

To: All Members

Ref: 16/006 : A006

Date: 06 January 2016

Subject: **LME ENFORCEMENT PROCESS - GUIDANCE FOR MEMBERS ON
INDICATIVE FINANCIAL PENALTIES**

Summary

1. Pursuant to Regulations 11.23-11.25 of Part 2 of the LME Rules, this Notice sets out indicative financial penalties for Members to be attached to certain offences covered by the LME Rules. The indicative benchmark penalties represent the level of financial penalty the Exchange and Enforcement Committee consider appropriate for an offence given no aggravating or extenuating circumstances. The Disciplinary Panel has reviewed the guidance and approves its circulation to Members. This Notice also includes guidance on aggravating and extenuating circumstances.

Background

Defined Terms

2. Capitalised terms not otherwise defined herein shall have the meaning ascribed to them in the LME Rules.

Summary of the Enforcement Process

3. The process regarding enforcement proceedings against Members is set out in Regulation 11 of Part 2 of the LME Rules. Following an investigation, the Exchange shall bring a report of the investigation to the Enforcement Committee. The Enforcement Committee is a sub-committee of the Board of the Exchange composed of LME Directors. The Enforcement Committee may institute disciplinary proceedings against any Member in respect of any act of misconduct by a Member or employee thereof or any other person for whom the Enforcement Committee deems the Member to be responsible. The term "act of misconduct" is defined at Regulation 11.1 of Part 2 of the LME Rules and includes:
 - (a) any violation or attempted violation of the Rules or participation in conduct by a third party which would be a violation or attempted violation of the Rules if that third party were subject to the Rules;
 - (b) a failure to pay an automatic fine or a fine or order for costs imposed by a Disciplinary Committee that has not been overturned by an Appeal Committee;
 - (c) conduct which has brought or may be likely to bring the Exchange or any of its markets into disrepute;



- (d) provision to the Exchange of information (including information for the purpose of obtaining Membership) which is false, misleading or inaccurate in a material particular;
 - (e) ceasing to meet eligibility criteria for membership as set out in Regulation 1 of Part 2 without notifying the Exchange;
 - (f) any other matter of which the Exchange may, from time to time, notify Members through administrative notices.
4. Where the Enforcement Committee decides to institute disciplinary proceedings, a Notice approved by it setting out the alleged act of misconduct together with a summary of the facts relied upon shall be served on the Member concerned. The Member has twenty working days from the service of the Notice to serve a defence. Having seen the defence, the Enforcement Committee may choose to discontinue disciplinary proceedings, or to continue proceedings by forming a Disciplinary Committee drawn from the Disciplinary Panel. Regulations 11.6-11.12 set out the procedures for a pre-hearing review. The pre-hearing review will be followed by a hearing before the Disciplinary Committee (Regulations 11.13-11.15). Following the hearing, the Disciplinary Committee shall announce its findings to the parties as soon as practicable. Where the Disciplinary Committee is satisfied that the Member has committed an act of misconduct, it shall provide the parties with an opportunity to make representations before determining the penalty to be imposed. Any penalty imposed shall take into account any representations made by the parties, all the circumstances of the offence, and may take into account any previous disciplinary record. The Disciplinary Committee may impose any one or more of the following penalties:
- (a) a reprimand;
 - (b) a fine;
 - (c) an order that the Member make restitution to any person when the Member has profited from an act of misconduct at that person's expense;
 - (d) an order that the Member forfeit to the LME any gains made as a result of a proven Regulation breach;
 - (e) a requirement to comply with such terms and conditions as appropriate;
 - (f) temporary or permanent withdrawal of Dealer or Clerk status or admission rights to the Exchange rooms from any individual;
 - (g) suspension or expulsion from Membership subject to ratification by the Board of Directors.
5. Either party may appeal the finding of a Disciplinary Committee to an Appeal Committee constituted pursuant to Regulations 11.27 and 11.28 of Part 2. Regulations 11.29 to 11.32 set out the process for an appeal. The Appeal Committee may dismiss or allow the appeal and may increase or decrease the penalty imposed upon such terms and conditions as it considers appropriate.



6. Information about the composition of the Disciplinary Panel and the Appeal Panel is contained on the LME website at <http://www.lme.com/about-us/corporate-structure/committees/>. Provisions concerning membership and composition of the Disciplinary Panel and the Appeal Panel are contained at Regulations 11.47 – 11.60 of Part 2 of the LME Rules. Provisions concerning procedural matters relating to the enforcement process are contained at Regulations 11.61 – 11.76 of Part 2.
7. Pursuant to Regulations 11.36-11.39 of Part 2 of the LME Rules, the Exchange and the Member may agree a settlement of disciplinary proceedings at any time up to the commencement of the disciplinary hearing. A Member wishing to enter into settlement negotiations must submit written proposals for settlement to the Exchange and the Enforcement Committee. Settlement negotiations shall be on a without prejudice basis. Any settlement agreement shall be submitted to the Enforcement Committee for ratification. The Enforcement Committee may ratify or refuse to ratify any settlement agreement. A settlement agreement shall not take effect unless ratified by the Enforcement Committee. A settlement agreement so ratified shall have the same status as a decision by a Disciplinary Committee.
8. Furthermore, pursuant to Regulations 11.40-11.41, once the hearing has commenced, the Exchange and the Member may reach an agreed finding. Any agreed finding shall be submitted to the Disciplinary Committee for ratification. The Disciplinary Committee may ratify or refuse to ratify the agreed finding. An agreed finding shall not take effect unless ratified by the Disciplinary Committee. Where the Disciplinary Committee refuses to ratify the agreed finding, the hearing shall proceed as if no agreed finding was reached.

Nature & Scope of this Notice

9. This Notice sets out the indicative financial penalties which the Exchange and Enforcement Committee considers appropriate for an offence given no aggravating or extenuating circumstances. As stated above, the Disciplinary Panel has reviewed the guidance and approves its circulation to Members. This Notice also includes some guidance on aggravating and extenuating circumstances. It should be viewed as non-binding guidance, designed to assist a Disciplinary Committee and Appeal Committee in the assessment and determination of appropriate sanctions, and also the Exchange, the relevant Member and the Enforcement Committee when negotiating potential settlements. The indicative financial penalties set out in this Notice shall not fetter the discretion of a Disciplinary Committee or Appeal Committee to set the penalty it deems appropriate in all the circumstances of the case in question. This Notice is not intended to be exhaustive, and there may be other factors to be taken into account when consideration is being given to the full circumstances of any particular act of misconduct or series of acts of misconduct. In setting the indicative financial penalties, the Exchange and the Enforcement Committee have taken into account the penalties set by other exchanges.
10. This Notice focusses on financial penalties (i.e. fines), because such financial penalties are capable of standardisation and approximation. Of course there will likely be circumstances where some other penalty is appropriate, either instead of, or in addition to, a financial penalty. It is the view of the Exchange that all penalties should constitute



a credible deterrent and be reasonable and proportionate in all the circumstances. This is the basis on which this guidance has been prepared. This Notice is in no way intended to limit the discretion of a Disciplinary Committee or an Appeal Committee or the Exchange or the Enforcement Committee to impose or agree non-financial penalties where appropriate.

11. For the avoidance of doubt, this Guidance Notice does not cover offences for which appropriate sanctions have been set out in the LME Rules, in particular Regulation 11 of Part 3 of the LME Rules relating to Dealings in the Ring.
12. This Notice only covers indicative penalties for Members pursuant to the LME Rules – it does not cover indicative penalties for warehouses pursuant to the warehouse disciplinary procedures. The LME may issue a Notice covering indicative penalties for warehouses at a later date.
13. The LME may review the existing guidance or update or supplement this Notice with further guidance from time-to-time.

Why is the Enforcement Process Important?

14. As a Recognised Investment Exchange (RIE), the LME has certain statutory responsibilities including, amongst other things, to provide safeguards for investors (including the maintenance of a “proper” market) and to promote and maintain standards. The LME is also charged with responsibility for monitoring and regulating the market in an appropriate manner in order to ensure that market practitioners meet required standards.
15. The LME (together with all those who trade LME products) relies on its ability to inspire the confidence of current and potential users that it provides a professional, appropriately regulated and liquid marketplace for their business. Anything that detracts from LME’s perceived integrity cannot be tolerated, particularly in the context of the continuing focus on the integrity and robustness of financial markets and dealings. In consequence, the key regulatory aims of the LME are to provide appropriate protection for investors and to maintain the integrity of the market.
16. Given the regulatory aim to provide appropriate protection for investors, conduct which causes or could cause disadvantage to Clients should be viewed as a serious violation of the LME Rules (see in particular the section headed “Conduct of Business and Treatment of Clients” below). The LME ensures appropriate protection for investors by, amongst other things, maintaining the integrity of its Contracts and of its market. For this reason, concerns about investor protection will overlap with concerns about market integrity. The LME Rules also address matters of potential conflict of interest between Members and their Clients, or the Client of other Members, particularly where a Member (and its employees) act in a dual capacity: priority must be given to Client business. Disadvantage to Clients may therefore result from violations of the Rules designed to protect general market integrity, or from violations of the Rules specifically designed to provide protection for investors. Although in some cases it may be argued that a Member’s actions or those of its staff have been to the benefit of its own Client, there are wider issues of investor protection to be considered, for example whether any actual or potential disadvantage has thereby been caused to other users of the market.



17. In terms of maintaining the integrity of the market, the LME has a statutory obligation to maintain a “proper” market and it must protect the reputation of the market in order to attract business to it. The LME therefore imposes requirements relating to the interests of the central market place (in terms of price discovery and the execution of on-exchange business) and requirements in respect of the processing of business, the maintenance of records and the provision of information for example to support the audit trail. Specifically, a “proper” trade, is one that:
- (i) is entered into for proper trading purposes, e.g. hedging, speculating;
 - (ii) is exposed to the LME’s pricing mechanism, e.g. competitive trading through the Ring or via LMEselect, unless otherwise permitted under the Rules; and
 - (iii) has market risk, e.g. it opens or closes a position.
18. Trading activities which undermine or threaten the integrity of the market include, amongst other things, breach of procedures governing “improper” trades or conduct likely to cause a degradation of LMEselect.
19. The reputation of the LME also rests in part upon the integrity of LME Contracts. Market users must have confidence that the Contracts they enter into are binding, and in consequence the LME must be able to ensure performance by its Members. Conduct which may undermine the validity of LME Contracts affects their perceived integrity and such conduct will therefore be seen as a potentially serious offence. Such offences may include delivery defaults and exerting undue influence on market prices.

Member Responsibility

20. A Member shall be responsible for all LME business conducted by or through that Member. In particular, Members will be responsible for all business submitted into the trading and matching systems under its identifier codes.

Referral to FCA

21. The LME reserves the right to refer the conduct of a Member and/or an employee of a Member to the FCA for consideration without delay and without notice to such Member/employee.

Categories of Misconduct & Indicative Penalties

22. This section of the Notice sets out a non-exhaustive list of examples of behaviour which may attract disciplinary action, an explanation of how/why such behaviour would constitute a breach of the Rules, and the indicative financial penalties for such breach. The examples of behaviour which may attract disciplinary action can be categorised as follows:
- (a) Market abuse;
 - (b) Bringing the LME or the market into disrepute;
 - (c) Member controls / record keeping;



- (d) Dealing with the Exchange in an open and cooperative manner;
- (e) Conduct of business and treatment of Clients;
- (f) Conduct likely to cause a degradation of LMEselect;
- (g) Exerting undue influence on market prices;
- (h) Wash trades;
- (i) Breach of account holding restrictions;
- (j) Business processing breach; and
- (k) Delivery default.

Market Abuse

23. The LME takes any form of market abuse or market manipulation extremely seriously. Regulation 9.7 of Part 2 of the LME states that no Member shall manipulate or attempt to manipulate the market, nor create or attempt to create a disorderly market nor assist its Clients, or any other person, to do so. Market abuse may constitute a criminal offence and any suspected infringement would be referred without delay by the LME to the FCA. Given the seriousness of the offence, the LME does not consider it appropriate to prescribe an indicative fine for market abuse.

Bringing the LME or the Market into Disrepute

24. Conduct which has brought or may be likely to bring the Exchange or any of its markets into disrepute shall constitute an act of misconduct pursuant to Regulation 11.1(iii) of Part 2. Without limitation, examples of such conduct might include (i) a failure to adhere to the Lending Guidance Regime, or (ii) passing off non-LME contracts as LME Contracts (for example by stating on a contract “This is an LME Registered Client Contract” when it is not).

Indicative fine: £100,000 and upwards

Member Controls

25. Regulation 9.6(b) of Part 2 of the LME Rules states that a Member shall organise and control its internal affairs in a responsible manner, keep proper records, and have adequate arrangements to ensure that its staff and directors are suitable, adequately trained and properly supervised and that it has well-defined procedures as regards compliance with these Rules. Any failure of monitoring and/or management control would be likely to constitute a breach of these provisions. The Exchange’s Market Operations Department visits Members to undertake audits of, amongst other things, the Member’s processes and controls. The Exchange takes a robust approach to failures identified during these audits. Examples of misconduct might include (i) failure to provide adequate training for an employee, or (ii) failure to have proper procedures in place to ensure compliance with the Rules. Breaches might range from minor misconduct to more systemic failures. Where such failures were isolated and ‘out of the



ordinary' for the Member, this might only warrant a relatively minor penalty. On the other hand, more a more systemic failure of controls or processes might warrant a significantly larger penalty.

Indicative fine for minor breach: £30,000 and upwards

Indicative fine for systemic failure: £150,000 and upwards

Dealing with the Exchange in an open and cooperative manner

26. The LME expects its Members to be open, transparent and cooperative with the Exchange at all times. Regulation 9.6(d) of Part 2 of the LME Rules states that a Member shall deal with the Exchange in an open and cooperative manner and keep the Exchange promptly informed of anything concerning the Member which might reasonably be expected to be disclosed to it. A serious breach of Regulation 9.6(d) may occur where a Member has failed to be honest and truthful with the LME, or has knowingly misled or concealed any material matter that might reasonably be expected to be disclosed to the LME. A more minor breach may occur where a Member unintentionally failed to disclose something which might reasonably be expected to be disclosed to it.

Indicative fine for minor breach: £30,000 and upwards

Indicative fine for serious breach: £100,000 and upwards

Conduct of Business and Treatment of Clients

27. The LME expects its Members to adhere to relevant FCA rules and guidance regarding business standards, including, without limitation, the Conduct of Business Sourcebook and the Handbooks relating to Client Assets (CASS) and Market Conduct (MAR). The LME also expects its Members to observe relevant LME Rules, Administrative Procedures and guidance regarding conduct of business and treatment of Clients. Pursuant to Regulation 9.6(a) of Part 2 of the LME Rules, a Member shall observe high standards of integrity and fair dealing, and observe high standards of market conduct as reflected in the FCA Principles and Guidance Releases as published from time to time. Without limitation, the LME expects its Members to act honestly and fairly at all times in their treatment of Clients and not abuse client orders or otherwise disadvantage Clients. This includes, for example, requirements relating to conduct of business obligations such as acting honestly, fairly and professionally, information disclosure, rules regarding Client categorisation, communications with Clients, dealing with conflicts of interest, best execution, fair dealing, timely allocation etc. Failure to observe the relevant Rules, Administrative Procedures and guidance would likely lead to enforcement action. Such failure would also likely constitute a breach of Regulation 11.1(iii) of Part 2 of the LME Rules (conduct which has brought or may be likely to bring the Exchange or any of its markets into disrepute).
28. The LME believes that, for the purposes of setting out indicative penalties regarding breaches relating to conduct of business and treatment of Clients, breaches can be categorised into different levels of intention/knowledge, as follows: deliberate, reckless and negligent.



Deliberate

- (i) This covers cases where the person involved deliberately set out to engage in conduct knowing that a Client would be harmed or where, a situation arising, the person involved deliberately took advantage of the circumstances. An example would be where there has been a deliberate “front running” of an order or where there had been a bona fide error in the execution of a Client order and an improvement has been achieved, yet the improvement has been deliberately withheld from the Client. However, should it be considered that the Client disadvantage was premeditated, this might be considered an aggravating factor.

Indicative fine £200,000 and upwards

Reckless

- (ii) This covers cases where the person involved acted in a reckless manner, for example, where the conduct was such that no reasonable person could have failed to have known that Client disadvantage would result. Therefore, the resulting Client disadvantage was so obvious that the person involved must have either given no thought to the possibility of a Client being disadvantaged or recognised that it would have that result but chose to ignore its occurrence. Accordingly, the person was reckless in his conduct and in his regard for the Client’s interest. However, mere negligence and a simple error or failure in the duty of care owed to a Client would not be covered by this benchmark.

Indicative fine £100,000 and upwards

Negligent

- (iii) This level of intention is distinct from the above in that there is no deliberate or reckless intention to disadvantage the Client. An allegation of negligence is founded upon the duty of care that is owed by a registered individual/Member to a Client. Negligence may involve an act or an omission and, had the duty of care been discharged properly, this act/omission would not have occurred.

Indicative fine £50,000 and upwards

Conduct likely to cause a degradation of LMEselect

- 29. Conduct likely to cause a degradation of LMEselect has the potential for a serious impact upon market quality and integrity and the way that the market is perceived. The most serious form of this abuse may give rise to a disorderly market or a total shutdown of the market. This might be caused by excessive automatically-generated orders or spoiling activities which are considered an abuse of the reasonable and proper use of LMEselect. Such behaviour might constitute, amongst other things, a breach of



Regulations 9.6(a)¹, 9.6(b)², 9.7³ and 11.1(iii)⁴. The benchmark sanctions below contemplate a regular or particularly serious but isolated incident.

Indicative fine £40,000 and upwards

Exerting Undue Influence on Market Prices

30. An attempt to distort or exert undue influence on market prices has the potential for a serious impact upon market quality/integrity, and the way in which the market is perceived. The most serious of this abuse (i.e. market manipulation) may constitute a criminal offence and any suspected infringement would be referred by the LME to the FCA. Other very serious forms of this abuse (such as exerting undue influence to affect the Official Price or the Closing Price) would typically be accompanied by an allegation of breach of Regulations 9.7⁵ or 11.1(iii)⁶ of Part 2 of the Rules).
31. The benchmark sanctions below contemplate a serious abuse of this kind, such as a regular or particularly serious but isolated attempt to break market prices, to exercise undue influence on market prices to affect the Official Prices or the Closing Prices, or to place orders prohibited by the LME. However, they do not contemplate an abuse which might also be referred to the Financial Conduct Authority under the Code of Market Conduct.

Indicative fine £100,000 and upwards

Wash Trades

32. A wash trade might be executed, for example, in an attempt to post an unrepresentative price in the market, to affect the Official Price or Closing Price or to circumvent certain other Rules. There are a variety of ways in which wash trades could be perpetrated. In most cases, the executed trade does not amount to a “proper” trade and has no recognised economic purpose. These are all practices which are incompatible with the operation, and affect the integrity, of the market. A wash trade would constitute a breach of Regulations 9.6(a)⁷, 9.7⁸ and 11.1(iii)⁹ of Part 2 of the LME Rules.

¹ A Member shall observe high standards of integrity and fair dealing, and observe high standards of market conduct as reflected in the FCA Principles and Guidance Releases as published from time to time.

² A Member shall organise and control its internal affairs in a responsible manner, keep proper records, and have adequate arrangements to ensure that its staff and directors are suitable, adequately trained and properly supervised and that it has well-defined procedures as regards compliance with these Rules.

³ No Member shall manipulate or attempt to manipulate the market, nor create or attempt to create a disorderly market nor assist its clients, or any other person, to do so.

⁴ Conduct which has brought or may be likely to bring the Exchange or any of its markets into disrepute.

⁵ No Member shall manipulate or attempt to manipulate the market, nor create or attempt to create a disorderly market nor assist its clients, or any other person, to do so.

⁶ Conduct which has brought or may be likely to bring the Exchange or any of its markets into disrepute.

⁷ A Member shall observe high standards of integrity and fair dealing, and observe high standards of market conduct as reflected in the FCA Principles and Guidance Releases as published from time to time.

⁸ No Member shall manipulate or attempt to manipulate the market, nor create or attempt to create a disorderly market nor assist its clients, or any other person, to do so.

⁹ Conduct which has brought or may be likely to bring the Exchange or any of its markets into disrepute.



Indicative fine £50,000 and upwards

Reporting / Business Processing Breach

33. The absence of trade documentation, or failure to report transactions to the Exchange, is clearly a serious matter, in that it undermines confidence in the Exchange and prevents a full audit trail being maintained. Failure to comply with reporting requirements set out in the LME Rules or Administrative Procedures or failure to keep proper records is likely to constitute, amongst other things, a breach of Regulations 9.6(b)¹⁰ and 9.6(c)¹¹ of Part 2 of the LME Rules as well as specific requirements set out in the LME Rules and Administrative Procedures. This category is divided into two in order to recognise those business processing breaches which are covered either by specific Rules or Administrative Procedures – e.g. Matching Rules – and those which represent a more generic failing when processing business. Clearly where one of the breaches listed below had been undertaken with the aim of hiding conduct or misleading the Exchange then this would clearly be an aggravating factor (see paragraphs 35 and 36 below).

Specific Business Processing Breach

- (i) Failure to comply with requirements relating to entry of trades into the trading and matching systems set out in the Rules and Administrative Procedures.

Indicative fine of £2,000 for the first offence, £5,000 for the second offence, and £10,000 for each offence thereafter within a 24 month rolling period. An offence may include a failure to report as well as errors in what has been reported.

- (ii) Late Input of Trades

Indicative fine of £1,000 for the first offence, £2,000 for the second offence, and £5,000 for each offence thereafter within a 24 month rolling period.

- (iii) Daily Reporting of Positions

Indicative fines: 5 errors or more in a calendar month: £1,000 for first offence, £2,000 for a second offence, and £5,000 for each offence thereafter within a 24 month rolling period. An offence may include a failure to report as well as errors in what has been reported.

- (iv) Reporting of Option Volatilities

¹⁰ A Member shall organise and control its internal affairs in a responsible manner, keep proper records, and have adequate arrangements to ensure that its staff and directors are suitable, adequately trained and properly supervised and that it has well-defined procedures as regards compliance with these Rules.

¹¹ A Member shall retain all relevant documentation, and provide the Exchange with copies thereof on request, in relation to all Contracts entered into by them and also in relation to all other contracts entered into by them for the purchase and sale of primary aluminium, aluminium alloy, cobalt, copper, lead, molybdenum, nickel, steel, tin, zinc, including: (a) any option for the purchase and sale of any such metal; and (b) any contract for difference, swap, or similar contract based on the price of any such metal.



Indicative fines: 5 errors or more in a calendar month: £1,000 for first offence, £2,000 for a second offence, and £5,000 for each offence thereafter within a 24 month rolling period. An offence may include a failure to report as well as errors in what has been reported.

(v) Failure to ensure Rent Paid on Warrants

Failure to ensure that all Warrants that are the subject of a cleared transfer instruction through LMEsword on 31 March of the relevant year have been endorsed as rent paid up to and including 31 March of that year, as set out in the relevant Administrative Procedure.

Indicative fines: £1,000 per warrant subject to a minimum of £10,000.

Generic Business Processing Breach

Indicative fine £20,000 fine and upwards

34. Delivery Default

- (a) As noted above, the reputation of the LME rests on, amongst other things, the integrity of LME Contracts, and market users must have confidence that the Contracts they enter into are binding. Offences in this category include not only a failure to deliver on the due date, but also failures to meet relevant deadlines set out by the relevant Clearing House. Pursuant to Regulation 9.4.6.2 of Part 3 of the LME Rules, the Exchange may prescribe such penalties for non-delivery of Warrants as it may from time to time deem fit by notice. This Notice shall constitute notice of such penalties for non-delivery. The benchmark penalties below cater for a delivery default of all sizes, although the greater the number of lots that are the subject of a delivery default, so the impact to the market will be more significant and therefore the benchmark penalty is likely to be increased.

Indicative fine: 1/2% of the notional value of each lot which is the subject of a delivery default, subject to a minimum sanction of £100,000.

Aggravating and Mitigating Factors

35. As explained above, the benchmark penalties should only be used as the starting point for the setting of penalties (either by a Disciplinary Committee or Appeal Committee or by the Exchange in negotiating a settlement with a Member). When evaluating the seriousness of a particular act of misconduct, the full circumstances of the act of misconduct must be taken into account. For example, the following general factors should also be considered:

- (a) the extent to which the act of misconduct was committed deliberately, recklessly or negligently;
- (b) the extent of the Member's responsibility for the act of misconduct involved, and the systems and controls which the Member had in place to prevent such act of misconduct;



- (c) the extent, if any, to which the Member benefited from the act of misconduct;
 - (d) the prior conduct and disciplinary record of the Member (including any informal warnings issued by the Exchange); and
 - (e) the degree of co-operation and assistance provided by the Member.
36. In terms of aggravating factors, these would include in particular the presence of multiple acts of misconduct (e.g. a pattern or practice of behaviour). Whilst the maximum penalties available under the Rules may be imposed for each and every act of misconduct, the Disciplinary Committee or Appeal Committee should seek to ensure an appropriate aggregate penalty for the misconduct as a whole, particularly where multiple violations have been found as a part of a single course of misconduct. However, in considering such a potential situation, multiple breaches should not be categorised as a single course of misconduct. The penalty imposed must be proportionate to the breach(es) that have taken place, and must be reasonable in all the circumstances.
37. In addition, where a Member has undertaken the same act of misconduct within a 24 month rolling period, this should be considered as a severe aggravating factor. As such, the sanction is likely to be significantly greater than the benchmark proposed for a single instance of an act of misconduct.
38. Another aggravating factor would be whether the conduct in question was part of a wider failure of compliance and lack of proper systems and controls. Clearly where a rule breach was the result of the misconduct of one rogue individual and the firm can otherwise demonstrate that it generally had effective systems and controls in place, the penalties will be lower than where a firm is unable to demonstrate that it had proper and effective systems and controls and the breach is symptomatic of a wider issue.

Andrew Dodsworth
Head of Market Operations

cc: Board directors
Disciplinary Panel
Appeal Panel