



NYSE LIFFE US NOTICE No. 21/2013

ISSUE DATE: August 30, 2013
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Affiliate Access – Rule 427

Summary

This Notice announces that Rule 427 is being amended to expand the situations under which an Affiliate of a Member will be granted access to the NYSE Liffe US Trading Platform, but only under circumstances that ensure that the Member and Affiliate are under common control, and to clarify that Affiliates being granted access pursuant to Rule 427 consent to the jurisdiction of the Exchange. The amendments to Rule 427 are set forth in the Appendix to this Notice.

1 Affiliate Access – Background

1.1 The Exchange amended its Rules with a Regulation Section 40.6 certification filing with the Commission on September 3, 2008 adding Rule 427 to the Rules. The Exchange's Rules permit only Members to have access to the NYSE Liffe US Trading Platform, except as provided in Rule 427. Rule 427, on a limited basis, allows non-Member affiliates of Members to have access, but only under circumstances where there are strong indicia that the affiliate for which access is sought is under common control with the Member. Specifically, the ownership relationship must be one where there is at least ninety-five percent common ownership between the Member and the affiliate.

2 Amendment Expanding Situations Where Affiliate Access Can be Granted

2.1 Rule 427(a)(iii) is amended to add that in addition to a Person who is owned 95 percent or more by a third-party who also owns 95 percent or more of the Member, an acceptable affiliate can be a Person who is owned 95 percent or more by a group of third-parties who also own 95 percent or more of the Member. The Rule amendment also adds that a group of third parties that would justify a grant of access to the affiliate must demonstrate that the circumstances of the ownership relationships must assure that the Person applying for access as an affiliate and the Member are under common control. The amendment leaves the determination of whether the ownership relationship adequately assures that the affiliate and Member are under common control solely in the discretion of the Exchange.

2.2 Factors that would make it more likely that the Exchange would determine that common control exists are: the group of third-parties is composed of a discrete number of Persons; the third-parties who hold controlling interests in the Member also

hold controlling interests in the affiliate; the third-parties, at least to the extent that they are natural persons, actively participate in the management of both the Member and the affiliate.

3 Exchange Jurisdiction Over Affiliates Granted Access

- 3.1 Commission Regulation Section 38.151(a) requires that “[p]rior to granting any member or market participant access to its markets, a designated contract market must require that the member or market participant consent to its jurisdiction.”
- 3.2 Accordingly, Rule 427(a) is being amended to make clear that a Person who applying for access under Rule 427 must consent in writing to the jurisdiction of the Exchange.

4 Text of Amendments

- 4.1 For convenience, the text of the amendments to Rule 427 is set forth in the attached Appendix.

Members who have questions or seek additional information in respect of this Notice should contact:

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APPENDIX TO NYSE LIFFE US NOTICE 21/2013

Amendments to Rule 427 below: Added language is underscored; deleted language shown in strikethrough characters.

427. **Electronic Access for Affiliates**

(a) The Exchange may consider an application from a Member that wishes to obtain direct access to the Exchange for its Affiliate(s). For the purposes of this Rule 427, "Affiliate" means a Person who:

- (i) owns 95 per cent or more of the Member; or
- (ii) is owned 95 per cent or more by the Member; or

(iii) is owned 95 per cent or more by a third party or group of third parties (under circumstances that ensure the Person applying for access as an Affiliate and the Member are under common control as determined by the Exchange in its sole discretion) who also owns or own 95 per cent or more of the Member; and

(iv) in its application for access pursuant to this Rule, the Person expressly consents in writing to be subject to the Exchange's jurisdiction.

(b) All successful applicants for affiliate access will be notified in writing by the Exchange. The Exchange will only consider applications of Affiliates located in jurisdictions with satisfactory regulatory arrangements including those in respect of:

- (i) supervision of investment activity; and
- (ii) information sharing and co-operation between the supervisory authority of the jurisdiction concerned and the Commission.

(c) All business undertaken by an Affiliate on the Exchange will be done in the name of the Member and the Member retains full responsibility for the conduct of all such business.