



Summary Enforcement Proceedings - Appeals Procedure

1 Summary Enforcement Proceedings: Exchange Rules, Section E.2

- 1.1 This document ("**Appeal Procedures**") sets out the procedure for appeal against any finding, determination, direction or sanction ("**Finding**") imposed by the Exchange in Summary Enforcement Proceedings under Rule E2. These Appeal Procedures have been prescribed by the Exchange under Rule E.2.2 on 31 December 2021, pursuant to Circular 21/234.
- 1.2 Capitalised terms used but not defined in these Appeal Procedures will have the meaning given to that term in the ICE Futures Europe Regulations.
- 1.3 In these Appeal Procedures, the date of effective service will be calculated in accordance with Rule 113(c) and (d) of the ICE Clear Europe Rules (with references to "the Clearing House" in those Rules being read, for the purposes of these Appeal Procedures, as "the Exchange").

2 Notices of Appeal and Grounds of Appeal

- 2.1 A Member or Person Subject to the Regulations ("**Appellant**") may appeal against a Finding imposed by the Exchange in Summary Enforcement Proceedings under Rule E.2 by lodging a notice of appeal ("**Notice of Appeal**").
- 2.2 A Notice of Appeal must be lodged by the Appellant with the Exchange within 14 days after the date of effective service of notice in writing of a Finding ("**Notice Under Appeal**") arising out of Summary Enforcement Proceedings.¹
- 2.3 A Notice of Appeal must set out the grounds of appeal, which may only be any one or more of the following:
- 2.3.1 The Finding imposed in the Summary Enforcement Proceedings was:
- (a) one which no reasonable Compliance Officer could have reached;
 - (b) unsupported by the evidence or was against the weight of the evidence; and/or
 - (c) based on an error of law, or a misinterpretation of the Regulations; and/or
- 2.3.2 new evidence has become available since the Finding and, had it been available at the time of the Finding, the Compliance Officer could not reasonably have come to the same decision.

¹ If the 14th day after the date of effective service of the Finding is not a Business Day the deadline referred to in paragraph 2.2 will be the end of the next Business Day after the 14th day.



- 2.4 A Notice of Appeal must contain a statement of all matters relied upon by the Appellant and must be accompanied by all the evidence the Appellant seeks to rely upon in the appeal (or must include a statement indicating no evidence will be served);
- 2.5 A filing fee of the greater of £1,000 or 20% of the fine specified in the Notice Under Appeal must be paid by the Appellant. The Exchange will issue an invoice to the Appellant upon receipt of the Notice of Appeal and will not be required to refer the appeal to the Authorisation, Rules and Conduct Committee (“**ARCC**”) unless the invoice has been paid in full. The Exchange may determine in its discretion to reduce or waive the fee.
- 2.6 A Notice of Appeal must state whether the Appellant wishes to have the appeal determined at a hearing or on paper.
- 2.7 Upon receipt of a Notice of Appeal, the Exchange will assess whether the Notice of Appeal contains a valid basis for appeal, under paragraph 2.3 above, and will be entitled to reject any Notice of Appeal which does not contain a valid basis for appeal.

3 Appeal Procedures and Directions

- 3.1 Following receipt of a Notice of Appeal the Exchange will seek to agree directions for the conduct of the appeal with the Appellant, including:
 - 3.1.1 the deadline for service by the Exchange on the Appellant of any response by the Exchange to the Notice of Appeal (with or without evidence in support);
 - 3.1.2 the documents to be provided to the Sub-ARC Panel hearing the Appeal (“**Summary Proceedings Appeal Panel**”), which must include the Notice Under Appeal, the Notice of Appeal, any evidence to be relied on by the Appellant, any response by the Exchange to the Notice of Appeal and any evidence to be relied on by the Exchange. The documents referred to in this paragraph will be referred to collectively as the “**Appeal Bundle**”;
 - 3.1.3 if there is to be a hearing, the date, time and format of the hearing (which may be in person, by telephone or conducted virtually, using other communications technology); and
 - 3.1.4 any other directions agreed between the Exchange and the Appellant (“**Agreed Directions**”).
- 3.2 The Appellant and the Exchange will have 21 days from the date of effective service of the Notice of Appeal to agree directions under paragraph 3.1 above.²
- 3.3 If directions are agreed, the Appellant must, within 28 days of the date of effective service of its Notice of Appeal, or 7 days of the date of effective service of the Exchange's response to the Notice of Appeal (if it has been agreed that the Exchange will file one)

² If the 14th day after the date of effective service of the Notice of Appeal is not a Business Day the deadline referred to in paragraph 3.2 will be the end of the next Business Day after the 14th day.



(whichever is later), provide the Appeal Bundle to the Exchange, unless the Exchange and Appellant agree to an alternative deadline.³ If directions are not agreed by the deadline set out in paragraph 3.2, the procedure in paragraphs 3.4, 3.6 and 3.7 will be followed.

- 3.4 On receipt of the Appeal Bundle, or passing of the deadline in paragraph 3.2 to agree directions, the Exchange must refer the appeal to the Chairperson of the ARCC, who will then compose the Summary Proceedings Appeal Panel, consisting of three members of the ARCC. The Exchange and Appellant will be informed of the composition of the Summary Proceedings Appeal Panel within 7 days of its composition.
- 3.5 The Exchange will provide the Appeal Bundle and any Agreed Directions to the Summary Proceedings Appeal Panel. If the Appellant has indicated that it wishes to have the matter determined on paper, the Summary Proceedings Appeal Panel may proceed to determine the appeal on paper, in accordance with paragraph 5 below.
- 3.6 If there is to be a hearing the Summary Proceedings Appeal Panel will either adopt the Agreed Directions (with or without any changes) or, in the absence of Agreed Directions, give directions for the hearing of the Appeal ("**Summary Proceedings Appeal Hearing**"). The Summary Proceedings Appeal Panel may require the Exchange and Appellant to attend a pre-hearing review (which may be in person, by telephone or conducted virtually, using other communications technology) for such purposes. Such directions may include (but may not be limited to) the matters in paragraph 3.1 above.
- 3.7 The Summary Proceedings Appeal Panel will issue its directions to the Parties. Should either Party wish to apply to vary these directions, it should do so in writing to the Summary Proceedings Appeal Panel within 7 days of the directions being issued.

4 Conduct of a Summary Proceedings Appeal Hearing

- 4.1 The Summary Proceedings Appeal Panel will have the powers given to an ARC Disciplinary Panel under Rule E.4.8 of the Rules, and may adopt such procedure as it considers just, including, without limitation, all or any of the procedures that may be adopted by an ARC Disciplinary Panel. A Summary Proceedings Appeal Hearing will proceed in the manner deemed most appropriate and fair by the Chairperson of the Summary Proceedings Appeal Panel (the "**Appeal Chairperson**").
- 4.2 The Summary Proceedings Appeal Hearing may proceed as follows:
- 4.2.1 Introductions of those present, which may include:
- (a) The Appeal Chairperson;
 - (b) Other Summary Proceedings Appeal Panel members present;

³ If the 21st / 7th day is not a Business Day the deadline referred to in paragraph 3.3 will be the end of the next Business Day after the 21st / 7th day.



- (c) The Secretariat;
 - (d) Those representing the Exchange (including any external advisors);
 - (e) Those representing the Appellant (including any external advisors).
- 4.2.2 The Appeal Chairperson will outline the order of proceedings as set out below. The Appeal Chairperson may call an adjournment at any convenient point.
- 4.2.3 The Appellant will be invited to present its appeal.
- 4.2.4 The Exchange will be invited to respond to the appeal.
- 4.2.5 The Appellant will be invited to respond to the Exchange's submissions.
- 4.2.6 The Summary Proceedings Appeal Panel may ask questions of either Party.
- 4.2.7 The Appellant will be invited to make any concluding remarks, followed by concluding remarks from the Exchange.
- 4.2.8 There will be an adjournment for the Summary Proceedings Appeal Panel to deliberate.
- 4.2.9 The hearing will then re-convene, either for the decision to be given, or for the Summary Proceedings Appeal Panel to indicate a further adjournment for deliberation.

5 Determination of the appeal

- 5.1 The Summary Proceedings Appeal Panel will determine the appeal by applying the civil standard of proof, i.e. on the balance of probabilities.
- 5.2 The Summary Proceedings Appeal Panel may:
- 5.2.1 dismiss or allow the appeal;
 - 5.2.2 confirm the Finding arising out of the Summary Enforcement Proceedings;
 - 5.2.3 substitute or make a new Finding; and
 - 5.2.4 order any Party to pay costs as it considers appropriate.
- 5.3 The outcome of the Appeal will be notified to the Appellant in writing, the Exchange, the Clearing House (where applicable) and any other party involved.

6 Concluding Matters

- 6.1 The decision of a Summary Proceedings Appeal Panel will be final, binding and conclusive and there will be no further appeal and no recourse to arbitration under Section H or the Clearing House Rules.



- 6.2 The Summary Proceedings Appeal Panel will give such publicity as they consider appropriate to any Finding imposed or other order made by the Summary Proceedings Appeal Panel. Any decision of the Summary Proceedings Appeal Panel may be published by Circular.