



## LONDON METAL EXCHANGE

### -----From Executive Director: Regulation and Compliance

To: ALL MEMBERS

Ref: 00/383 : A376 : R010

Date: 15 September 2000

Subject: **RULES FOR LME GIVE-UP AGREEMENTS**

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The LME board has approved the reissue of its rules on give-ups in order to reflect recent changes in other areas of LME rules. This notice replaces notices 95:365, 96:158, 97:304 and 99/091:A091 which are withdrawn.

For the purposes of this notice “member” means a ring dealing, associate broker clearing or an associate broker member of the LME.

#### **Give-ups**

These rules set out the procedures to be used by members who wish to be a party to a give-up trade. The notice also sets out certain of the legal and regulatory responsibilities that such members take on when they transact give-up business.

For the purposes of these rules, a give-up is a new transaction which arises when an executing LME member (‘LME executor’) trades with a third-party entity (‘customer’) who then wants that trade ‘given-up’ to a clearing LME member (‘LME clearer’) for the purposes of open position maintenance and settlement. Give-up trades may only be conducted at certain price references which are indicated later in this document. The give-up trade is the transaction matched in the LME matching system (‘LMEMS’) between the LME executor and the LME clearer in order to allow the movement of the customer trade. Please note that other entities may be party to the agreement but the above is the minimum.



## **Requirements**

Members conducting a give-up trade must comply with the following requirements:

### **Written agreements**

Prior to conducting a give-up trade, members must:

- i have in place a written agreement with the customer, which includes details of the arrangements between the LME clearer and LME executor for dealing with events and consequences of default;
- ii have in place a written agreement with the LME clearer/LME executor confirming the name of the customer (or code see below), the conditions under which give-ups will be accepted and the conditions under which give-ups will be refused;
- iii ensure that the 'effective date' of the agreement (the date on which the give-up agreement is fully completed) is recorded either on the agreement or in the LME members' own records. Members should be able to demonstrate, if required, that a completed give-up agreement was in place prior to trading;
- iv ensure that any material amendments to the terms of completed agreements are countersigned by all the parties to the original give-up agreement, or are set out in a novation letter indicating the changes and the agreements covered. Alternatively, material changes can be dealt with simply by cancelling and re-issuing the agreement. Material changes include a change of name to any of the parties, the addition of an introducing broker (see notice 00/385:A378:R012), or the addition of a new customer;
- v have received confirmation from the LME clearer that it has a written agreement with the customer and that it has carried out all appropriate regulatory and legal procedures;
- vi have received confirmation from the LME executor that it has a written agreement with the customer.



## Contents of written agreements

The written agreements referred to above may be in the form of a tripartite give-up agreement. The uniform give-up agreement ('UGA') is recommended for this purpose but is not compulsory. A completed UGA should be sufficient to comply with the requirements of this notice. Please see the attached example. Whichever document is chosen, the give-up agreement must:

- vii contain details of all the parties involved in the transaction. This includes, but is not limited to, the LME executor, the LME clearer, the third-party customer and any agents acting for the customer (commodity trading advisor, introducing broker, futures commission merchant etc);
- viii name either a ring dealing member, an associate broker clearing member or an associate broker member of the LME (ABM) as the LME executor and the LME clearer (subject to ix below);
- ix state the identity of the LME clearing member that will process the give-up transaction in the LMEMS on behalf of the ABM if either the LME executor or the party issuing the LME contract is an ABM;
- x be signed by all parties, including the LME member clearing for the ABM.

## Miscellaneous requirements

- i an LME trade may only be transacted under a completed give-up agreement that complies with LME rules;
- ii the customer identity must be the same in the records of both the LME clearer and LME executor;
- iii in order to maintain customer confidentiality, members may use an identity code on give-up agreements. This code must allow the LME clearer, or if appropriate the ABM (if issuing the client contract), to identify a customer which **must be a fully disclosed principal** of the LME clearing member or ABM. However, in certain circumstances, a general code may be used for a group of customers but, again, the customers covered by the code, should be fully disclosed principals of the LME clearer or ABM (if issuing the client contract). If further customers are added to the general code the LME clearer or ABM must agree the addition(s) prior to the trade being effected;



- iv in the event that an introducing broker (IB) of the customer or either LME member, is acting under an LME give-up agreement, the IB must disclose a code or customer name to the LME executor that will be recognised by the LME clearer or, if appropriate, the ABM, as identifying a customer who is its fully disclosed principal. Where an IB is advising more than one customer, a general code may be used as long as it complies with iii above;
- v the LME clearer or ABM (if issuing the client contract) is responsible for the proper and timely allocation of trades given-up pursuant to the IB identity code or name.

Members are reminded that the give-up agreement should reflect the actual relationship of the parties to the agreement; ie customers should not be described as traders and vice versa.

Members are reminded that they must at all times be in compliance with LME rules, with the FSA principles, rules and guidance (including the guidance 'Proper Trades in Relation to On-Exchange Derivatives') and with other legal and regulatory obligations.

### **Recording of trades in the LME Matching and Clearing System ('LMEMS')**

Give-up trades must comprise at least two entries to the LMEMS. The exchange contract must first be matched between the LME executor and the LME clearer to signify the 'movement' of the customer trade. The issuance of an LME client contract is then signified by the registration of the appropriate client contract(s) in the LMEMS by the LME clearer. If an ABM issues the client contracts, then they should be registered in the LMEMS by its LME clearing member. The registered client contract(s) should replicate any instructions received from either the customer or the appointed IB in terms of account allocation.

The trade types for the matching/registration of give-up trades within the LMEMS are contained within LME board notice 00/212: A206: R005.

Members must agree a coding to identify the customer, which may be different to any code used on the actual give-up agreement. This code must be input into the public reference field of the LMEMS in order for matching of the trade to take place. Members must be able to demonstrate how the code used in the public reference field relates to a specific give-up agreement if required to do so.

The time of trade to be used is set out in LME board notice 00/211: A205:R004.



Exchange contracts relating to give-up trades should be matched in the LMEMS no later than the original trade date plus two business days (see notice 00/211: A205: R004). Client contracts relating to give-up trades should also be registered within this time period by the LME clearer. In the event that an exchange trade remains unmatched beyond this point, both LME executor and LME clearer must seek authorisation from the LME Compliance Department **before** attempting to match the trade in the LMEMS. Both members must provide reasons why the trade has not matched and may be required to provide supporting documentary evidence. This process should be followed by the LME clearer for the late registration of client contracts. Examples of acceptable reasons for late matching include:

- i System failure resulting in the inability to match or process trades.
- ii Public holidays in different time zones that prevent instructions being transmitted in a timely manner. In this case the LME will determine whether the issue resulting from the holiday was predictable and as such, should have been accounted for when the transaction took place.
- iii Errors on specific trade details that could not be rectified within the time limits due to time zones. Again the particular circumstances will be evaluated.

Other reasons for trades failing to match within the prescribed time periods may be accepted. The LME will judge each case on its merits but it expects all parties to use best endeavours to comply with the timing requirements. **However, members should note that requests to match/register give-up trades outside the prescribed time periods will not be automatically granted. Repeated material failure to adhere to the prescribed periods could result in disciplinary action.**

### **Pricing of give-up trades**

Give-up trades may be transacted at the following price references:

- i the current, prevailing market price;
- ii the average of the current, prevailing market price over a series of forward prompt dates either as a succession of outright trades ('strip') or as a carry trade;
- iii the final price of an average price contract ('APC').

In all the above examples members may, with the agreement of the customer, amalgamate similar trades to obtain the trade weighted average price of all the trades forming the amalgamation. In this event, the LME executor must



retain sufficient documentary evidence to achieve a full and complete audit trail of the trade(s).

In example (iii) above, the executor must be able to demonstrate how the final price was derived if requested to do so by the customer, the LME, or the FSA.

### **Single give-up agreements**

In the exceptional circumstance where members do not envisage a continuing relationship with a customer, the single trade give-up agreement ('STGA') may be utilised. In this instance, 'single' relates to the isolated use of a give-up agreement and not the number of trades transacted thereunder. Any number of trades may be included as part of the STGA as long as all are transacted/priced on the same trade date. In addition to all the requirements of a give-up agreement, the STGA must also provide full details of the trade(s) covered by the agreement. A copy of the STGA must be retained by both the LME executor and LME clearer to demonstrate that they have complied with these rules.

STGAs may be used more than once with a particular customer but if a pattern develops that indicates an ongoing relationship with that customer the LME will expect the members to replace the STGA with an agreement such as a UGA. Members should use their own judgement to determine what constitutes an ongoing relationship. Factors to be taken into account include the frequency of trading and the continuing nature of the relationship.

The LME does not prescribe the form of STGAs but the attached document is an example that would comply with these rules.

### **Give-up of off-exchange contracts brought on-exchange**

The LME rules on the bringing on-exchange of off-exchange positions and subsequent movement of customer positions among members are covered by board notice 99/587.

## **EFFECTIVE DATE**

These rules become effective from the date of this notice.

## **A WHITING**



cc: Board directors