



ICE Clear Singaporesm

Complaint Resolution Procedures

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1. GENERAL INTRODUCTION

- 1.1 These Complaint Resolution Procedures are 'Procedures' as defined in the ICE Clear Singapore Pte. Ltd. rules (the "**Rules**") and are subject to the Rules, including, without limitation, Rule 102. These Complaint Resolution Procedures, and all non-contractual obligations arising out of or in connection with them, are governed by and shall be construed in accordance with Singapore law and any Dispute arising under these Complaint Resolution Procedures will be subject to arbitration under Rule 117.
- 1.2 These Complaint Resolution Procedures establish arrangements and adequate procedures for the recording, monitoring, investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its regulatory functions (any such matter, a "**Complaint**"). Steps will be taken by the Clearing House to ensure that Complaints are handled fairly, consistently and promptly. These arrangements include procedures for a Complaint to be fairly and impartially investigated by an Independent Complaints Commissioner and for that person to report on the result of his investigation to both the Clearing House and the person making the Complaint ("**Complainant**"). The arrangements must also confer on the person the power to recommend, if appropriate, that the Clearing House: (i) makes a compensatory payment to the Complainant; and/or (ii) remedies the matter complained of. The Clearing House should also take prompt action to rectify systems and controls weaknesses highlighted by any Complaint.
- 1.3 The Clearing House has adopted these Complaint Resolution Procedures. A Complaint which runs its full course will consist of the following key stages:
- (a) an Eligible Complaint (as defined in Paragraph 2.1) must be submitted in writing;
 - (b) at first instance, the Clearing House will investigate the Complaint and attempt to resolve it. If the Complainant is dissatisfied with the Clearing House's response or proposals to redress the Complaint, the Complainant may refer the Complaint to an Independent Complaints Commissioner (the "**Commissioner**") or request that the Clearing House refers the Complaint to the Commissioner;
 - (c) the Commissioner, if he determines that the referral is an Eligible Complaint, will investigate the matter as appropriate;
 - (d) following due consideration, the Commissioner will produce a report outlining his recommendations which will be copied to the Clearing House and the Complainant; and
 - (e) if the Commissioner recommends a compensatory payment and/or remedial action, the Clearing House will consider and may act upon such recommendation.
- 1.4 There is no restriction on who can bring a Complaint, although a Complaint must be an Eligible Complaint in order to be capable of being handled in accordance with these Complaint Resolution Procedures. These Complaint Resolution Procedures do not limit the Clearing House from considering or refraining from considering any Complaint which is not an Eligible Complaint pursuant to such procedures as it may determine.
- 1.5 In referring any Eligible Complaint (or by asking the Clearing House to refer such a Complaint) to the Commissioner, the Complainant shall be deemed to agree to be bound by and be subject to these Complaint Resolution Procedures and, as a result, accepts that any recommendation made by the Commissioner to the Clearing House, if adopted by the Clearing House, shall be in full and final resolution and settlement of the Complaint and all associated rights and claims.
- 1.6 Without prejudice to the ability of any other Person to act as a Complainant, these Complaint Resolution Procedures apply in relation to all Clearing Members.

2. ELIGIBLE COMPLAINTS

- 2.1 "Eligible Complaints" are Complaints against the Clearing House arising in connection with the performance of, or its failure to perform, any of its regulatory functions.
- 2.2 A Complaint will not be an Eligible Complaint if it:
- (a) relates to:
 - (i) the Clearing House's relationship with its Directors, officers, employees, committees or any individual committee member;
 - (ii) the content of the Clearing House's Rules; or
 - (iii) a decision against which the Complainant has the right to appeal under Part 10 of the Rules;
 - (b) is connected with a contractual or commercial dispute involving the Clearing House and is not connected in any way with the Clearing House's regulatory functions;
 - (c) is made outside the period of 12 months from the date on which the Complainant becomes aware of the circumstances giving rise to the Complaint unless the Complainant can show reasonable grounds for delay; or
 - (d) is of a frivolous or vexatious nature or amounts to an abuse of process.
- 2.3 A Complaint connected with, or which arises from, any form of continuing action by the Clearing House under Part 10 of the Rules or in relation to an Event of Default will not normally be investigated by the Commissioner until the action has been completed.

3. MAKING A COMPLAINT

- 3.1 A Complaint should be made in writing, marked "Complaint for Resolution under ICE Clear Singapore Complaint Resolution Procedure" and sent to:
- Chief Regulatory Officer
ICE Clear Singapore Pte. Ltd.
6 Battery Road #36-01
Singapore 049909 or by e-mail to: icesingapore-complaints@theice.com
- 3.2 The Complaint should be signed on behalf of the Complainant, and in any case where it is made by a company, partnership or other body corporate, should be signed by a director or equivalent officer with appropriate authority.
- 3.3 If a Complaint is made orally, the Complainant will be asked to confirm its Complaint in writing. The Clearing House shall not be obliged to investigate any Complaint unless and until the Complainant has submitted a written Complaint in accordance with these Complaint Resolution Procedures.
- 3.4 The written Complaint should include sufficient information to allow the Clearing House to properly identify the Contracts or other matters to which the Complaint relates, the activities complained of, and the basis for any alleged loss or other detriment of the Complainant. If insufficient information is provided, the Clearing House may request further information and the Complaint may not be investigated further until such information is provided.
- 3.5 The Clearing House will not impose any charge to Complainants in relation to any Complaint. The Clearing House's and Commissioner's costs and expenses in relation to any Complaint will be paid by the Clearing House.

4. INVESTIGATION OF COMPLAINTS BY THE CLEARING HOUSE

- 4.1 At the first instance, an investigation into the Complaint will be conducted by a suitably senior member of staff who has not previously been involved in the matter and who is not the subject of the Complaint.
- 4.2 The Clearing House will acknowledge the Complaint within five Business Days of receipt, giving the name and job title of the individual handling the Complaint and including a copy of these Complaint Resolution Procedures.
- 4.3 Within 15 days of receiving any Complaint which the Clearing House considers to be ineligible, the Clearing House will inform the Complainant that it proposes not to investigate the Complaint for the reason specified. Within 15 days of receiving such notice, the Complainant may refer the Complaint to the Commissioner or ask the Clearing House to refer the Complaint to the Commissioner. The Commissioner may ask the Clearing House to investigate the matter if he deems it appropriate.
- 4.4 The Clearing House will seek to resolve any Eligible Complaint as quickly as possible. In most cases, the Clearing House will produce a final response to the Complaint within eight weeks from the date of receipt of the Complaint by the Clearing House. However, where the scope of the Complaint reasonably demands further investigation, after eight weeks the Clearing House will write to the Complainant explaining why the matter has not been resolved, indicating when a final response is likely to be made.
- 4.5 If the matter has not been resolved within 12 weeks, the Complainant will have the right to refer the Complaint to the Commissioner. In such cases, the Commissioner will be entitled to decline to consider the Complaint for a defined period notified to the Complainant in order to allow the Clearing House to complete its investigation, if: (i) it arises from any form of continuing action by the Clearing House under Part 10 of the Clearing House's Rules; (ii) it relates to an Event of Default; or (iii) it shares its subject matter with an investigation, arbitration or disciplinary proceeding on which the outcome of the Complaint would impinge or otherwise depend.
- 4.6 Where, in the opinion of the Clearing House, any Eligible Complaint is connected with or arises out of the same or similar facts or circumstances in respect of which an outstanding or otherwise unresolved Complaint has been made under these Complaint Resolution Procedures, the Clearing House may, in its absolute discretion and upon giving notice in writing to any Complainant or Complainants so concerned, join such Eligible Complaints so that they may be addressed in the same investigation and/or any final response. The Clearing House shall not in such circumstances be obliged to disclose the identity of a Complainant or facts that in its opinion would be likely to reveal such identity when notifying any individual Complainant of such a joinder or in its drafting of a final response.
- 4.7 The Clearing House may obtain professional advice as appropriate.

5. RESULT OF THE INVESTIGATION

- 5.1 The Clearing House will inform the Complainant of the outcome of the investigation, together with any proposed remedial action. The remedial action taken may include, but will not be limited to, offering an apology, taking steps to rectify the error, the offer of a compensatory payment on an *ex gratia* basis, or a combination of the above. If a Complaint is rejected, the Clearing House will give its reason for doing so.
- 5.2 The Clearing House may, where it deems it necessary, itself refer the Complaint to the Commissioner for investigation.

6. REFERRAL TO THE COMMISSIONER

Within 15 days of the receipt of notice of the outcome of the Clearing House's investigation, the Complainant must notify the Clearing House in writing whether it accepts the proposals or requires that the Complaint be referred to the Commissioner. If the Complainant wishes to refer the Complaint to the Commissioner, the Complainant should state the reason for its continued dissatisfaction. Failure by the Complainant to make such notification to the Clearing House within 15 days will result in the Complaint not being referable to the Commissioner and ceasing to be an Eligible Complaint.

7. THE COMMISSIONER'S INVESTIGATION

7.1 The Commissioner will acknowledge any Complaint referred to him within 10 Business Days of receipt, giving a proposed timetable for the completion of various stages in the investigation.

7.2 If the Commissioner determines at any time that a Complaint he is investigating is not an Eligible Complaint, he must cease conducting his investigations forthwith and give notice to the Complainant(s) and the Clearing House of his determination.

7.3 The Commissioner will seek to resolve Eligible Complaints as quickly as possible. The Commissioner will use reasonable endeavours in all cases to produce a final response to the Complaint within eight weeks from the date of his acknowledgment letter. However, where the scope of the Complaint reasonably demands further investigation, the Commissioner will instead explain why the matter has not been resolved and indicate when he is likely to produce a final response. The Commissioner will make every effort to resolve all Complaints within 12 weeks from the date of referral to the Commissioner but will otherwise inform the Complainant if this is not possible.

7.4 In considering whether a Complaint made against the Clearing House is justified or substantiated, the Commissioner must consider whether the Clearing House's conduct, in relation to its regulatory functions, amounted to, *inter alia*:

- (a) a failure to act fairly;
- (b) a failure to perform its regulatory functions having regard to all the circumstances of the case;
- (c) a lack of care or a mistake; or
- (d) an act of fraud, bad faith or negligence.

7.5 Where, in the opinion of the Commissioner, any Eligible Complaint is connected with or arises out of the same or similar facts or circumstances as another Eligible Complaint already referred to him, he may, in his absolute discretion and upon giving notice in writing to any Complainant or Complainants so concerned, join such Eligible Complaints so that they may be addressed in the same investigation and/or any final response. The Commissioner shall not in such circumstances be obliged to disclose the identity of a Complainant or facts that in his opinion would be likely to reveal such identity when notifying any individual Complainant of such a joinder or in his drafting of a final response.

7.6 The Clearing House and the Complainant shall each make every effort to afford the Commissioner all reasonable cooperation, including access to its staff, documents, records and information. However, the Clearing House and Commissioner will have regard to the confidentiality of certain information (such as that given to the Clearing House under confidentiality arrangements) as outlined in Paragraph 11.

7.7 The Clearing House is not prevented from taking or continuing to take such action, or further action, as it considers appropriate during the investigation in relation to any matter which is related to a Complaint or Complainant.

- 7.8 If the appointed Commissioner is unable to consider the Complaint due to a conflict of interest, illness or other unavoidable commitments, the Commissioner must nominate an alternate, appointment of which alternate Commissioner is subject to the Clearing House's prior written approval. The Complainant will be subsequently informed of any such appointment.
- 7.9 Any alternate Commissioner must himself meet the requirements for being the Commissioner and shall be required to be bound by these Complaint Resolution Procedures and to conduct the investigation on behalf of the Commissioner. The alternate Commissioner will have the same powers and rights as the Commissioner and must conduct the investigation in accordance with these Complaint Resolution Procedures.
- 7.10 During the course of his investigation, the Commissioner may:
- (a) permit and/or request both the Complainant and the Clearing House to provide appropriate documentation, evidence or oral or written submissions in relation to any specific matters that arise in relation to the Complaint;
 - (b) make further requests of all relevant parties and/or take whatever action is considered appropriate which might assist in considering the Complaint and confirming its factual accuracy including, where reasonable and at the Clearing House's expense, appointing or seeking the advice of independent external advisers or experts;
 - (c) require the parties to co-operate; and
 - (d) otherwise, conduct the investigation as he sees fit.
- 7.11 The Commissioner may appoint a person to conduct any part of an investigation on his behalf, but subject to his direction. That person must be independent of the Clearing House and Complainant.
- 7.12 The Commissioner will ensure that, before he concludes an investigation and makes a report, any person who may be the subject of criticism in it is given notice of, and the opportunity to respond to, that criticism within a reasonable period.

8. RESULT OF THE INVESTIGATION

- 8.1 The Commissioner must report on the result of his investigation to both the Clearing House and the Complainant, giving reasons for any recommendations made. The Commissioner can recommend that the Clearing House takes remedial action including, but not limited to, offering an apology, taking steps to rectify the error, the offer of a compensatory payment on an *ex gratia* basis, or a combination of the above. The Clearing House may, where appropriate, also be required by the Commissioner to inform the Commissioner and the Complainant of such steps which it proposes to take in response to the report.
- 8.2 The Commissioner may, where appropriate, require the Clearing House to publish the Commissioner's report (or any part thereof), either publicly or to all Clearing Members, if the Commissioner considers that such report should be brought to the attention of the public or Clearing Members generally. Further, the Commissioner must ensure that his report, apart from identifying the Clearing House, does not mention the name of any other person or contain particulars which are likely to identify any other person unless:
- (a) in the opinion of the Commissioner the omission of such particulars would be likely to impair the effectiveness of the report;
 - (b) taking into account the public interest and the persons involved, the Commissioner considers it necessary to mention the name of that person or to include in the report those particulars;
 - (c) the consent of the person involved is given to such publication; or

(d) the information is otherwise already public knowledge.

8.3 The Clearing House may, where it considers appropriate to do so, disclose to third parties, such as other Regulatory Authorities, any information which is received with the Complaint or which is obtained from the Complainant in the course of a subsequent investigation. Such disclosures are subject to Rule 106.

8.4 The Clearing House may instigate disciplinary proceedings at any time as a result of the Clearing House's investigation or matters surrounding any Complaint.

9. RECORD-KEEPING

A copy of all documents and materials relating to Complaints should be sent to the Clearing House. The Clearing House will retain such documents and materials for a minimum of seven years.

10. EXCLUSION OF LIABILITY

The Commissioner shall not be liable to the Clearing House or any Complainant for any loss (direct or otherwise), damage or injury arising from any act, omission or negligence on his part, save in the case of fraud, death, personal injury or any other liability which by law cannot be excluded.

11. CONFIDENTIALITY

The Commissioner, the Clearing House and any Complainant must each observe the strict confidentiality of the investigation of any Complaint, all information provided (to the extent it has not been made public in the Commissioner's report) and all communications made for the purpose of the investigation subject to Rule 106.