

LONDON NOTICE NO. 3796

Issue Date: 7 February 2014
Effective Date: 12 February 2014

IMPLEMENTATION OF REVISED RULES IN RESPECT OF BCLEAR

Executive Summary

This Notice confirms the implementation of revised Rules in respect of Bclear on and from 12 February 2014 that are designed to ensure that business confirmed via Bclear will not be subject to duplicative reporting under the EMIR trade reporting obligations, which are also due to come into effect on and from 12 February 2014.

1. Introduction

- 1.1 Following the market consultation undertaken in November/December 2013 (London Info-Flash No. [LO13/87](#) refers), this Notice confirms the implementation of revisions to the LIFFE Rules (Book II) in respect of Bclear (“the Bclear Rules”), on and from 12 February 2014.
- 1.2 As Members will recall, the revised Rules are designed to ensure that business confirmed via Bclear will not be subject to duplicative reporting under the EMIR trade reporting obligations which are also due to come into effect on 12 February 2014. All of the consultation responses received by the Exchange were in favour of the proposed revisions.

2. Background

- 2.1 The current Bclear Rules are predicated on the basis of an “OTC Trade” being brought to the Exchange for confirmation, administration and clearing. By virtue of this process, the original “OTC Trade” is, by novation, replaced by a LIFFE Contract.
- 2.2 Members will be aware that in 2013, ESMA published a Q&A document (and updates thereto) which sought to clarify certain matters, including the definition of “OTC derivatives” for the purposes of EMIR. One of the effects of the Q&A document was to clarify that the LIFFE Contract resulting from the novation of an OTC Trade reported, and subsequently confirmed, via Bclear would be treated as an exchange-traded derivative (“ETD”) for the purposes of EMIR. However, the original “OTC Trade” would necessarily be defined as “OTC”. This would mean that, when the EMIR requirements for reporting derivative transactions to a Trade Repository commence on 12 February 2014, both the creation and subsequent cancellation of the “OTC Trade” would need to be reported (as OTC) as well as the LIFFE Contract that arises from the confirmation of a Bclear transaction (as ETD).

2.3 In any event, since the introduction of Bclear the way in which Members use the service has evolved and the Exchange understands that typically the so-called “OTC Trade” is, in practice, a commitment between the two parties involved to enter into a LIFFE Contract (i.e. if the Exchange authorises the intended transaction). In other words, it is the Exchange’s understanding that the parties do not usually create - and subsequently extinguish - a fully formed and binding ISDA-documented OTC contract prior to reporting their intended transaction via Bclear.

3. Revisions to the Bclear Rules

3.1 In order to reflect the practicalities of how the Bclear service is used today and to ensure that trade reporting under EMIR can take place in an efficient manner, the Bclear Rules have been revised, replacing the concept of the original “OTC Trade” with a “Contingent Agreement to Trade”.

3.2 The Bclear counterparties will therefore agree the details of a trade which they intend to submit to the Exchange for authorisation as a LIFFE Contract and, in authorising the Contingent Agreement to Trade, the Exchange will be bringing about the execution of that LIFFE Contract, which will then be cleared in the usual manner. In other words, a contract will only be created at the time the Contingent Agreement to Trade is accepted by the Exchange, thereby creating a Contract in the Terms of an Exchange Contract; in the event that the Exchange refuses to accept the Contingent Agreement to Trade, no transaction will exist between the parties. Members may wish to bring this feature to the attention of their clients i.e. that the Contingent Agreement to Trade does not represent a transaction between the Member and his client and that only if the Exchange accepts the Contingent Agreement to Trade will an Exchange Contract arise.

3.3 Members should note that all other aspects of the Bclear Rules remain unchanged at this time. In particular, reporting deadlines continue unchanged and the Contingent Agreement to Trade reported to the Exchange must represent a fair value.

4. Further Information

4.1 The revised Bclear Rules are set out as the Attachment to this Notice and an updated version of the LIFFE Rules (Book II) will be made available on the Euronext website in due course.

For further information in relation to this Notice, Members should contact:

Maxine Norris

+44 (0)20 7379 2334

mnorris@nyx.com

Revised Rules

LIFFE RULES SECTION 12 – BCLEAR SERVICE

12.1 Definitions and interpretation

12.1.1 In this Section 12 of the *LIFFE Rules*, unless the context otherwise requires:

Bclear Reporting Member means a *Member* holding the appropriate right(s) entitling him to report to the Exchange each of the legs of a *Contingent Agreement to Trade*.

Bclear Service means the service operated by the *Exchange* which enables *Members* to report *Contingent Agreements to Trade* to the *Exchange* for acceptance and consequent creation of a *Contract in the Terms of an Exchange Contract*.

Contingent Agreement to Trade An agreement between two parties to submit details to the Exchange with a view to creation of one or more *Contracts in the Terms of an Exchange Contract* pursuant to this Section 12 of the *LIFFE Rules*. The agreement is contingent on acceptance by the Exchange and consequent creation of the *Contract(s) in the Terms of an Exchange Contract*.

Bclear Contracts means those *Exchange Contracts* designated by the *Exchange* which may form the subject matter of a *Contingent Agreement to Trade* pursuant to this Section 12 of the *LIFFE Rules*;

12.2 General

12.2.1 The *Bclear Service* enables *Bclear Reporting Members* to report a *Contingent Agreement to Trade* to the *Exchange* in order to create a *Contract in the Terms of an Exchange Contract*. Pursuant to LIFFE Rule 12.7.6, the *Exchange* shall be entitled to reject a *Contingent Agreement to Trade* which is reported to it in accordance with LIFFE Rule 12.7 with the effect that no *Contract in the Terms of an Exchange Contract* shall be created.

12.2.2 In reporting such *Contingent Agreement(s) to Trade* and entering into contract(s) under LIFFE Rule 12.3.1, *Members* shall be bound by the *LIFFE Rules* in this Section 12 and the following *LIFFE Rules*:

- (a) Chapters 1, 3 and 8 of Book I of the *Rules* in their entirety;
- (b) Rules 5103, 5104, 5106/1(ii), 5401 to 5403 and 5701/4 of Book I of the *Rules*;
- (c) Book II of the *Rules* in its entirety; and
- (d) Notices issued pursuant to this Section 12 of the *LIFFE Rules*.

Upon agreeing the terms of a *Contingent Agreement to Trade* and causing the *Contingent Agreement to Trade* to be reported to the *Exchange*, a non-Member client shall also be bound by this Section 12 of the *LIFFE Rules*.

12.3 Acceptance and creation of contracts

12.3.1 Upon acceptance by the *Exchange* of a *Contingent Agreement to Trade* reported to it by a *Bclear Reporting Member* pursuant to this Section 12 of the *LIFFE Rules* and subject to any applicable *Rules of the Clearing Organisation*, there shall arise:

- (a) a *Contract in the Terms of an Exchange Contract* between the *Clearing Member* that clears for the *Buyer* and *Seller* respectively in accordance with the relevant *Clearing Agreement* (or the *Clearing Member* itself if the *Buyer* and/or *Seller* is a *Clearing Member* and will clear the transaction itself) (in either case, such person being a "*Bclear Reporting Member*") and the *Clearing Organisation* on agreed terms which are identical (except as to the parties) to the *Contingent Agreement to Trade* or, where the *Contingent Agreement to Trade* consists of a combination of legs, a *Contract in the Terms of an Exchange Contract* on the same agreed terms (except as to the parties) as the equivalent leg of the *Contingent Agreement to Trade* for each leg of the *Contingent Agreement to Trade*;
- (b) for each person other than the *Bclear Reporting Member* who is a party to the *Contingent Agreement(s) to Trade*, a *Contract in the Terms of an Exchange Contract* between the *Bclear Reporting Member* and the counterparty on pre-agreed terms.

12.3.2 On the arising of *Contracts in the Terms of an Exchange Contract* pursuant to LIFFE Rule 12.3.1, the *Contingent Agreement to Trade* to which such contract relate shall be discharged by those contracts.

12.3.3 If the *Exchange* rejects a *Contingent Agreement to Trade* under LIFFE Rule 12.7.6 which has been reported to it through the *Bclear Service*, LIFFE Rules 12.3.1 and 12.3.2 shall not apply and such *Contingent Agreement to Trade* shall lapse.

12.4 Designation of Bclear Contracts

12.4.1 *Bclear Contracts* and the permissible strategies comprising combinations of *Bclear Contracts* shall be designated by *Notice*. Such designations may specify a minimum number of *Lots* necessary for a *Contingent Agreement to Trade* to be acceptable to the *Exchange* (“*minimum volume requirements*”). Different *minimum volume requirements* may be specified for different *Bclear Contracts* and for each of the permissible strategies.

12.5 Reporting rights

12.5.1 The *Exchange* shall stipulate by *Notice* which *Members*, or class or classes of *Members*, shall have the right to report their own and other parties’ *Contingent Agreements to Trade*.

12.5.2 Each *Contingent Agreement to Trade* confirmed through the *Bclear Service* shall be binding on the *Bclear Reporting Member* through whose ITM such trade was reported and such *Bclear Reporting Member* shall be responsible for the *Contract(s)* arising under LIFFE Rule 12.3.1.

12.6 Business days and hours

12.6.1 A *Contingent Agreement to Trade* may only be reported on the *Business Days* and during the business hours specified by *Notice*. Different *Business Days* and business hours may be specified for different *Bclear Contracts*.

12.7 Reporting procedures

12.7.1 Only a *Bclear Reporting Member* may report *Contingent Agreements to Trade* to the *Exchange*. Where a *Member* is not permitted by the *LIFFE Rules* or is unable to report a *Contingent Agreement to Trade*, he must ensure that he has arrangements in place with another appropriately authorised *Member* to report *Contingent Agreements to Trade* before he becomes party to or organises any such *Contingent Agreement to Trade*. Where a *Contingent Agreement to Trade* has been agreed by two *Members*, the *Contingent Agreements to Trade* shall be reported by the *Bclear Reporting Member* agreed by such *Members*.

12.7.2 *Members* should ensure that the price of any *Contingent Agreement to Trade* that is reported to the *Exchange* represents a fair value for that trade.

12.7.3 The *Exchange* requires *Members* to maintain a robust audit trail in relation to *Contingent Agreements to Trade* to which they are party, or which they have organised or which they have reported or are due to report through the *Bclear Service*. When a *Member* accepts a *Contingent Agreement to Trade* he must record its details on an order slip. The following details, as applicable, in respect of a *Contingent Agreement to Trade* must be recorded and such order slip must be time stamped on receipt and again on organisation:

- (a) identity of the individual submitting the *Contingent Agreement to Trade* to the *Exchange*;
- (b) the *Bclear Contract(s)* concerned;

- (c) *Expiry Month(s)/date(s) or Delivery Month(s)*;
- (d) *Exercise Price(s)*;
- (e) class – call(s) and/or put(s);
- (f) price for each leg;
- (g) number of *Lots* for each leg;
- (h) strategy trade code

and, in addition, for delta neutral/stock contingent *Contingent Agreements to Trade*, as applicable:

- (i) *Bclear Contract/underlying stock* concerned;
- (j) *Delivery Month* of the *Bclear Contract*;
- (k) price of the *Bclear Contract* or the underlying shares (as the case may be);
- (l) number of *Lots* of the *Bclear Contract* or number of shares (as the case may be); and
- (m) delta.

All information recorded by a *Member* pursuant to this LIFFE Rule 12.7.3 must be retained by the *Member* for not less than five years.

12.7.4 *A Bclear Trade Reporting Member must submit to the Exchange the details of the Contingent Agreement to Trade described in LIFFE Rule 12.7.3(b) to (m), as applicable, as soon as practicable. In any event, the details of the Contingent Agreement to Trade must be submitted by the Bclear Reporting Member within the time period specified by Notice. Members must not delay the reporting of Contingent Agreement to Trade.*

12.7.5 The time limit for the submission of *Contingent Agreement to Trade* commences as soon as there is verbal agreement on the *Contingent Agreement to Trade*.

12.7.6 The *Exchange* will check the validity of the details of a *Contingent Agreement to Trade* submitted by the *Bclear Reporting Member*. If the *Exchange*, following consultation where it deems necessary with the *Clearing Organisation*, is satisfied that all such details are valid and that the *Contingent Agreement to Trade* has been entered into at a fair value (to be determined by the *Exchange* at its absolute discretion), it will accept the *Contingent Agreement to Trade* to the *Bclear Reporting Member* via the ITM through which it was submitted. If the details of a *Contingent Agreement to Trade* are not valid or the *Exchange* determines that it has not been entered into at a fair value, the *Exchange* shall reject the *Contingent Agreement to Trade* and shall notify the *Bclear Reporting Member* accordingly.

12.7.7 Details of both the buying and the selling sides of the trade will be submitted to trade registration and matched under the *Bclear Reporting Member's* mnemonic.

12.7.8 Acceptance of a *Contingent Agreement to Trade* does not preclude the *Exchange* from instigating action pursuant to Section 5 of the *LIFFE Rules*.

12.8 Publication arrangements

12.8.1 Publication arrangements in respect of *Contracts in the Terms of an Exchange Contract* arising pursuant to LIFFE Rule 12.3 shall be specified by *Notice*.