



ICE Futures Europe

Complaints Resolution Procedures

Version 1.4

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Revisions

Version	Date	Requested By	Completed By	Description of Changes
1.0	Nov 2006	Mark Woodward	C Ferros-Moore	Reflecting name change to ICE Futures
1.1	Dec 2006	Mark Woodward	Mark Woodward	Minor formatting changes
1.2	Dec 2007	Mark Woodward	C Ferros-Moore	Reflecting legal advice
1.3	Oct 2009	C Ferros-Moore	C Ferros-Moore	Updating address where complaints are to be made
1.4	Apr 2014	E Holt	E Holt	Updating email address where complaints are to be made

ICE Futures Europe Complaints Resolution Procedures

General Introduction

1. As a recognised investment exchange under the Financial Services and Markets Act 2000, ICE Futures (the “Exchange”) must put in place effective arrangements for the 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”). These arrangements must include procedures for a Complaint to be fairly and impartially investigated by a person independent of the Exchange and for that person to report on the result of his investigation to both the Exchange and the person making the Complaint (“Complainant”). The arrangements must also confer on the person the power to recommend, if appropriate, that the Exchange: (i) makes a compensatory payment to the Complainant; and/or (ii) remedies the matter complained of.
2. The Exchange has adopted these Complaints Resolution Procedures (the “Procedures”) which build on the Procedures for handling complaints outlined in Circular 01/79 R23. In general terms, the key stages of the Procedures are:
 - (i) an Eligible Complaint (as defined in paragraphs 5 – 7) must be submitted in writing;
 - (ii) at first instance the Exchange will investigate the Complaint and attempt to resolve it. If the Complainant is dissatisfied with the Exchange’s response or proposals to redress the Complaint, the Complainant may refer the Complaint to the Independent Complaints Commissioner (the “Commissioner”) or request that the Exchange refers the Complaint to the Commissioner;
 - (iii) the Commissioner, if he determines that the referral is of an Eligible Complaint, will investigate the matter in accordance with the Commissioner’s Terms of Reference;
 - (iv) following due consideration, the Commissioner will produce a report outlining his recommendations which will be copied to the Exchange and the Complainant;
 - (v) if the Commissioner recommends a compensatory payment and/or remedial action, the Exchange will consider and may act upon such recommendation.
3. There is no restriction on who can bring a Complaint, although any Complaint must be an Eligible Complaint in order to be capable of being handled in accordance with these Procedures. These Procedures do not limit the Exchange from considering or refraining from considering any Complaint which is not an Eligible Complaint pursuant to such procedures as it may determine.
4. In referring any Eligible Complaint (or by asking the Exchange to refer such a Complaint) to the Commissioner, the Complainant shall be deemed to agree to be bound by and be subject to these Procedures and, as a result, accepts that any recommendation made by the Commissioner to the Exchange, if adopted by the Exchange, shall be a full and final resolution of the Complaint and all associated rights and claims.

Eligible Complaints

5. “Eligible Complaints” are Complaints against the Exchange arising in connection with the performance of, or failure to perform, of any of its regulatory functions.
6. A Complaint will not be an Eligible Complaint if it:
 - (i) relates to:
 - (a) the Exchange’s relationship with its employees;
 - (b) the content of the Exchange’s rules; or
 - (c) a decision against which the Complainant has the right to appeal against disciplinary procedures under Rule E.4.14 – E.4.18 of the ICE Futures Europe Regulations;
 - (ii) is connected with a contractual or commercial dispute involving the Exchange and is not connected in any way with the Exchange’s regulatory functions;
 - (iii) 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
 - (iv) is of a frivolous or vexatious nature or amounts to an abuse of process.
7. A Complaint connected with, or which arises from any form of continuing action by the Exchange will not normally be investigated by the Commissioner until the action has been completed.

Making a Complaint

8. A Complaint should be made in writing, marked “Complaints Resolution Procedure” and sent to:

Complaints Handling Officer
ICE Futures Europe
Milton Gate
60 Chiswell Street
LONDON
EC1Y 4SA

or by e-mail to ICEFuturesEurope-Complaints@theice.com
9. The Complaint should be signed by 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.

10. If a Complaint is made orally, the Complainant will be asked to confirm their Complaint in writing. The Clearing House shall not be obliged to investigate any Complaint unless and until the Complainant has submitted a Complaint in accordance with these Procedures.
11. The written Complaint should include sufficient information to allow the Exchange 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 Exchange may request further information and the Complaint may not be investigated further until such information is provided.
12. The Exchange will not make any charge to Complainants in relation to any Complaint. The Commissioner's costs and expenses will be paid by the Exchange.

Investigation of the Complaints by the Exchange

13. 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.
14. The Exchange will acknowledge the Complaint within 5 working days of receipt, giving the name and job title of the individual handling the Complaint and including a copy of these Procedures.
15. Within 15 days of receiving any Complaint which the Exchange considers to be ineligible, the Exchange 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 Exchange to refer the Complaint to the Commissioner. The Commissioner may ask the Exchange to investigate the matter if he deems it appropriate.
16. The Exchange will seek to resolve any Eligible Complaint as quickly as possible. In most cases, the Exchange will produce a final response to the Complaint within 8 weeks from the date of receipt of the complaint by the Exchange. However, where the scope of the Complaint reasonably demands further investigation, after 8 weeks the Exchange will write to the Complainant explaining why the matter has not been resolved, indicating when a final response is likely to be made.
17. 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 Exchange to complete its investigation, if (i) it arises from any form of continuing action by the Exchange under Section E of the ICE Futures Europe Regulations; or (ii) it shares its subject matter with an investigation, arbitration or disciplinary proceedings on which the outcome of the Complaint would impinge or otherwise depend.

18. Where in the opinion of the Exchange any Eligible Complaint is connected with or arises out of the same or similar facts of circumstances in respect of which an outstanding or otherwise unresolved Complaint has been made under these Procedures, the Exchange 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 Exchange 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.
19. The Exchange may obtain professional advice as appropriate.

Result of the Exchange's investigation

20. The Exchange 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 Exchange will give its reason for doing so.
21. The Exchange may, where it deems it necessary, itself refer the Complaint to the Commissioner for investigation.

Referral to the Commissioner

22. Within 15 working days of the receipt of the outcome of the Exchange's investigation, the Complainant must notify the Exchange 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 their continued dissatisfaction. Failure by the Complainant to make such notification to the Exchange within 15 days will result in the Complaint not being referable to the Commissioner and ceasing to be an Eligible Complaint.

The Commissioner's investigation

23. The Commissioner will acknowledge the Complaint within 10 working days of receipt, giving a proposed timetable for the completion of various stages in the investigation.
24. If the Commissioner determines at any time that a Complaint he is investigating is ineligible, he must cease his investigation forthwith and give notice to the Complainant(s) and the Exchange of his determination.

25. The Commissioner will seek to resolve Eligible Complaints as quickly as possible. In most cases, the Commissioner will produce a final response to the Complaint within 8 weeks from the date of his acknowledgement letter. However, where the scope of the Complaint reasonably demands further investigation, after 8 weeks the Commissioner will instead explain why the matter has not been resolved and indicate when he is likely to make 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.
26. In considering whether a Complaint made against the Exchange is justified, the Commissioner must consider whether the Exchange's conduct, in relation to its regulatory functions, amounted to, *inter alia*:
 - (i) a failure to act fairly;
 - (ii) a failure to perform its regulatory functions having regard to all the circumstances of the case;
 - (iii) a lack of care or a mistake; or
 - (iv) an act of fraud, bad faith or negligence.
27. 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 such 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.
28. The Exchange 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 Exchange and Commissioner will have regard to the confidentiality of certain information (such as that given to the Exchange under confidentiality arrangements) as outlined in paragraph 41.
29. The Exchange is not prevented from 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.
30. If the appointed Commissioner is unable to consider the Complaint due to a conflict of interest, illness or other unavoidable commitments, the Commissioner may nominate an alternate, appointment of which alternate Commissioner is subject to the Exchange's prior written approval. The Complainant will be subsequently informed of any such appointment.
31. Any alternate Commissioner must himself meet the requirements for being the Commissioner and shall be required to be bound by these 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 Procedures.

32. During the course of his investigation, the Commissioner may:
- (i) permit and/or request both the Complainant and the Exchange to provide appropriate documentation, evidence, oral or written submissions in relation to any specific matters that arise;
 - (ii) 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 Exchange's expense, appointing or seeking the advice of independent external advisers or experts;
 - (iii) require the parties to co-operate; and
 - (iv) otherwise conduct the investigation as he sees fit.
33. The Commissioner may appoint a person to conduct any part of an investigation on his behalf, but subject to his discretion. That person must be independent of the Exchange and the Complainant.
34. 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.

Result of the investigation

35. The Commissioner must report on the result of his investigation to the Exchange and the Complainant, giving reasons for any recommendations made. The Commissioner can recommend that the Exchange takes remedial action including, but not limited to, offering an apology, taking steps to rectify the error or, if appropriate, the offer of a compensatory payment on an *ex gratia* basis, or a combination of the above. The Exchange may, where appropriate, also be required to inform the Commissioner and the Complainant of such steps which it proposes to take in response to the report.
36. The Commissioner may, where appropriate, require the Exchange to publish the Commissioner's report (or any part thereof) if the Commissioner considers that such report should be brought to the attention of the public or Members generally. Further, the Commissioner must ensure that his report, apart from identifying the Exchange, does not mention the name of any other person or contain particulars which are likely to identify any other person unless:
- (i) in the opinion of the Commissioner the omission of such particulars would be likely to impair the effectiveness of the report; or

- (ii) 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; or
 - (iii) the consent of the person involved is given to such publication; or
 - (iv) the information is otherwise already public knowledge.
37. The Exchange 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 remain subject to Rule A.4 of the Exchange's Regulations.
38. The Exchange may instigate disciplinary proceedings as a result of the Exchange's or Commissioner's investigation or matters surrounding the Complaint.

Record-keeping

39. A copy of all documents and materials relating to Complaints should be sent to the Exchange. The Exchange will retain such documents and materials for a minimum of 3 years.

Exclusion of liability

40. The Commissioner shall not be liable to the Exchange 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.

Confidentiality

41. The Commissioner, the Exchange 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 A.4 of the ICE Futures Europe Regulations.