

## **LONDON NOTICE No. 3186**

ISSUE DATE: 6 August 2009  
EFFECTIVE DATE: 6 August 2009

### **POTENTIAL DESIGNATION OF LIFFE AS A “QUALIFIED BOARD OR EXCHANGE” FOR THE PURPOSES OF SECTION 1256 OF THE UNITED STATES (“US”) INTERNAL REVENUE CODE**

#### **Executive Summary**

This Notice informs Members of amendments to the LIFFE Rules, Book II which are a pre-requisite for LIFFE Administration and Management to be designated as a “qualified board or exchange” for the purposes of Section 1256 of the US Internal Revenue Code of 1986, as amended. Such designation is intended to benefit eligible US taxpayers who transact futures and options on futures on the Exchange. The revised Rules, which are a pre-requisite of designation as a “qualified board or exchange”, potentially affect all LIFFE Members.

Each Member who has, or is required to have, a United States Taxpayer Identification Number should complete the form contained in Attachment 2 of this Notice.

#### **1. Introduction**

- 1.1 The Exchange has applied to the US Internal Revenue Service (“IRS”) for designation under Section 1256 of the US Internal Revenue Code of 1986, as amended (the “Code”) as a “qualified board or exchange”. Such designation is intended to benefit eligible US taxpayers who transact LIFFE’s futures and options on futures by reducing their effective US rate of taxation on gains from such transactions. The revised Rules, which are a prerequisite of the designation, potentially affect all LIFFE Members as explained in section 2 of this Notice. **Please note that the status of the Exchange as a “qualified board or exchange” for the purposes of Section 1256 of the Code will not be effective unless and until the IRS grants such designation.**
- 1.2 The tax treatment provided by Section 1256 of the Code is commonly referred to as “60/40 tax treatment” and allows eligible US taxpayers to treat 60% of the profits/losses gained/incurred on certain futures, options and other contracts (“Section 1256 Contracts”) as long-term capital gains/losses, and 40% of such gains/losses as short-term capital gains/losses for US tax purposes. Long-term capital gains of certain US taxpayers are currently taxed at more favourable rates than short term capital gains.
- 1.3 Section 1256 requires that each Section 1256 Contract held by a US taxpayer at the close of the taxable year “shall be treated as sold for its fair market value on the last business day of

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The **Euronext Derivatives Market** comprise the markets for derivatives operated by Euronext Amsterdam, Euronext Brussels, Euronext Lisbon, Euronext Paris and LIFFE Administration and Management, referred to respectively as the Amsterdam, Brussels, Lisbon, Paris and London markets. Euronext is part of the NYSE Euronext group.

such taxable year (and any gain or loss shall be taken into account for the taxable year)". This requirement to mark-to-market all Section 1256 Contracts at year end is an exception to the general rule that gains/losses are recognised at the time of the disposal of property and applies to US taxpayers irrespective of whether they are eligible for favourable tax rates on long-term capital gains.

- 1.4 In order to achieve Section 1256 designation, the Exchange has been required to make a number of undertakings to the IRS which include making representations that the Exchange will assist the IRS in the performance of its duties in respect of LIFFE business undertaken by LIFFE Members. This necessitates certain amendments to the LIFFE Rules which are set out in Attachment 1 and which are summarised in section 2 of this Notice. In addition, Members who have, or are required to have, a US Taxpayer Identification Number ("TIN") are required to complete the form contained in Attachment 2 of this Notice.

## **2. New Rules**

- 2.1 The new Rules require Members to provide information to the IRS, on request, about relevant LIFFE business. The Rules further stipulate that should the Exchange become aware that a Member has failed to do so, the Exchange would suspend the Member's rights of membership, and such suspension would remain in force until such time as the IRS confirmed to the Exchange that the Member was in compliance with IRS requirements.
- 2.2 In practice, suspension would follow interaction between the IRS and the Member regarding the information being requested and failure of the Member to provide the requested information. The Exchange would contact that Member to confirm that there is indeed a dispute between the Member and the IRS. Whilst the Exchange is not responsible for establishing whether a Member is, or is not, in compliance with the IRS rules, suspension of a Member's rights of membership would only be instituted once the Exchange had confirmed that the alleged non-compliance had been discussed between the Member and the IRS and was not simply a case of mistaken identity.
- 2.3 For the avoidance of doubt, the new Rules apply only to Members of the London market that is administrated by LIFFE Administration and Management and to business undertaken on that market.

## **3. Information collection**

- 3.1 The Exchange requires all Members who either have, or are required to have, a TIN to complete the form attached at Attachment 2 and return it to the Exchange by close of business on **Friday, 4 September 2009**.
- 3.2 Once LIFFE is designated as a "qualified board or exchange", the Exchange will be required to provide TIN information to the IRS on request. Members should notify the Exchange immediately as and when they are given a TIN or where there is any change to TIN information which has been submitted to the Exchange.

## **4. Next steps**

- 4.1 Subject to the IRS designating LIFFE as a "qualified board or exchange", the Exchange will issue a further Notice confirming the IRS ruling and the date on which the tax treatment outlined in this Notice will become effective.
- 4.2 Members are advised to consult their tax advisers in relation to the consequences for them of the Exchange's designation as a "qualified board or exchange".

**5. DISCLAIMER**

**5.1 PURSUANT TO IRS CIRCULAR 230: NOTHING CONTAINED IN THIS NOTICE CONCERNING ANY US FEDERAL TAX ISSUE IS INTENDED OR WRITTEN TO BE USED, AND IT CANNOT BE USED, BY ANYONE FOR THE PURPOSE OF AVOIDING U.S. FEDERAL TAX PENALTIES UNDER THE CODE.**

**5.2 THIS NOTICE IS NOT INTENDED TO BE, AND SHOULD NOT BE CONSTRUED AS, LEGAL OR TAX ADVICE. EACH MEMBER AND ANY OTHER INTERESTED PERSON SHOULD SEEK TAX ADVICE, BASED ON SUCH PERSON'S PARTICULAR CIRCUMSTANCES, FROM AN INDEPENDENT TAX ADVISOR.**

For further information in relation to this Notice, Members should contact their Account Manager or the following:

Laurence Walton	+44 (0)20 7379 2782	lwalton@nyx.com
Penny Wade	+44 (0)20 7379 2043	pwade@nyx.com

**New Rules facilitating the designation of LIFFE as a “qualified board or exchange”  
(Rules, Book II)**

**3.29 Arrangements with the U.S. Internal Revenue Service**

- 3.29.1 Upon request, each *Member* who has, or is required to have, a United States taxpayer identification number shall supply to the Exchange the details of such taxpayer identification number so that the Exchange can, upon request, provide such information to the U.S. Internal Revenue Service (“the Service”).
- 3.29.2 (a) Upon request by the Exchange, *Members* shall supply to the Exchange or directly to the Service or any grand jury properly convened within the United States books, papers, records, or other data with respect to transactions occurring on LIFFE as described in Section 7602 of the United States Internal Revenue Code of 1986 (“the Code”) and the Treasury Regulations thereunder (hereinafter collectively referred to as “records”). Such requests will be made by the Exchange whenever the Exchange receives a written request, summons or subpoena to produce such records from the Service or from any grand jury.
- (b) Failure by a *Member* to comply with the requirements of LIFFE Rule 3.29.2 (a) shall constitute a violation of the *Member’s* obligations under the Rules and, upon becoming aware of such a failure, the Exchange shall immediately suspend the *Member’s* rights of membership (and the rights of membership of any successor to such *Member*).
- (c) A suspension imposed on a *Member* pursuant to LIFFE Rule 3.29.2 (b) shall continue until the *Member* complies with the requirements of LIFFE Rule 3.29.2 (a) in all respects.
- 3.29.3 (a) This LIFFE Rule 3.29.3 applies to those *Members* who are otherwise subject to the reporting requirements of brokers under Section 6045 of the Code and the Treasury Regulations thereunder (“Relevant Exchange Members”).
- (b) Each Relevant Exchange Member shall comply with the reporting requirements referred to in Rule 3.29.3(a), as such requirements are amended from time to time, with respect to transactions effected on, or otherwise subject to the Rules of, LIFFE in the manner prescribed by Section 6045 of the Code, the regulations thereunder, and such other provisions of the Code and regulations that are pertinent thereto.
- (c) Failure by a Relevant Exchange Member to comply with the requirements of LIFFE Rule 3.29.3(b) shall constitute a violation of the *Member’s* obligations under the Rules and, upon becoming aware of such a failure, the Exchange shall immediately suspend the *Member’s* rights of membership (and the rights of membership of any successor to such *Member*).
- (d) A suspension imposed on a Relevant Exchange Member pursuant to LIFFE Rule 3.29.3(c) shall continue until the Service has confirmed that the *Member* complies with the reporting requirements under Section 6045 of the Code and the Treasury Regulations thereunder with respect to transactions effected on, or otherwise subject to the Rules of, LIFFE in all respects. Such compliance includes the filing of all returns that were required to have been filed under Section 6045 but were not filed or were filed improperly.

3.29.4 This LIFFE Rule 3.29 shall come into force on the day on which the Service rules that the Exchange shall be treated as a “qualified board or exchange” within the meaning of section 1256(g)(7) of the Code (“the Relevant Date”) and shall continue in force for as long as that ruling remains effective.

3.29.5 All references to provisions or requirements of the Code and the Treasury Regulations thereunder in this LIFFE Rule 3.29 shall be those applicable as at the Relevant Date. In the event that those provisions or requirements are materially changed subsequent to the Relevant Date, the Exchange shall remake this LIFFE Rule 3.29 so as to take effect on the date that the changes take effect.

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7.1.3 The suspension of a *Member's* membership rights pursuant to LIFFE Rule 3.29.2(b) or LIFFE Rule 3.29.3(c) shall be deemed to be a suspension by the *Board* pursuant to LIFFE Rule 7.1.1.

**Information required in connection with the designation of LIFFE as a “Qualified Board or Exchange” within the meaning of Section 1256 of the US Internal Revenue Code**

Member Name	
United States Tax Identification Number	
<p>I certify that the above information is provided in good faith and is, to the best of my knowledge and belief, correct:</p> <p>Signed: .....</p> <p>Print Name: .....</p> <p>Title: .....</p> <p>Date: .....</p>	
<p>Please contact Christina Dietel on +001 312 442 7031 or e-mail at CDietel@nyx.com if you have any questions relating to the completion of this form</p>	
<p><b>When completed please fax this form to +44 020 7379 2409 or e-mail a scanned version to derivativesmembership@nyx.com by no later than close of business on 4 September 2009.</b></p>	