The NoI shall be sent to the Member or the Person concerned and copied to the Member's compliance officer or other appropriate Member's Representative and shall contain a brief description of the issue under investigation.
- E.3.3 In the course of conducting an investigation, the Exchange may obtain the assistance of such professional, legal or accounting advisers, Exchange Bodies, Clearing Organisations, Regulatory Authorities and other advisers or Persons as it considers appropriate. Any external adviser appointed by the Exchange shall be required to treat all information obtained as well as any information it has been given access to in the course of the investigation as confidential and to disclose it only to the Exchange, save where compelled to disclose such information to a third party under any Applicable Law.
- E.3.4 Members and other Persons Subject to the Regulations shall co-operate fully with all such investigations (whether or not such Member or Person is the direct subject of such investigation). Without limitation, each Member and, so far as applicable, each other Person Subject to the Regulations shall:
- (a) promptly furnish to the Exchange, or provide the Exchange with access to, such information and documentary and other material (including, without limitation, any information in electronic form) as may reasonably be requested (including, without limitation, in the case of Members, details of the Member's own and clients' accounts);
  - (b) permit those Persons appointed to carry out or assist in carrying out the investigation on reasonable notice, such notice being commensurate with the seriousness of the potential or alleged breach of the Regulations and to enter any premises in any part of the world where the Member or other Person Subject to the Regulations carries on its business or maintains its records during normal business hours for the purpose of carrying out such investigation; and each Member and other Person Subject to the Regulations hereby irrevocably grants the Exchange a licence for this purpose and shall procure a

<sup>14</sup> Amended 25 August 1998; 19 August 1999, 1 February 2001, 23 September 2003, 8 April 2005, 25 October 2005, 29 March 2006 24 January 2002, IPE ETS implementation date 2002, 27 April 2006, Launch of ICE Clear 2008, Amended 16 November 15 October 2012, 16 January 2015, 15 July 2016, 21 October 2020

<sup>15</sup> Amended 1 February 2001, 13 August 2001, IPE ETS implementation date 2002, 27 April 2006, Launch of ICE Clear 2008, 21 October 2020

licence to the Exchange from any Affiliate, agent or third party under its control that is necessary for this purpose;

- (c) make available for interview or ARC Hearing itself (if the Member or Person Subject to the Regulations is a natural person) and such of its Member's Representatives as may reasonably be requested; and itself answer, and procure that its Member's Representatives answer, truthfully and fully any question put by or on behalf of the Compliance Officer; and if a Member, Member's Representative or Person Subject to the Regulations fails to attend any such interview with the Exchange or a scheduled hearing of the Exchange, an ARC Disciplinary Panel or Appeal Panel, the Member and/or Member's Representative or Person Subject to the Regulations may be fined £1,000 per day of non-attendance and may be suspended or restricted access to the Market by the ARC Committee or the Exchange until they take reasonable steps to make themselves available on an alternative date;
- (d) make available for inspection, or provide access to, such documents, records or other material in its possession, power or control as may reasonably be required and, upon request, provide copies of the same; and
- (e) use its best endeavours to ensure that so far as possible its agents give similar co-operation.

E.3.5 Each Member and other Person Subject to the Regulations authorises the Exchange, either directly or through the ARC Committee, to request any Exchange Body, Clearing Organisation or Regulatory Authority or Person to furnish to the Exchange, or the ARC Committee, such information and documents as the Exchange, or the ARC Committee, may require in connection with an investigation.

E.3.6 [Not used.]

E.3.7 [Not used.]

E.3.8 When, in the opinion of the Compliance Officer, he or she has sufficient information, the Compliance Officer shall, without prejudice to any other of the Compliance Officer's powers:

- (a) decide that no further action should be taken and notify any Member or other Person concerned in writing accordingly;
- (b) in the event of a minor breach, issue a written warning (which shall be private save as provided for in paragraph (f) below) to the Member concerned (or, in the case of such a breach by some other Person, that Person with a copy to any Member with whom it was associated at the time of such breach);
- (c) commence disciplinary proceedings pursuant to Rule E.4 or Summary Enforcement Proceedings under Rule E.2;
- (d) [Not used.]
- (e) [Not used.]
- (f) report such findings of the investigation and hand over any documents or communicate any information acquired whether during the course of investigation or otherwise to such Exchange Body, Clearing Organisation or other Regulatory Authority as he or she thinks fit;
- (g) publish such findings and in such detail as he or she deems appropriate where the matter under investigation is considered of relevance to the market in general or in the public interest; or
- (h) any combination of the foregoing,

and may take more than one of the above actions or different actions in relation to different Members or other Persons concerned in the same investigation. In the event that the Compliance Officer is conflicted from taking action under this Rule in relation to an investigation, the powers of the Compliance Officer set out in this Rule E.3.8 shall be vested in the chairperson of the ARC Committee.

**E.4 ARC HEARINGS<sup>16</sup>****Commencement**

- E.4.1 A matter may be referred to the ARC Committee for disciplinary proceedings only when the Compliance Officer is satisfied that there is *prima facie* evidence of a breach of the Regulations by a Member or other Person Subject to the Regulations.
- E.4.2 If the Compliance Officer decides to refer a matter to the ARC Committee for disciplinary proceedings, the Compliance Officer shall direct that a formal written notice ("**Notice**") be sent to the Member (or, in the case of proceedings against some other Person Subject to the Regulations, that Person and any Member with whom it was associated at the time of the matter in question), which shall set out the alleged breach, including a summary of the facts relied upon.
- E.4.2.1 The Member or other Person Subject to the Regulations that is subject to a Notice shall have 20 Business Days (which may be extended by the Compliance Officer at the Compliance Officer's discretion or shortened by the chairperson of the ARC Committee at his or her discretion) from the date of service of the Notice in which to serve a statement of defence ("**Defence**"). The Defence shall state whether the Member or other Person Subject to the Regulations accepts the allegations in the Notice and what admissions of fact, if any, it makes. Where no Defence has been served within 20 Business Days or such shorter or extended period as has been agreed and no settlement has been reached, the ARC Committee will deem the Member or other Person subject to a Notice to have agreed to and accepted the facts and matters specified in the Notice.
- E.4.2.2 Having seen and considered the Defence, the ARC Committee may, as it sees fit:
- (a) convene a Sub-ARC Panel to proceed with the disciplinary proceedings, including by holding a Summary Hearing;
  - (b) where the sanction considered by the Exchange exceeds the powers that can be exercised by a Sub-ARC Panel at a Summary Hearing, convene a Full-ARC Panel to proceed with the disciplinary proceedings, including by holding a Full Hearing; or
  - (c) discontinue its disciplinary proceedings.
- E.4.3 Without adjournment or reference back to the Compliance Officer, the ARC Disciplinary Panel may amend a Notice by a change to the breach alleged in the Notice, addition of another breach to that specified in the Notice, or any other deletion, alteration or addition, provided that they are of the opinion that:
- (a) the deletion, alteration, addition, change, amendment or variation arises out of or in connection with the conduct which is the subject of the disciplinary proceedings;
  - (b) the essential character of the nature of the breach has not been changed even though further evidence may have become available; and
  - (c) the Member or other Person Subject to the Regulations that is subject to the Notice would not be substantially prejudiced in any defence it might wish to put forward during the ARC Hearing.

Following any such deletion, alteration, addition, change, amendment or variation of a Notice, the Compliance Officer shall serve an amended Notice on the Member or other Person subject to the Notice.

In any other circumstances, and in particular should an ARC Disciplinary Panel determine that a separate or unrelated course of breach of the Regulations may have been revealed at an ARC Hearing, the ARC Disciplinary Panel holding the ARC Hearing may order an adjournment of the ARC Hearing to enable the separate or unrelated breach to be investigated further.

**Settlement**

- E.4.3A The Member and/or the Person Subject to the Regulations alleged to have committed the breach may attempt to settle the disciplinary proceedings at any stage (including any appeal) with the Compliance Officer or ARC Committee, as appropriate. The terms of any settlement shall be agreed between the Compliance Officer or ARC Committee on the one hand and the Member or Person Subject to the Regulations as the case may be on the other hand. If agreed with the Compliance Officer, the terms of the settlement must be submitted in writing to the chairperson of the ARC Committee, or in the chairperson's absence a quorum of

<sup>16</sup> Amended 4 September 1998, 26 February 1999, 1 February 2001, 13 August 2001, IPE ETS implementation date 2002, 17 July 2003, 8 April 2005, 29 March 2006, 27 April 2006, Launch of ICE Clear 2008, 21 October 2020

the ARC Committee for ratification, and upon ratification, the terms of the settlement shall take effect. In the event the settlement is not agreed or ratified, as appropriate, the disciplinary proceedings shall continue.

E.4.4 [Not used.]

E.4.5 [Not used.]

E.4.6 [Not used.]

### **ARC Hearings**

E.4.7 The ARC Committee shall be responsible for appointing ARC Disciplinary Panels to convene ARC Hearings. Each ARC Hearing shall either be a Summary Hearing or Full Hearing, as detailed in Rule C.11.

E.4.8 The ARC Disciplinary Panel shall consider the alleged breach and determine whether there has been an actual breach of the Regulations and, if so, the appropriate sanction (if any) to be imposed. In carrying out this function, the ARC Disciplinary Panel may adopt such procedures for the ARC Hearing as it considers appropriate. Without limitation:

- (a) it may request from the Exchange or the Member (or the Person Subject to the Regulations and any associated Member) such further statements, information, documents or other evidence as it may think fit, or either party to the proceedings may adduce further evidence as they consider necessary, within time limits agreed at the ARC Hearing;
- (b) the ARC Disciplinary Panel, or the chairperson of the ARC Disciplinary Panel sitting alone, may deal with such matters as it considers appropriate in order to deal with disciplinary proceedings, including any pre-hearing review to hear procedural applications, and may issue directions and take such other steps as it considers appropriate for the clarification of the facts and issues and for the just and expeditious determination of the case;
- (c) it may, if it considers appropriate, but only with the express written agreement of the Exchange and the Member concerned (or the Person Subject to the Regulations concerned and any associated Member), decide to determine the case upon written submissions and evidence placed before it during the ARC Hearing;
- (d) in all other cases, the Exchange and the Member (or the Person Subject to the Regulations and any associated Member) shall be given the opportunity (and may be required by the ARC Disciplinary Panel upon reasonable notice) to attend and give evidence at the ARC Hearing and be questioned. The Exchange or the Member (or the Person Subject to the Regulations and any associated Member, as the case may be) may call witnesses to give evidence and be questioned;
- (e) it and the Member (or the Person Subject to the Regulations and any associated Member) may be assisted or represented by any Person who may or may not be legally qualified;
- (f) it may require any Person who is Subject to the Regulations (and request any other Person) to attend and give evidence during an ARC Hearing upon reasonable notice; the Member (or Person Subject to the Regulations and any associated Member) shall be given notice of every ARC Hearing at which any Person is to give evidence and both the Member (or the Person Subject to the Regulations and any associated Member, as the case may be) and the Exchange shall be allowed the opportunity of examining and cross-examining any person who attends to give evidence;
- (g) it may call for any Person to attend an ARC Hearing; save for this, all ARC Hearings shall be in private unless the Member (or other Person Subject to the Regulations) requests otherwise and the ARC Committee and the ARC Disciplinary Panel consent;
- (h) it shall not be bound by any rule of law or court procedure concerning admissibility of evidence and may accept as conclusive any finding of fact made by any legally constituted court, tribunal, arbitrator, expert or any Governmental Authority;
- (i) it shall apply the civil standard of proof on the balance of probabilities, with the cogency of evidence required being commensurate with the seriousness of the alleged breach;
- (j) it may consult with and may appoint its own legal advisers; and
- (k) it may receive submissions from the Exchange on the appropriate sanction; such submissions shall be made available to the Member and/or Person Subject to the Regulations concerned who shall have the right to make final submissions on penalty.

- E.4.9 If the Exchange or Member (or Person Subject to the Regulations or any associated Member) fails to meet a time limit imposed by the ARC Disciplinary Panel or fails to attend an ARC Hearing, the ARC Disciplinary Panel, may in its discretion, allow an extension of time, adjourn the ARC Hearing or proceed if necessary in the absence of the Member (or the Person Subject to the Regulations and any associated Member, or either of them).
- E.4.10 The findings and decisions made at the ARC Hearing shall be notified in writing to the Member (or Person Subject to the Regulations and any associated Member). Such notification will include: (i) any act or practice which the Member or Person Subject to the Regulations has been found to have carried out or omitted; (ii) a citation of the relevant provisions which are considered to have been breached; and (iii) the proposed sanction to be imposed and the reasons therefor. Such findings and decision shall be deemed conclusive and binding upon expiry of the time permitted for the service of a notice of appeal or receipt by the Exchange of any earlier written notice that such right of appeal will not be exercised.

## E.5 SANCTIONS<sup>17</sup>

### Summary Enforcement Proceedings

- E.5.1 The sanctions that may be imposed on a Member or other Persons Subject to the Regulations pursuant to Summary Enforcement Proceedings will include, without limitation, the imposition of fixed penalty fines of up to £5,000 for an individual and £50,000 for a Member or other Person Subject to the Regulations and fixed terms of exclusion from the Market (or any part thereof). The Exchange may from time to time by Circular prescribe further sanctions that may be imposed pursuant to Summary Enforcement Proceedings.

### Summary Hearings

- E.5.2 The sanctions which may be imposed on a Member or other Persons Subject to the Regulations at a Summary Hearing are the same as the sanctions available to an ARC Disciplinary Panel for a Full Hearing as set out in Rule E.5.3 save that:
- (a) the sanction of termination or expulsion or permanent removal of access shall not be available for Summary Hearings;
  - (b) the maximum sanction of suspension which may be imposed by Summary Hearings on an individual is limited to three calendar months; and
  - (c) the maximum fine which may be imposed by Summary Hearings is limited to £25,000 for an individual and £250,000 for a Member or other Persons Subject to the Regulations in respect of each offence.

### Full Hearings

- E.5.3 The sanctions which may be imposed on a Member or other Person Subject to the Regulations at a Full Hearing shall not exceed the following:
- (a) the issue of a public or private warning or reprimand;
  - (b) the issue of a public or private notice of censure;
  - (c) in the case of an individual, disqualification (either indefinitely or for a fixed term) from being a Director or member of a committee or any panel of the ARC Committee;
  - (d) in the case of a Member, disqualification (either indefinitely or for a fixed term) of any of its Member's Representatives from being a Director or member of a committee or any panel of the ARC Committee;
  - (e) a fine of any amount, to be paid on such terms as may be prescribed by the Exchange;
  - (f) in the case of an individual entitled to enter or access the Market, suspension or curtailment of his or her right to do so (which may include suspension of his or her registration as a Responsible Individual) for a fixed term of up to a maximum of 36 months;
  - (g) [Removed – 8 April 2005]
  - (h) a recommendation to the Directors that they terminate or expel a Member from membership of the Exchange, or in the case of other Persons Subject to the Regulations, terminate their status as a Person

<sup>17</sup> Amended 20 May 2011, 21 October 2020, 17 December 2020



Subject to the Regulations, expel or permanently remove their right to access the Trading Facilities of the Exchange under Rule B.7.1 or suspend a Person Subject to the Regulations under Rule B.7.2;

- (i) an order requiring the Member or Person Subject to the Regulations (and any associated Member) found to have committed the breach to take such steps, including without limitation making an order for compensation, as the ARC Disciplinary Panel may direct to remedy the situation including, without limitation, making an order for restitution to any affected Person when the Member (or Person Subject to the Regulations or any associated Member) has profited (or avoided a loss) from a breach at that Person's expense;
- (j) [deleted, with effect from 2 June 1994]; or
- (k) any combination of the foregoing.

E.5.4 Where a Person Subject to the Regulations is terminated, expelled or suspended pursuant to the Regulations, the ARC Committee may make such directions as it considers appropriate in respect of the Person's open Contracts or Corresponding Contracts (including, without limitation, directions for the reduction, transfer or liquidation of any of them).

E.5.5 A Person Subject to the Regulations that has been terminated or expelled may reapply for registration with the Exchange at any time after the date specified in the notice of sanction. Such reapplication will only be considered if all costs and fines associated with the notice of sanction are paid in a timely fashion.

## **E.6 APPEALS AND APPEAL PANEL<sup>18</sup>**

### **Appeal**

E.6.0 A Member or Person Subject to the Regulations may appeal against any finding, determination, direction or sanction imposed by an ARC Disciplinary Panel against it by lodging a notice of appeal.

E.6.0A A notice of appeal shall be lodged with the Compliance Officer. In the case of an appeal against the decision of a Summary Hearing, the appeal shall be heard by a further Summary Hearing held by an ARC Disciplinary Panel from members of the ARC Committee who did not attend the previous Summary Hearing, according to the procedure set out in Rule E.6.4 *et seq.* In the case of an appeal against the decision of a Full Hearing, this shall be heard in accordance with the procedure set out in the remainder of this Rule E.6.

### **Composition of an Appeal Panel**

E.6.1 The Exchange shall from time to time appoint individuals who shall not be Directors or serving members of the ARC Committee to serve on Appeal Panels. An Appeal Panel shall consist of a chairperson sitting alone or together with one or two other individuals.

E.6.2 Individuals appointed to an Appeal Panel must be suitably skilled and experienced and be independent of the Exchange. Expert assessors may be appointed, at the discretion of the Appeal Panel (including following any request or recommendation of the Exchange or any party to the appeal), to sit with and advise the Appeal Panel but such persons shall not be entitled to vote. No person shall be appointed to an Appeal Panel and no person may be eligible as an expert assessor if it has any direct or indirect personal or financial interest or involvement in a dispute or matter, or any party (or any client or underlying client of a party) involved in that dispute or matter, to be determined by the Appeal Panel. The Exchange may remove from office any individual who no longer meets the foregoing criteria and shall be entitled to remove from office any individual it reasonably considers to no longer be suitable for that role.

E.6.3 The chairperson of the Appeal Panel shall be a lawyer, who shall be a lawyer qualified to practice in the laws of England and Wales, and shall be appointed at the discretion of the Exchange. In the event of an equality of votes in relation to any dispute or matter before the ARC Disciplinary Panel, the chairperson shall have a second or casting vote.

### **Appeal Procedure**

E.6.4 (a) Within 14 days of receiving notice in writing of a finding or order of an ARC Disciplinary Panel, or such longer period as the ARC Disciplinary Panel may in its discretion direct following such finding or order being made, the Member or Person Subject to the Regulations to whom such finding or order relates or the Exchange, may request an Appeal Panel be convened to hear its appeal by lodging with the ARC Disciplinary Panel a notice of appeal in writing and by delivering a copy thereof to any other

<sup>18</sup> Amended 1 February 2001, 21 October 2020

party. With such notice it shall lodge with the Exchange a filing fee of £20,000 unless the Exchange determines in its discretion to reduce or waive the fee. A notice of appeal shall set out the grounds of the appeal and shall contain a brief statement of all matters relied on by the appellant.

The only grounds of the appeal may be any one or more of the following:

- (i) the ARC Disciplinary Panel misdirected itself;
- (ii) the ARC Disciplinary Panel's decision was:
  - (aa) one which no reasonable ARC Disciplinary Panel could have reached;
  - (bb) unsupported by the evidence or was against the weight of the evidence; or
  - (cc) based on an error of law, or a misinterpretation of the Regulations;
- (iii) the finding, determination, direction or sanction imposed by the ARC Disciplinary Panel was excessive, insufficient or inappropriate; or
- (iv) new evidence is available and that, had it been made available, the ARC Disciplinary Panel could reasonably have come to a different decision,

but no party may otherwise appeal on any other grounds against the ARC Disciplinary Panel's finding, or order;

- (b) On receipt of a notice of appeal, the Exchange will constitute an Appeal Panel in accordance with the procedure set out in Rules E.6.1 to E.6.3.

E.6.5 The Appeal Panel shall have the powers given to the original ARC Disciplinary Panel from which the appeal was made (regardless of whether such powers were actually exercised) and may adopt such procedure as it considers just, including, without limitation, all or any of the procedures that the original ARC Disciplinary Panel from which the appeal was made may have adopted pursuant to these Regulations (regardless of whether such procedures were actually adopted). The appellant and the respondent may appear, make representations and call witnesses, who may be examined and cross-examined.

E.6.6 The Appeal Panel may:

- (a) dismiss or allow the appeal;
- (b) confirm or amend the finding, determination, direction or sanction of the original ARC Disciplinary Panel (including in respect of costs);
- (c) substitute or make a new finding, determination, direction or sanction; and
- (d) order any party to the proceedings to pay costs as it considers appropriate, including, but not limited to, administration costs, fees and expenses of the members of the Appeal Panel, costs of the parties, costs incurred in the investigation, preparation, and presentation of the case and any fees and expenses incurred by the Appeal Panel, Exchange or Clearing House in obtaining legal or expert advice; and any order in relation to payment of costs may also specify the manner of assessment to be used as well as a timetable for payment.

In the case of appeal against a finding, determination, direction or sanction, the Appeal Panel may affirm, vary or revoke the sanction, in all cases, within the limits set out in these Regulations on the original ARC Disciplinary Panel that made the finding or order. In the case of an appeal pursuant to Rule E.6.4(a)(i), (ii) or (iv), the Appeal Panel may make such order or give such direction as it considers just, including, if thought fit, in relation to an appeal pursuant to Rule E.6.4(a)(ii), a direction for a rehearing of the case by another ARC Disciplinary Panel at another ARC Hearing.

E.6.7 The Appeal Panel may at any stage approve the settlement of any issue between the parties on such terms as it considers expedient or satisfactory. Any withdrawal of an appeal by the appellant must be in writing and lodged with the Exchange. The chairperson of the original ARC Disciplinary Panel may direct such Party to pay to the Exchange any costs set out in Rule E.6.6(d).

E.6.8 The decision of an Appeal Panel shall be final, binding and conclusive and there shall be no further appeal and no recourse to arbitration under Section H or the Clearing House Rules. The decision shall be notified to the appellant, respondent, Exchange, Clearing House and any other party involved in writing as soon as possible.

E.6.9 Members and other Person Subject to the Regulations shall comply with any decision of the Appeal Panel. The contravention by a Member or other Person Subject to the Regulations of any direction or sanction

imposed under or pursuant to these Regulations by the Appeal Panel shall be treated for all purposes as a breach of the Regulations. The lack of enforcement by the Exchange of any sanction shall not constitute a breach of the Regulations by the Exchange.

- E.6.10 The Appeal Panel shall give such publicity as they consider appropriate to any finding, determination, decision or sanction imposed or other order made by the Appeal Panel, or any ratified settlement. Any decision of the Appeal Panel may be published by Circular. The provisions of this Rule are without prejudice to the right of the Exchange under Rule A.4.1 or otherwise to disclose confidential information to other Regulatory Authorities or law-enforcement bodies.

#### **E.7 EMERGENCY SUSPENSION<sup>19</sup>**

Notwithstanding and without prejudice to any other provision of the Regulations (including without limitation this Section E of the Regulations) the Exchange (including, without limitation, the Compliance Officer) may, upon reasonable belief that immediate suspension is necessary to protect the interests of the Exchange and its Members or to ensure an orderly market, suspend for up to seven Business Days the right of any Member's Representative (including clients or customers) to enter the Market to trade. Such decisions shall be reviewed by the Exchange within that period, and may be extended subject to such arrangements as the Exchange considers appropriate.

#### **E.8 LOSS OR DAMAGE TO TRADING FACILITIES<sup>20</sup>**

- E.8.1 Damage or loss to the property of the Exchange or the Trading Facilities will be paid for by the Member causing such damage or loss unless the Member can satisfy the Exchange that the damage or loss to property was caused by a third party named by the Member.
- E.8.2 All other forms of damage or loss to property to the Exchange or the Trading Facilities will be charged to the Members when no individual or individuals can be held responsible.

#### **E.9 OTHER OFFENCES<sup>21</sup>**

- E.9.1 [Not used.]
- E.9.2 The Exchange may, by Circular, prescribe fixed penalty fines to be imposed on a Member who has, or appears to have, failed to comply with any obligation under the Regulations.

#### **E.10 INTERACTION WITH CLEARING HOUSE RULES AND OTHER PROCESSES<sup>22</sup>**

- E.10.1 The existence of any disciplinary or other dispute resolution processes under any relevant Clearing House Rules shall not preclude any process under this Section E.
- E.10.2 Where there are disciplinary processes, summary enforcement processes or appeal processes under both this Section E and the Clearing House Rules, and both the panels appointed under this Section E and the Clearing House Rules consider that the disciplinary processes involve at least one common Member or Clearing Member and substantially the same subject matter, the disciplinary processes under this Section E may be consolidated with the disciplinary processes under the Clearing House Rules at the election of the panel appointed under this Section E. In such circumstances, the same procedures, documents, notices, evidence and panel members may be used in both sets of disciplinary processes.

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<sup>19</sup> Amended 25 August 1998; 19 August 1999, 1 February 2001, 23 September 2003, 8 April 2005, 25 October 2005, 29 March 2006, 27 April 2006, Launch of ICE Clear 2008, Amended 16 November 2016, 21 October 2020

<sup>20</sup> Amended 28 April 1999, 27 February 2003, 23 September 2003, 8 April 2005, 25 October 2005, 29 March 2006, 21 October 2020

<sup>21</sup> Amended 28 April 1999, 27 February 2003, 8 April 2005, 21 October 2020

<sup>22</sup> Amended 19 August 1999, 1 February 2001, 7 March 2001, 17 July 2003, 23 September 2003, 27 April 2005, 25 October 2005, 29 March 2006, 12 May 2006, Launch of ICE Clear 2008, Amended 05 January 2015, 17 March 2015, 21 October 2020

**SECTION E - DISCIPLINARY**

- E.1 Notification of Breach<sup>23</sup>
- E.2 Breaches of Rules and Acts of Misconduct<sup>24</sup>
- E.3 Investigations<sup>25</sup>
- E.4 Disciplinary Proceedings<sup>26</sup>
- E.5 Emergency Suspension<sup>27</sup>
- E.6 [deleted with effect 1 February 2001]
- E.7 Summary Enforcement<sup>28</sup>
- E.8 Market Offences<sup>29</sup>
- E.9 Loss or Damage to Market Property<sup>30</sup>
- E.10 Other Offences<sup>31</sup>

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<sup>23</sup> Amended IPE ETS implementation date 2002, 27 April 2006

<sup>24</sup> Amended IPE ETS implementation date 2002, 27 April 2006, Launch of ICE Clear 2008, Amended 15 October 2012, 16 January 2015, 15 July 2016

<sup>25</sup> Amended IPE ETS implementation date 2002, 27 April 2006, Launch of ICE Clear 2008

<sup>26</sup> Amended 17 July 2003, 8 April 2005, 29 March 2006, 27 April 2006, Launch of ICE Clear 2008

<sup>27</sup> Amended 20 May 2011

<sup>28</sup> Amended 23 September 2003, 8 April 2005, 25 October 2005, 29 March 2006, 27 April 2006, Launch of ICE Clear 2008, Amended 16 November 2016

<sup>29</sup> Amended 23 September 2003, 8 April 2005, 25 October 2005, 29 March 2006

<sup>30</sup> Amended 27 February 2003, 25 October 2005

<sup>31</sup> Amended 23 September 2003, 27 April 2005, 7 December 2005, 7 February 2006, 29 March 2006, 12 May 2006, Launch of ICE Clear 2008, Amended 05 January 2015, 17 March 2015

**E.1 NOTIFICATION OF BREACH<sup>32</sup>**

All Members shall immediately notify the Exchange of any infringement of the Regulations (including those prescribed under Rule A.9) or of any financial or commercial difficulty on the part of themselves or any Member or person subject to the Regulations and, as soon as practicable thereafter, give the Exchange full particulars of the infringement or difficulty.

**E.2 BREACHES OF RULES AND ACTS OF MISCONDUCT<sup>33</sup>****Bringing the Exchange into disrepute**

- E.2.1 (a) No Member and no person subject to the Regulations shall (or shall permit any Member's Representatives to) take any action or be guilty of any omission which in the opinion of the Exchange is liable to bring the Exchange or its Members into disrepute or otherwise be substantially detrimental to the interests or welfare of the Exchange.
- (b) No Member and no person subject to the Regulations shall knowingly or recklessly permit the use of his or its services, facilities or membership or trading privileges by any person in a manner which is in the opinion of the Exchange liable to bring the Exchange or its Members into disrepute, impair the dignity or degrade the good name of the Exchange, create or maintain or exacerbate manipulations (or attempted manipulations) or corners (or attempted corners) or violations of the Regulations (or arrangements, provisions or directions made or given thereunder) or otherwise be substantially detrimental to the interests or welfare of the Exchange.

**Conduct in relation to trading**

- E.2.2 (a) No Member (or other person subject to the Regulations) shall in relation to Contracts or Corresponding Contracts entered into, or orders placed, on the Market or otherwise in accordance with the Regulations:-
- (i) commit any act of fraud or bad faith;
  - (ii) act dishonestly;
  - (iii) engage or attempt to engage in extortion;
  - (iv) continue (otherwise than to liquidate existing positions) to place orders trade or enter into such Contracts or Corresponding Contracts or accept margin when not in compliance with the minimum financial requirement currently in force in relation to the category of membership to which it belongs;
  - (v) knowingly disseminate false, misleading or inaccurate reports concerning any product or market information or conditions that affect or tend to affect prices on the Market;
  - (vi) manipulate or attempt to manipulate the Market, nor create or attempt to create a disorderly Market, nor assist its clients, or any other person to do so;
  - (vii) make or report a false or fictitious trade;

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<sup>32</sup> Amended 1 February 2001, IPE ETS implementation date 2002, 27 April 2006

<sup>33</sup> Amended 1 February 2001, 24 January 2002, IPE ETS implementation date 2002, 27 April 2006, Launch of ICE Clear 2008, Amended 15 October 2012, 16 January 2015, 15 July 2016

- (viii) enter into any Contract or Corresponding Contract or fail to close out the same either intending to default in performance of the same or having no reasonable grounds for thinking that it would be able to avoid such default (provided that it shall not be sufficient to have intended to comply with any contractual or other provision governing the consequences of default);
- (ix) use or reveal any information confidential to the Exchange or another person obtained by reason of participating in any investigation or disciplinary proceedings;
- (x) Enter an order or market message or cause an order or market message to be entered which is then cancelled or modified before execution, for the purposes of misleading market participants, for his own benefit, or the benefit of any other person;
- (xi) mislead other market participants;
- (xii) overload, delay, or disrupt the systems of the Exchange or other market participants;
- (xiii) disrupt the orderly conduct of trading or the fair execution of transactions, or
- (xiv) enter an order or market message or cause an order or market message to be entered with reckless disregard for the adverse impact of the order or market message.

### Market Abuse Regulation

E.2.2A Members and persons subject to the Regulations whose behaviour amounts to market abuse as set out in the Market Abuse Regulation (EU) No 596/2014 and any other applicable European Directives or Regulations, including, to the extent applicable, Articles 3 and 5 of Regulation (EU) No 1227/2011; Articles 37 to 41 of Regulation (EU) No 1031/2010, or insider dealing under the Criminal Justice Act 1993 shall be in breach of the Regulations.

### Other Acts of Misconduct

E.2.3 For the purposes of these Regulations, an act of misconduct is:

- (a) any conduct contrary to Rule A.2.1;
- (b) participation in conduct by a third party which would be a violation or attempted violation of these Regulations if that third party were subject to these Regulations;
- (c) a failure to pay a fine or order for costs imposed by a Disciplinary Panel that had not been overturned by an Appeal Panel;
- (d) any other event or practice which has developed or is developing on the Exchange and is thought to be capable of impairing the orderly conduct of business on the Exchange or affecting the due performance of contracts;
- (e) provision to the Exchange of information (including information for the purpose of obtaining membership) which is false, misleading or inaccurate in a material respect;
- (f) ceasing to meet eligibility criteria for membership as set out in the Rules without notifying the Exchange;
- (g) any other matter of which the Exchange may, from time to time, notify Members through administrative notices issued to Members.

## E.3 INVESTIGATIONS<sup>34</sup>

<sup>34</sup> Amended 1 February 2001, 13 August 2001, IPE ETS implementation date 2002, 27 April 2006, Launch of ICE Clear 2008

- E.3.1 Investigations into alleged infringements of the Regulations or an act of misconduct may be authorised by the Compliance Officer or any person authorised by him.
- E.3.2 The Exchange's Compliance Department shall issue a Notice of Investigation (NoI) notifying the Member concerned that an investigation has been commenced. The NoI shall be sent to the Member or the person concerned and copied to the Member's Compliance Officer and shall contain a brief description of the matter under investigation.
- E.3.3 In the course of conducting an investigation, the Exchange may call for the assistance of such professional, legal or accounting advisers, clearing houses, exchanges, regulatory organisations and other advisers or persons as it thinks fit. The Exchange may also call on other departments and officials of the Exchange for such documents, information and assistance as it thinks fit. Any external adviser appointed by the Exchange shall be required to treat all information obtained in the course of the investigation as confidential and to disclose it only to the Exchange.
- E.3.4 Members and other persons subject to the Regulations shall co-operate fully with all such investigations (whether or not such Member or person is the direct subject of such investigation). Without limitation, each Member (and, so far as applicable, each person subject to the Regulations) shall:-
- (a) promptly furnish to the Exchange such information and documentary and other material as may reasonably be requested (including without limitation in the case of Members details of the Member's own and clients' accounts);
  - (b) permit those persons appointed to carry out or assist in carrying out the investigation to enter any premises where the Member carries on its business or maintains its records for the purpose of carrying out such investigation. Each Member hereby irrevocably grants the Exchange a licence for this purpose;
  - (c) make available for interview itself (if the Member is a natural person) and such of its Member's Representatives as may reasonably be requested; and itself answer, and procure that its Member's Representatives answer, truthfully and fully any question put by or on behalf of the Exchange. If a Member or Member's Representative fails to attend an interview with the Compliance Officer or a scheduled Summary Hearing of the Authorisation, Rules and Conduct Committee, Disciplinary Panel or Appeals Panel the Member and/or Member's Representative may be fined £1000 per day of non attendance and may be excluded from the Market until they take reasonable steps to make themselves available on an alternative date;
  - (d) make available for inspection such documents, records or other material in its possession, power or control as may reasonably be required and, upon request, provide copies of the same;
  - (e) use its best endeavours to ensure that so far as possible its agents give similar co-operation.
- E.3.5 Each Member and other person subject to the Regulations authorises the Exchange to request any clearing house, investment exchange or regulatory body or person to furnish to the Exchange such information and documents as the Exchange may require in connection with an investigation.
- E.3.6 [deleted with effect 1 February 2001].

- E.3.7 When, in the opinion of the persons conducting the investigation, they have sufficient information, they shall make a written report to the Compliance Officer who may, or may not, recommend to the Authorisation, Rules and Conduct Committee that disciplinary proceedings should be commenced.
- E.3.8 The Compliance Officer or the Authorisation, Rules and Conduct Committee may, without prejudice to any other of their powers:-
- (a) decide that no further action should be taken and notify any Member or other person concerned in writing accordingly;
  - (b) in the event of a minor infringement or misconduct, issue a written warning (which shall be private save as provided for in paragraph (f) below) to the Member concerned (or, in the case of such an infringement or misconduct by some other person, that person with a copy to any Member with whom he was associated at the time of such infringement or misconduct);
  - (c) commence disciplinary proceedings (including, in an appropriate case, summary proceedings under Rule E.7.0);
  - (d) refer the matter back to the Compliance Department for further enquiry; or
  - (e) in the case of the Authorisation, Rules and Conduct Committee, make such amendments to the Regulations as they think fit;
  - (f) report such of the findings of the investigation to such investment exchanges, clearing houses or other regulatory bodies as they think fit;
  - (g) publish such findings and in such detail as the Authorisation, Rules and Conduct Committee deems appropriate where the matter under investigation is considered of relevance to the market in general or in the public interest.

Provided that the Compliance Officer or the Authorisation, Rules and Conduct Committee may, in an appropriate case, take more than one of the above actions or different actions in relation to different Members or other persons concerned in the same investigation.

#### **E.4 DISCIPLINARY PROCEEDINGS<sup>35</sup>**

##### **Commencement**

- E.4.1 Disciplinary proceedings may be commenced by the Authorisation, Rules and Conduct Committee only when the Committee is satisfied (whether or not a formal investigation has taken place under the Regulations) that there is prima facie evidence of an infringement of the Regulations or misconduct by a Member or other person subject to the Regulations.
- E.4.2 When the Authorisation, Rules and Conduct Committee decide to commence disciplinary proceedings, they shall (subject to Rule E.7.0) direct that a written notice (“Notice”) be sent to the Member (or, in the case of

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<sup>35</sup> Amended 4 September 1998, 26 February 1999, 1 February 2001, 13 August 2001, IPE ETS implementation date 2002, 17 July 2003, 8 April 2005, 29 March 2006, 27 April 2006, Launch of ICE Clear 2008



proceedings against some other person, that person and any Member with whom he was associated at the time of the matter in question), which shall set out the alleged act of misconduct or infringement, including a summary of facts relied upon.

- E.4.2.1 The Member or other person the subject of a Notice shall, if it wishes, have twenty working days (or such further time as the Authorisation, Rules and Conduct Committee may in its absolute discretion allow) from the service of the Notice in which to provide a statement of defence (“The Defence”) responding to all or any of the allegations, stating its intended pleas and what admissions of fact, if any, it makes. Where no defence has been served and no settlement has been reached, the Exchange will deem the Member or other person the subject of Notice to have accepted the facts and matters alleged in the Notice.
- E.4.2.2 Having seen and considered the Defence, the Authorisation, Rules and Conduct Committee may, if it deems appropriate, continue to proceed with the disciplinary proceedings and refer the matter to the Disciplinary Panel or may choose to discontinue disciplinary proceedings or deal with the matter as set out in Rule E.3.8.
- E.4.3 Without adjournment or reference back to the Authorisation, Rules and Conduct Committee, the Disciplinary Panel, or a quorum of the Authorisation, Rules and Conduct Committee hearing a case summarily, may amend a Notice by deletion, alteration or addition, or may vary the Rule breach alleged or add another Rule breach provided that they are of the opinion that:
- (a) the amendment or variation is material to the course of conduct under investigation;
  - (b) the essential character of the allegation or Rule breach has not been changed; and
  - (c) the Member would not be prejudiced in any defence it might wish to put before the Disciplinary Panel.

In any other circumstances, and in particular should a Disciplinary Panel, or a quorum of the Authorisation, Rules and Conduct Committee hearing a case summarily, determine that a separate or unrelated course of misconduct or an infringement of the Regulations may have been revealed, it may order an adjournment to enable the matter to be investigated further or, in the case of the Disciplinary Panel, may refer the matter back to the Authorisation, Rules and Conduct Committee for further examination.

### Settlement

- E.4.3.A The Member and/or the person alleged to have committed the infringement may attempt to settle the disciplinary proceedings at any stage (including any appeal) with the Exchange. The terms of any settlement shall be agreed between the Compliance Officer and the individual or Member as the case may be and submitted in writing to the Chairman of the Authorisation, Rules and Conduct Committee, or in his absence a quorum of this Committee for ratification. Upon ratification the terms of the settlement shall take effect. In the event the settlement is not ratified, the disciplinary proceedings shall continue.

### Appointment of Panel

- E.4.4 Disciplinary Panels shall be appointed, as required, by the Exchange and by the Remuneration and Appointments Committee. A Panel shall consist of a Chairman sitting alone or together with one or two other persons; such persons that are appointed to the Panel may be persons drawn from market practitioners, lawyers or other suitable persons. Serving members of the Authorisation, Rules and Conduct Committee or Directors of the Exchange shall not be appointed to a Disciplinary Panel. Expert assessors may be appointed, at the discretion of the Authorisation, Rules and Conduct Committee or the Panel itself, to sit with and advise the Panel but not to vote. No person shall serve on or sit with a Panel if he has a personal or financial interest in or has been involved in any investigation into or previous Panel hearing on the matter under consideration.

The Member and/or the person alleged to have committed the infringement and the Exchange may object to any particular appointment to the Panel which objection will be determined in the first instance by the

Chairman of the Disciplinary Panel and, in the event that the objection is against the Chairman of the Disciplinary Panel, then this will be determined by the Chairman of the Appeals Panel.

In the event of equality of votes, the Chairman shall have a second or casting vote.

In the event of any of the Panel having or acquiring a personal or financial interest in the outcome, or dying or in any other way being or becoming, incapacitated, the Chairman of the Disciplinary Panel (or in the case of the Chairman of the Disciplinary Panel, the Chairman of the Appeal Panel) may direct that the Panel shall continue to act with a reduced number or appoint another person to take the place of the retiring member of the Panel (and the disciplinary proceedings shall then proceed as if such person had been originally appointed in lieu of the first person) or may direct that a new Panel should be appointed to rehear the matter.

[Rules E.4.5, E.4.6, E.4.7 - deleted, with effect from 2 June 1994]

### **Proceedings of Panel**

E.4.8 The Disciplinary Panel shall investigate the alleged misconduct or infringement and determine whether there has been a violation of the Regulations and, if so, the appropriate sanction (if any) to be imposed. In carrying out this function, the Disciplinary Panel may adopt such procedure as it thinks fit. Without limitation:-

- (a) it may request from the Exchange or the Member (or the person concerned and any Member) such further statements, information, documents or other evidence as it may think fit or either party to the proceedings may adduce further evidence as they consider necessary within time limits agreed by the Panel;
- (b) the Panel, or its Chairman sitting alone, may deal with such matters as it considers appropriate at a pre-hearing review, issue directions and take such other steps as it considers appropriate for the clarification of the facts and issues and for the just and expeditious determination of the case;
- (c) it may, if it considers appropriate, but only with the agreement of the Exchange and the Member concerned (or the person concerned and any associated Member), decide to determine the case upon written submissions and evidence placed before it;
- (d) in all other cases, the Exchange and the Member (or the person concerned and any Member) shall be given the opportunity (and may be required by the Panel upon reasonable notice) to attend and give evidence before the Panel and be questioned. The Exchange or the Member (or the person concerned and associated Member, as the case may be) may call witnesses to give evidence and be questioned;
- (e) the Member (or the person concerned and any associated Member) and the Exchange may be assisted or represented by any person who may or may not be legally qualified;
- (f) any person who is subject to the Regulations may be required (and any other person may be requested) by the Panel (upon reasonable notice) to attend and give evidence. The Member (or person concerned and any associated Member) shall be given notice of every hearing at which any person is to give evidence. Both the Member (or the person concerned and associated Member, as the case may be) and the Compliance Officer or other representative of the Exchange shall be allowed the opportunity of examining and cross-examining any person who attends to give evidence;

- (g) the Panel may call for any person to attend its hearings. Save for this, all hearings shall be in private unless the Member requests otherwise and the Exchange and the Panel consent;
- (h) the Panel shall not be bound by any rule of law or court procedure concerning admissibility of evidence and may accept as conclusive any finding of fact made by a court or any regulatory body;
- (i) the Panel shall apply the civil standard of proof on the balance of probabilities, with the cogency of evidence required being commensurate with the seriousness of the alleged infringement;
- (j) the Panel may consult with legal advisers;
- (k) a Member's disciplinary record shall not be disclosed to the Panel until the Panel shall have declared itself satisfied that an infringement has been proved. The Panel shall then bespeak such record from the Exchange and shall be entitled to take it into account when selecting the appropriate sanction;
- (l) the Panel may receive submissions from the Exchange on the appropriate sanction. Such submissions shall be made available to the Member and/or person concerned who shall have the right to make final submissions on penalty.

E.4.9 If the Exchange or Member (or person concerned and any associated Member or either of them) should fail to meet a time limit imposed by the Disciplinary Panel or fail to attend a hearing, the Panel may in its absolute discretion allow an extension of time, adjourn its proceedings or proceed, if necessary in the absence of the Member (or the person and Member, or either of them).

E.4.10 The findings of the Disciplinary Panel, and particulars of any sanction, shall be notified in writing to the Member concerned (or the person concerned and any associated Member). Such findings and sanction shall be deemed conclusive and binding upon expiry of the time permitted for appeal or receipt by the Secretary of any earlier written notice that such right of appeal will not be exercised.

### **Sanctions**

E.4.11 The sanctions which may be imposed on a person subject to the Regulations by a Disciplinary Panel shall not exceed the following:-

- (a) the issue of a warning or reprimand;
- (b) the issue of a notice of censure;
- (c) in the case of an individual, disqualification (either indefinitely or for a fixed term) from being a Director or member of a committee or any panel of the Exchange;
- (d) in the case of a Member, disqualification (either indefinitely or for a fixed term) of any of its Member's Representatives from being a Director or member of a committee or any panel of the Exchange;
- (e) a fine of any amount, to be paid on such terms as may be prescribed;

- (f) in the case of an individual entitled to enter or access the Market, suspension or curtailment of his right to do so (which may include suspension of his registration as a Responsible Individual) for a fixed term of up to a maximum of 36 months;
- (g) [Removed – 8 April 2005]
- (h) a recommendation to the Directors that they expel a Member from membership of the Exchange, or in the case of other persons subject to the Regulations, permanently remove their right to access the premises or the trading facilities of the Exchange under Rule B.7.1(a);
- (i) the issue of an order requiring the Member found to have committed the breach (or the person found to have committed the breach and the Member with whom he was associated at that time, or either of them) to take such steps including making an order for compensation, as the Panel may direct to remedy the situation including, without limitation, making an order for restitution to any affected person when the Member (or person concerned) has profited (or avoided a loss) from an act of misconduct at that person's expense;
- (j) [Rule E.4.11(j) - deleted, with effect from 2 June 1994]
- (k) any combination of the foregoing.

Where a person subject to the Regulations is expelled pursuant to Rule B.7.1(a) or has any or all of his rights of membership suspended pursuant to Rule B.7.1(b) or Rule B.7.2 (as applicable), the Directors or the Authorisation, Rules and Conduct Committee may make such directions;

- (i) as they think fit in respect of his open Contracts or Corresponding Contracts (including without limitation directions for the reduction, transfer or elimination of them);
- (ii) to the effect that where a person subject to the Regulations is expelled, they may reapply for registration with the Exchange at any time after the date specified in the Notice of Sanction. Such reapplication will only be considered if all costs and fines associated with the Notice of Sanction are paid in a timely fashion.

- E.4.12
- (a) The contravention of any sanction imposed or direction made under or pursuant to Rule E.4.11 may be treated for all purposes as an infringement of the Regulations;
  - (b) A Disciplinary Panel may order any party to the proceedings to pay costs as it thinks appropriate, including but not limited to, administration costs, costs incurred in the investigation, preparation, and presentation of the case.

#### **Publication of Findings**

- E.4.13
- The Authorisation, Rules and Conduct Committee shall give such publicity as they consider appropriate to any finding of, or any sanction imposed or other order made by a Disciplinary Panel or by an Appeals Panel, or any ratified settlement, provided that if the Authorisation, Rules and Conduct Committee shall determine that no publicity shall be given as aforesaid, they shall record in the minutes of their meeting the reasons for the said determination. The provisions of this Rule are without prejudice to the right of the Exchange under Rule A.4.3 or otherwise to disclose confidential information to other regulatory or law-enforcement bodies.

**Appeal**

- E.4.14 The Exchange and the Remuneration and Appointments Committee shall appoint persons who shall not be Directors or serving members of the Authorisation, Rules and Conduct Committee, who shall be authorised to serve on Appeals Panels. A Panel shall consist of a Chairman sitting alone or together with one or two other persons who are not prevented from serving on the Panel by reason of the matters contained in Rule E.4.4. The Chairman of the Panel shall be a lawyer.
- E.4.15 (a) Within 14 days of receiving notice in writing of a finding or order of a Disciplinary Panel, or such longer period as the Exchange may in its absolute discretion direct, a defendant or the Exchange, or both may appeal to the Appeals Panel by lodging with the Exchange a notice of appeal in writing and by delivering a copy thereof to any other party. A notice of appeal shall set out the grounds of the appeal and shall contain a brief statement of all matters relied on by the appellant. The grounds of the appeal may be any one or more of the following:
- (i) the Disciplinary Panel misdirected itself; or
  - (ii) the Disciplinary Panel's decision was:
    - (aa) one which no reasonable Disciplinary Panel could have reached;
    - (bb) unsupported by the evidence or was against the weight of the evidence; or
    - (cc) based on an error of law, or a misinterpretation of the Exchange Regulations; or
  - (iii) the sanction imposed by the Disciplinary Panel was excessive or, in the case of an appeal by the Exchange, was insufficient or inappropriate; or
  - (iv) new evidence is available and that, had it been made available, the Disciplinary Panel could reasonably have come to a different decision. This will not apply if the evidence could have been adduced before the Disciplinary Panel by the exercise of reasonable diligence;
- but no party may otherwise appeal against the Disciplinary Panel's finding of infringement, or order;
- (b) In the case of appeal against a sanction, the Appeals Panel may affirm, vary or revoke the sanction. In the case of appeal pursuant to Rule E.4.15(a)(i), (ii) or (iv), the Appeals Panel may make such order or give such direction as it considers just including, if thought fit, in relation to an appeal pursuant to Rule E.4.15(a)(ii) a direction for a rehearing of the case by another Disciplinary Panel.
- (c) On receipt of a notice of appeal, the Remuneration and Appointments Committee will constitute an Appeals Panel from among those persons authorised under Rule E.4.14 above.
- E.4.16 An Appeals Panel may adopt such procedure as it thinks fit and just, including without limitation the procedures described in Rule E.4.8. The appellant and the respondent may appear, make representations and (subject to the restriction on adducing new evidence in Rule E.4.15(a) (iv)) call witnesses, who may be examined and cross-examined.
- E.4.17 (a) The decision of an Appeals Panel shall be final and binding and there shall be no further appeal. The decision shall be notified to the appellant in writing as soon as possible.

- (b) Rule E.4.12(b) shall apply to the Appeals Panel as though the reference therein to the Disciplinary Panel were to the Appeals Panel.

E.4.18 [Rule E.4.18 - deleted, with effect from 8 November 1996]

#### **E.5 EMERGENCY SUSPENSION<sup>36</sup>**

Notwithstanding and without prejudice to any other provision of the Regulations (including without limitation this Section E of the Regulations) the Exchange may, upon reasonable belief that immediate suspension is necessary to protect the interests of the Exchange and its Members or to ensure an orderly market, suspend for up to seven working days the right of any individual (or all individuals associated with a particular Member) to enter the Market to trade. Such decisions shall be reviewed by the Exchange within that period, and may be extended subject to such arrangements as the Exchange thinks fit.

**E.6** [Rule E.6, deleted with effect 1 February 2001]

#### **E.7 SUMMARY ENFORCEMENT<sup>37</sup>**

E.7.0 (a) Subject to paragraph (b) below, where in all the circumstances of a case the Authorisation, Rules and Conduct Committee considers summary enforcement of the Regulations to be apt it may, instead of referring disciplinary proceedings to a Disciplinary Panel, summarily hear and determine the case itself. The sanctions which may be imposed by the Authorisation, Rules and Conduct Committee are those set forth in Rule E.4.11 save that:

- (i) the sanction of expulsion shall not be available to the Committee;
- (ii) the maximum sanction of suspension which may be imposed by the Committee on an individual is limited to 3 calendar months; and
- (iii) the maximum fine which may be imposed by the Committee is limited to £25,000 for an individual and £250,000 for a Member in respect of each offence.

In the conduct of a summary hearing under this Rule the Authorisation, Rules and Conduct Committee shall conform to such procedures as may from time to time be prescribed for the purpose by the Directors.

- (aa) In connection with a summary hearing under this Rule the Authorisation, Rules and Conduct Committee may order any party to the proceedings to pay costs as it thinks

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<sup>36</sup> Amended 20 May 2011

<sup>37</sup> Amended 25 August 1998; 19 August 1999, 1 February 2001, 23 September 2003, 8 April 2005, 25 October 2005, 29 March 2006, 27 April 2006, Launch of ICE Clear 2008, Amended 16 November 2016

appropriate, including but not limited to, administration costs, costs incurred in the investigation, preparation and presentation of the case.

- (b) Where an alleged infringement or misconduct falls outside those mentioned in Rule E.7.1, before commencing a summary hearing under paragraph (a) above the Authorisation, Rules and Conduct Committee shall inform the Member or other person concerned that such person may object to summary enforcement. If the person concerned so objects, the case shall not proceed under this Rule but shall be referred to a Disciplinary Panel under Rule E.4.2.
- (c) A Member, or other person proceeded against, may appeal to a Disciplinary Panel against a summary determination of the Authorisation, Rules and Conduct Committee under paragraph (a) above. Notice of appeal shall be lodged with the Secretary within 7 days of notification of the Committee's determination. Rule E.4.8 shall apply to the proceedings of the Disciplinary Panel, modified as the Panel may consider appropriate to the case. The determination of the Disciplinary Panel on appeal from the Authorisation, Rules and Conduct Committee shall be final and binding. There shall be no further appeal.

E.7.1 Without prejudice to the powers of investigation and discipline contained in Rules E.3.1, E.4.1 and E.5, or to the summary jurisdiction of the Authorisation, Rules and Conduct Committee under Rule E.7.0, an infringement or contravention of or a failure to observe or comply with any provision of the Regulations appearing in Rule:

- E.8 (except paragraph (a) thereof)
- in Section G (Trading); or
- Section P (Position Reporting, Accountability and Limits); or
- Rules and Trading Procedures relating to EFPs, EFSs, Soft Commodity EFRPs; Basis trades; Block Trades and Asset Allocations; or
- a failure to identify a customer pursuant to Rule K.5 (b) or (c) on the part of a Member or a Member's Representative,

may be summarily dealt with under Rule E.7.2.

E.7.2 The Trading Committee and the compliance officer acting together or independently or such other persons as may be duly authorised by the Authorisation, Rules and Conduct Committee may take summary disciplinary measures, including without limitation the imposition of fixed penalty fines and fixed terms of exclusion from the Market (or any part thereof), in respect of any infringement, contravention or failure mentioned in Rule E.7.1. The Directors, or the Trading Committee and the compliance officer acting together under the authority of the Authorisation, Rules and Conduct Committee, may from time to time by circular or other written notice to Members prescribe the procedure governing the taking of summary disciplinary measures under this Rule, any procedure for appeal and any other matter incidental thereto, including the limitation of summary measures either generally or in particular classes of case.

E.7.3 A failure to observe any sanction imposed under Rule E.7.0 or E.7.2 shall be treated as an infringement of the Regulations.

E.7.4 Any summary decision of the Authorisation, Rules and Conduct Committee, the Trading Committee or the compliance officer shall be posted on the Market and circulated to the compliance officer of Member firms and to Individual Participants.

**E.8 MARKET OFFENCES<sup>38</sup>**

A person subject to the Regulations is prohibited from doing any act which may bring the Exchange into disrepute. Such acts as may include, but are not limited to:-

- (a) any form of physical violence;
- (b) the use of bad language;
- (c) the throwing of missiles, water, paper-balls etc. or any action which may cause injury to another person or damage to property;
- (d) [deleted 8 April 2005]
- (e) the unauthorised removal of, or damage to property, fixtures or fittings and communications equipment;
- (f) drunkenness;
- (g) [deleted 25 October 2005];
- (h) [deleted 8 April 2005];
- (i) [deleted 8 April 2005];
- (j) the consumption of alcohol;
- (k) [deleted 8 April 2005];
- (l) physical or verbal abuse of an Exchange official in the course of his duties;
- (m) abusive and/or disorderly behaviour;
- (n) any act which in the opinion of a member of the Exchange's secretariat, a Director or a member of the Trading Committee may be prejudicial to the good reputation of the Exchange; and
- (o) any other act prescribed under this Rule by the Trading Committee and/or the compliance officer acting together or independently.

**E.9 LOSS OR DAMAGE TO MARKET PROPERTY<sup>39</sup>**

<sup>38</sup> Amended 28 April 1999, 27 February 2003, 23 September 2003, 8 April 2005, 25 October 2005, 29 March 2006

<sup>39</sup> Amended 28 April 1999, 27 February 2003, 8 April 2005



Damage or loss to the property of the Exchange or any other property on the Exchange's premises will be paid for by the Member causing such damage or loss to the property unless the Member can satisfy the Exchange that the damage or loss to property was caused by a third party named by the Member.

All other forms of damage or loss to property on the Exchange's premises will be charged to the Members when no individual or individuals can be held responsible.

#### **E.10 OTHER OFFENCES<sup>40</sup>**

##### **(a) EFP and EFS Reports**

The Directors may by circular or other written notice otherwise require Members to report every exchange for physical and exchange for swaps transaction done under Rule F.5 to the Exchange in such manner and within such time as the Directors may prescribe.

##### **(b) Utility Contracts**

Directors may by circular or other written notice prescribe fixed penalty fines to be imposed on a Member who has, or appears to have, failed to comply with its Buyer or Seller obligations under the Rules relating to Utility Contracts.

(c) In the event of a Member failing, or appearing to have failed, to comply with its Buyer or Seller obligations under the Rules relating to Utility Contracts or failing to comply with the requirements of Rule E.10(a), the Directors may from time to time authorise the imposition of fixed penalty fines on Members, and may direct that such a fine may be imposed for every day of a Member's failure to comply. The Directors may in writing prescribe officers of the Exchange who are authorised to impose such fines, the procedure governing the exercise of such authority, a procedure for review and any other matter which they may consider pertinent to authorising or limiting the imposition of such fines.

##### **(d) ICE Futures Low Sulphur Gasoil Contracts**

(i) The Exchange shall by circular or other written notice prescribe fixed fines to be imposed on a Member who has, or appears to have, failed to comply with its obligations under Rules J.1, J1.11, J.12 or J1.12.

(ii) in respect of a finding of a panel of the Delivery Committee under Rules I.18 or I.19 or the summary finding of the compliance officer of a failure by a Member to comply with its obligations under Rules J.1, J1.11, J.12 or J1.12 the compliance officer may:

(aa) without prejudice to any other powers of the Exchange under the Regulations, take summary disciplinary action and impose a fixed fine prescribed under Rule E.10(d)(i) on such Member; or

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<sup>40</sup> Amended 19 August 1999, 1 February 2001, 7 March 2001, 17 July 2003, 23 September 2003, 27 April 2005, 25 October 2005, 29 March 2006, 12 May 2006, Launch of ICE Clear 2008, Amended 05 January 2015, 17 March 2015

- (bb) refer the failure to the Authorisation, Rules and Conduct Committee. The Authorisation, Rules and Conduct Committee may, without prejudice to any other of its powers: (1) impose a fixed fine prescribed under Rule E.10(d)(i) on such Member; such imposition of a fixed fine shall be treated as if it were a summary determination of the Authorisation, Rules and Conduct Committee; and/or (2) take any action under one or more of Rules E.3.8(a), (b), (c), (e), (f), or (g).

The Compliance Officer shall notify the Member of any action it takes under this Rule E.10(d)(ii).

- (iii) A Member who has been notified of the imposition of a fixed fine under Rule E.10(d)(ii)(aa) may in respect of a fine issued in respect of a category 1, 2 or 3 offence (as set out in the Schedule of Common Offences - Delivery Conduct in Appendix 1 to the Regulations), require the matter to be referred by way of appeal to the Authorisation, Rules and Conduct Committee. A Member shall lodge a notice setting out the grounds of its appeal within 5 Business Days of the date of such notice. An appeal shall be heard by the Authorisation, Rules and Conduct Committee and it shall make such finding as shall be appropriate and may affirm, vary or quash any fine imposed. The decision of the Authorisation, Rules and Conduct Committee on an appeal shall be final. Trading Procedures 10.3 (d) and (e) (where applicable) shall apply to such appeal.
- (iv) A Member who has been notified under Rule E.10(d)(ii)(bb) of:
  - (aa) the imposition by the Authorisation, Rules and Conduct Committee of a fixed fine, may require the matter to be referred by way of appeal to a Disciplinary Panel in accordance with Rule E.7.0(c);
  - (bb) an action taken by the Authorisation, Rules and Conduct Committee under Rule E.3.8(c), and such action results in a determination of a summary hearing of the Authorisation, Rules and Conduct Committee or of a Disciplinary Panel, the Member may require the matter to be referred by way of appeal pursuant to and in accordance with Rule E.4.15 or E.7.0 (c), as appropriate.
- (e) A Member's failure to pay a fine imposed pursuant to this Rule E.10 shall be treated as an infringement of the Regulations.
- (f) The Directors shall have power in their discretion to waive the imposition of a fine under this Rule.
- (g) Provided that the time for lodging an appeal has expired, and without prejudice to any other powers of the Exchange, the Exchange may give such publicity as it considers appropriate to any fine imposed on a Member under this Rule E.10.

