

SECTION H - ARBITRATION

- H.1 Scope¹
- H.2 Role of the Clearing House²
- H.3 Appointment and Constitution of Panel³
- H.4 Arbitration Procedure⁴
- H.5 Other Legal Proceedings⁵
- H.6 Registration Fee⁶
- H.7 Deposit⁷
- H.8 Application of Deposit
- H.9 Failure to Participate
- H.10 Suspension
- H.11 Cost of Arbitration⁸
- H.12 Arbitration Award
- H.13 Jurisdiction
- H.14 Service of Notices⁹
- H.15 Applicability of Rules
- H.16 Disclosure of Award

¹ Amended 4 June 2014, 3 September 2014, 18 September 2014

² Amended 3 September 2014

³ Amended 7 December 2005, 9 July 2018

⁴ Amended 7 December 2005, 9 July 2018

⁵ Amended 18 September 2014

⁶ Amended 9 July 2018

⁷ Amended 9 July 2018

⁸ Amended 9 July 2018

⁹ Amended 9 July 2018

H.1 SCOPE¹⁰

H.1.1 Subject to Rule A.5.3, a dispute arising out of or in relation to any Contract, including a dispute as to whether a Contract has been made, unless resolved between the parties, shall be referred to the Directors for arbitration subject to the following provisions of these Arbitration Rules. This excludes disputes arising out of or in relation to any designated Contract where:

- (a) the Member and the client agree in writing that any such dispute shall not be referred to arbitration and that the Courts of England shall have exclusive jurisdiction to hear and determine such dispute arising from or in relation to any designated Contract; and
- (b) the Member and the client inform the Exchange of their written agreement under Rule H.1.1(a) above and the Exchange agrees in writing that it is satisfied that the dispute shall not be referred to arbitration.

H.1.2 This Section H is not intended to extend to disputes which, under Rule I.7 and the Contract Rules are to be handled under the rules of another body.

H.2 ROLE OF THE CLEARING HOUSE¹¹

- (a) In any such dispute to which the Clearing House is a party, the Clearing House shall be entitled to call upon a Clearing Counterparty who is a Buyer, and a Clearing Counterparty who is a Seller, under the terms of Contracts which have been matched by the Clearing House and in respect of which reference to arbitration has under these Arbitration Rules been made, to conduct the arbitration between them under these Rules in accordance with the following procedure.
- (b) In the event that the Clearing House elects to call upon a Seller and a Buyer to arbitrate between them pursuant to these Rules, the following procedures shall apply:-
 - (i) the Clearing House shall give notice in writing of such election to the Buyer, the Seller and the Secretary;
 - (ii) the Seller and the Buyer shall, at their own expense, each have the conduct of the Clearing House's case against the other subject to the provisions of this Rule;
 - (iii) copies of all pleadings, correspondence and documents shall be given to the Clearing House and the Clearing House shall be entitled to submit any additional arguments to the board of arbitration in support of its own case, in which case it shall supply copies of such submissions to the Seller and the Buyer;
 - (iv) the board of arbitration shall have the power to call upon the Clearing House to disclose documents relating to the arbitration which are in its custody, power or possession, to the same extent as if it were a direct party to the arbitration;
 - (v) the board of arbitration shall issue two awards, one between the Seller and the Clearing House and one between the Buyer and the Clearing House, which shall determine the rights of each of the Seller and Buyer against the Clearing House and vice versa.
- (c) If the Clearing House is found liable to one party in respect of a breach of a Contract and the other party is also found liable to the Clearing House in respect of the same breach of a Contract which has been matched by the Clearing House as mentioned in paragraph (a) above, then the liability of the Clearing House shall be deemed to be a foreseeable consequence of that breach and the Clearing House shall be entitled to be indemnified by the other party in respect of such liability.
- (d) The Clearing House shall be bound by an arbitration award made against it in pursuance of an arbitration, whether it participates in the arbitration or not.

¹⁰ Amended 4 June 2014, 3 September 2014, 18 September 2014

¹¹ Amended 3 September 2014

H.3 APPOINTMENT AND CONSTITUTION OF PANEL¹²

- (a) Either party may refer a dispute to arbitration after giving four clear Business Days notice in writing of his intention to do so to the other party and to the Secretary. Where the parties are situated in different countries such notices shall be given by the most reasonably expeditious means of written communication available.
- (b) Upon a reference to arbitration under this Rule the Directors shall have authority to determine the dispute in accordance with these Arbitration Rules notwithstanding any failure or refusal of the other party to concur in the reference unless the Directors determine that another arbitration tribunal has jurisdiction over the dispute and that the dispute shall be referred to that tribunal.
- (c) For the determination of the dispute the Directors shall appoint a board of arbitration consisting of three arbitrators. No member of the board of arbitration shall be selected to act in any arbitration in which he is or becomes directly or indirectly interested in the subject matter in dispute and the arbitrators are to be independent and impartial.
- (d) In the event of a member of the board of arbitration being or becoming so interested, dying or in any other way being or becoming, in the opinion of the Directors, incapacitated from acting, the Directors may appoint another person as a replacement and the arbitration shall thereupon proceed as if such other person had been originally appointed in lieu of the first mentioned person.
- (e) In the event of disagreement between the members of the board of arbitration the decision of the majority shall prevail and in the event of an equality of votes the Chairman, who shall have been previously elected by the members of the board of arbitration, shall have a second or casting vote.
- (f) The award of the board of arbitration shall be signed by its Chairman, and when so signed shall be final and binding in all cases.
- (g) The award shall state the reasons of the board of arbitration for the award.

H.4 ARBITRATION PROCEDURE¹³

- (a) The party referring any dispute to arbitration shall draw up in writing a clear and concise statement of his case, which, together with a copy of the Contract and such documentary evidence as he may think proper, shall be lodged in duplicate with the Secretary within 14 clear Business Days of the reference to arbitration.
- (b) The Secretary shall forthwith, and not later than 7 days after receipt of the said statement of case, copy Contract and documentary evidence, if any, send a copy of each of the same by pre-paid registered or recorded delivery post to the other party.
- (c) The other party shall, not later than 22 days after the despatch to him by the Secretary of a copy of the first party's statement of case and copy Contract and said documentary evidence, if any, lodge in duplicate with the Secretary a clear and concise statement of his defence together with a copy of such other documentary evidence as he may think fit.
- (d) A copy of the statement of defence and supporting documents, if any, shall within 7 days of receipt by him, be sent by the Secretary by pre-paid registered or recorded delivery post to the party referring the dispute to arbitration.
- (e) The party referring the dispute to arbitration may not later than 15 days after the despatch to him by the Secretary of a copy of the statement of defence lodge in duplicate with the Secretary a clear and concise statement of his reply together with such other documentary evidence as he may think fit. A copy of any such statement and other documentary evidence, if any, shall within 7 days of receipt by him be sent by the Secretary by pre-paid registered or recorded delivery post to the other party.

¹² Amended 7 December 2005, 9 July 2018

¹³ Amended 7 December 2005, 9 July 2018

- (f) No further document stating the claim of one party against the other or the answer to any claim shall be served through the Secretary or otherwise howsoever or placed before the board of arbitration without the express prior consent of the board of arbitration. The board may determine any application for such consent in its absolute discretion.
- (g) Notwithstanding the foregoing the board of arbitration shall be entitled to require either party to the dispute to lodge with it such documents or information in written form as the board of arbitration may in its absolute discretion consider necessary to enable it to determine the dispute. Subject to compliance with any such requirement the board of arbitration shall meet to determine the dispute and shall make its award within 5 months of the date of the reference to arbitration or such other period of time as the board of arbitration deem appropriate in the circumstances (having consulted with the Secretary).
- (h) In the event of either party failing to comply with any time limit prescribed by this Rule or prescribed by the board of arbitration pursuant to these Arbitration Rules, the board of arbitration shall be entitled to proceed to determine the dispute notwithstanding such failure.
- (i) Unless either party shall not later than 14 days after the lodgement with the Secretary of the statement of defence request a viva voce hearing with or without witnesses, the board of arbitration may in its discretion decide the case on the written statements and documents submitted to it without a viva voce hearing after giving 7 Business Days' notice in writing to each party of its intention so to do or it may call the parties before it and request the attendance of witnesses. If either party requests a viva voce hearing the board may, in its absolute discretion, accede to or refuse such request.
- (j) The board of arbitration shall have power to obtain, receive and act upon such oral or documentary evidence or information (whether the same be strictly admissible as evidence or not) and to conduct the arbitration in such manner in all respects as the board may consider necessary.
- (k) In the event that a viva voce hearing, with or without witnesses, is granted or if the board of arbitration calls the parties before it or requests the attendance of witnesses the parties may be represented by any agent engaged in the oil or futures trade and duly appointed in writing.

A party shall not be represented or appear on such hearing by counsel or solicitor unless an order with respect to the arbitration has been made by a relevant and competent court pursuant to section 69(7) of the Arbitration Act 1996, as amended, modified, re-enacted or consolidated from time to time, and leave shall have been obtained in writing from the board of arbitration which leave the board may grant or refuse in its absolute discretion and without assigning any reason therefor.

- (l) The board of arbitration may consult the legal advisers of the Exchange.
- (m) The board of arbitration may, on such terms as it thinks fit, extend the period within which either it, the Secretary or a party to the dispute is required by these Arbitration Rules or by any order or direction made or given by the board of arbitration to do any act notwithstanding that the said period may have expired.
- (n) It shall not be permissible for a party to withdraw from a reference to arbitration without notice thereof in writing being given to the Secretary and to each party to the reference and received by them not less than 48 hours before the time appointed for the meeting of the board of arbitration at which the arbitration is to be heard. Should a reference be withdrawn the Directors or the board of arbitration shall be entitled to require payment by any party to the reference of their fees, expenses and costs and the board of arbitration shall be at liberty either to agree to the withdrawal of the reference upon such terms as it shall in its absolute discretion see fit or to proceed to hear the reference and to make its award notwithstanding the absence of any party to the reference.

H.5 OTHER LEGAL PROCEEDINGS¹⁴

For the avoidance of doubt, a party to a Contract or alleged Contract, or any other person claiming under such party, shall have the right to apply to any court of competent jurisdiction to request interim measures

¹⁴ Amended 18 September 2014

or other available relief in support of an arbitration being conducted under these Arbitration Rules or in relation to the enforcement of any award issued in such arbitration, or disciplinary proceedings under the Regulations. Each party to a Contract or alleged Contract, or any other person claiming under such party, submits to the jurisdiction of the High Court of England and Wales for these purposes.

H.6 REGISTRATION FEE¹⁵

A registration fee of £250 for Members and £500 for non-Members (or such other sums as the Directors may from time to time prescribe) shall be paid to the Secretary upon each reference of a dispute to arbitration by the party making the reference. The registration fee is not returnable under any circumstances.

H.7 DEPOSIT¹⁶

The party who refers a dispute to arbitration shall deposit with the Secretary the sum of £1000 (or such other sum as the Directors may from time to time prescribe) on account of the Directors' and the board of arbitration's fees and expenses in connection with the arbitration. The board of arbitration may in its absolute discretion call from time to time for further sums to be deposited by either party on account of such fees and expenses. In the event of failure to make any such deposit as aforesaid the board of arbitration may notwithstanding anything contained in these Arbitration Rules postpone or discontinue the arbitration proceedings.

H.8 APPLICATION OF DEPOSIT

Any sum deposited in accordance with Rule H.7 shall be applied towards payment of the total fees and expenses of the Directors and the board without prejudice to the incidence of liability therefor as between the parties to the dispute under the award of the board of arbitration or Rule H.11 below. Any balance of such sums shall thereafter be returned to the depositor in such proportions as to the board of arbitration shall in its absolute discretion seem fit.

H.9 FAILURE TO PARTICIPATE

If any Member shall refuse or fail to refer or participate in the reference of any dispute to arbitration in accordance with these Arbitration Rules (whether or not any other party to the dispute is a Member) or shall refuse or fail to perform any decision or award of the board of arbitration he shall be deemed to have infringed this Rule and be subject to disciplinary proceedings accordingly.

H.10 SUSPENSION

The fact of a Member being suspended or expelled shall not affect the rights of any person to arbitration under these Arbitration Rules in respect of any Contract entered or allegedly entered into by the Member.

H.11 COST OF ARBITRATION¹⁷

The board of arbitration shall have the power to specify costs awards as part of its award and how the costs are to be borne between the parties. The amount of the arbitration fees shall be fixed by the board of arbitration. To these fees shall be added any expenses incurred in connection with the arbitration and such additional fees as the board of arbitration may fix in cases where an award is remitted to the board on determination of an appeal to the High Court or an order is made by the High Court concerning the reasons for an award. Arbitration fees (including any such additional fees) and expenses shall be borne by the losing party unless otherwise specially awarded.

H.12 ARBITRATION AWARD

¹⁵ Amended 9 July 2018

¹⁶ Amended 9 July 2018

¹⁷ Amended 9 July 2018

- (a) The award shall be sent by the board of arbitration to the Secretary as soon as reasonably practicable. Upon receipt thereof the Secretary shall invite each party in writing to take up the award, stating the sum payable under paragraph (b) below.
- (b) Either party may take up the award by sending to the Secretary written notice of his desire to do so accompanied by a cheque or draft, payable to the Exchange, for the sum of the fees and expenses mentioned in Rule H.11, less the aggregate of sums deposited with the Secretary under Rule H.7; provided that where one party has taken up the award the other may not do so unless the first party's cheque or draft shall fail to be paid. The Exchange shall receive such payment for the persons entitled to the said fees and expenses under the award or these Arbitration Rules.
- (c) Upon the taking up of the award, and payment of the cheque or draft mentioned at paragraph (b) above, the Secretary shall send the award to the party taking it up and a copy thereof to the other party. Liability for payment of the fees and expenses shall be settled between the parties in accordance with the award.
- (d) In the event that neither party shall take up the award within four weeks from the date on which the Secretary shall have invited them to do so, the Exchange may, on behalf of the persons thereto entitled under the award or these Arbitration Rules, recover payment of the sum payable under paragraph (b) above from the party who made the reference to arbitration.

H.13 JURISDICTION

For the purpose of all proceedings by arbitration or otherwise any Contract shall be deemed to have been made in England, any correspondence in reference to the offer, the acceptance, the place of payment or otherwise notwithstanding, and England shall be regarded as the place of performance. Such disputes shall be settled according to the law of England whatever the domicile, residence, or place of business of the parties to the Contract may be or become.

H.14 SERVICE OF NOTICES¹⁸

Any notice or other document which is to be served on or delivered to any party in connection with an arbitration under these Arbitration Rules may be sent by prepaid post to the usual or last known address or place of business of that party and shall be deemed to have been served or delivered at the time when it would have arrived in the ordinary course of post. Notices may also be served by any other way of reasonably expeditious method of reproducing and recording words in visible form.

H.15 APPLICABILITY OF RULES

The Arbitration Rules governing any dispute referred to arbitration pursuant to Rule H.1 shall be those operative at the time of the reference.

H.16 DISCLOSURE OF AWARD

The board of arbitration may (as part of its award or otherwise) recommend that any matter coming to its attention in the course of an arbitration should be the subject of an investigation or disciplinary proceedings. The board may accordingly disclose such of its award, and the statements and evidence presented to the board as it thinks fit for this purpose. Such recommendation shall not, however, normally be made until after the board has made its award.

¹⁸ Amended 9 July 2018

