

To: All members and other interested parties

Ref: 18/060

Classification: Consultation Rulebook

Date: 1 March 2018

Subject: **DECISION NOTICE – CONSULTATION ON LME RULE CHANGES FOR FINANCIAL OTC BOOKING FEE POLICY AND USE OF LME DATA AND FACILITIES**

Summary

- 1 This Notice (this “**Decision Notice**”): (i) addresses comments made by respondents to Notice 17/378 dated 22 November 2017 (the “**Consultation Notice**”); (ii) sets out the new booking fee policy for LME referenced OTC contracts entered into by financial counterparties (the “**Financial OTC Booking Fee Policy**”); and (iii) provides the revised LME Rulebook.

Defined Terms

- 2 Terms not otherwise defined in this Decision Notice shall have the meaning ascribed to them in the Rules and Regulations of the LME (the “**Rules**”, “**Rulebook**” or “**LME Rulebook**”) or where not defined the Rules, shall have the meaning ascribed to them in the Financial OTC Booking Fee Policy. References to “**paragraph**” in this Decision Notice are references to the paragraphs of the Financial OTC Booking Fee Policy.

Background

- 3 The Consultation Notice proposed certain changes to the LME Rulebook relating to: (i) the introduction of the Financial OTC Booking Fee Policy; and (ii) the introduction of a number of other changes to clarify the extent to which LME data and facilities may be used for non-LME business and to protect the integrity of the LME's data and trading venues more broadly (the “**Proposals**”). The Proposals included:

- (a) a proposal to implement a Financial OTC Booking Fee Policy (the “**FOTC Booking Fee Proposal**”);
 - (b) a proposal to clarify the use of alternative platforms to create contracts using LME intellectual property or booking systems (the “**Facilities Proposal**”);
 - (c) a proposal to require the booking of trades on a gross basis into LMEsmart (the “**Gross Trades Proposal**”);
 - (d) a proposal to require that all orders intended to be submitted to LMEselect are actually submitted (the “**LMEselect Order Transparency Proposal**”); and
 - (e) a proposal to ensure that data made available by means of the API is subject to appropriate protections, including the Financial OTC Booking Fee Policy where applicable (the “**API Terms Proposal**”).
- 4 The London Metal Exchange (the “**LME**” or the “**Exchange**”) is grateful for the detailed comments received from Members and other respondents in response to the consultation and has considered them carefully. This Decision Notice summarises the responses received, the LME’s comments on those responses, and how the Proposals will now be implemented.

Implementation of proposals

- 5 Appendix I contains a table that summarises the responses received to the consultation (the “**Comments Table**”). The LME’s comments on each response are set out in the Comments Table; certain issues (chiefly the FOTC Booking Fee Proposal) are also covered in more detail in the main body of this Decision Notice.
- 6 The LME has decided to implement the following Proposals without modification:
- (a) the Facilities Proposal;
 - (b) the Gross Trades Proposal;

- (c) the LMEselect Order Transparency Proposal; and
- (d) the API Terms Proposal.

7 The LME has decided to implement the FOTC Booking Fee Proposal with minor modifications and clarifications. The modifications to the FOTC Booking Fee Proposal take account of the responses received in the Consultation. The details of the modifications to the Proposals are noted in the Comments Table and the main body of this Decision Notice. The changes to the Financial OTC Booking Fee Policy to effect the modifications to the FOTC Booking Fee Proposal can be seen most clearly in **Appendix V** (the revised Financial OTC Booking Fee Policy redlined against the version of the Financial OTC Booking Fee Policy appended to the Consultation Notice) to this Decision Notice.

FOTC Booking Fee Proposal

8 The FOTC Booking Fee Proposal attracted the most comment of all the Proposals. Set out below are some of the key issues raised by respondents, together with the LME's responses.

Regulatory and Competition Considerations

9 Some respondents asked for confirmation that the LME has considered all relevant regulatory and competition issues when designing, and deciding to implement, the FOTC Booking Fee Proposal.

10 The LME confirms that it has considered in detail the regulatory and competition issues relevant to the FOTC Booking Fee Proposal and considers that the FOTC Booking Fee Proposal is in full compliance with all relevant legal and regulatory requirements, as well as being carefully thought out and justifiable from a commercial perspective.

11 In particular, the LME notes that the FOTC Booking Fee Proposal is:

- (a) transparent, being publicly available and clear in its terms as to its scope and method of application;

- (b) fair, particularly having regard to the intention behind the FOTC Booking Fee Proposal, which is to rebalance and address certain disparities currently existing between the Cleared Contracts and OTC contracts in respect of their use of the LME's facilities; and
- (c) non-discriminatory, in both design and operation, given that the scope of application of the Financial OTC Booking Fee Policy (including the various exclusions from its application, which are consistent with its rationale) has been carefully developed and designed so as to operate on a non-discretionary basis, in accordance with objective criteria.

Scope of Application

- 12 Some respondents have commented that the Financial OTC Booking Fee Policy has a broad scope of application, noting in particular that the definition of "Relevant OTC Contract" is particularly broad, and can capture contracts that are not necessarily "lookalikes" of LME Contracts. Some respondents have instead suggested that certain types of contract should instead be subject to a simple data usage fee.
- 13 The LME has designed the policy to catch a broad range of transactions, in order to be fair between firms that book trades in different ways, and to prevent possible abuse of the arrangements by firms that deliberately structure trades in order to avoid the application of the Financial OTC Booking Fee Policy.
- 14 A flat data usage fee would not have the desired effect of applying a similar charging basis for both Cleared Contracts and OTC contracts in respect of their use of the LME's facilities.

Exclusions from Scope

- 15 Some respondents have suggested certain clarifications to the scope of the exclusions from the Financial OTC Booking Fee, on the basis that the broad scope of the policy could result in the booking fee applying to transactions that it was not designed to cover. Specific examples raised include:

- (a) financing transactions; and
 - (b) transactions in structured products.
- 16 The LME understands the concern around financing transactions, and it was not the LME's intention that such transactions should be subject to the booking fee. The wording of the Financial OTC Booking Fee Policy has therefore been clarified to specifically exclude such trades (see paragraph 3.1(g) of the revised Financial OTC Booking Fee Policy).
- 17 The LME also understands that the reporting mechanisms required to identify the in-scope transactions, so as to enable the LME to calculate the relevant booking fee, may be particularly burdensome in the context of transactions in structured products, where Booking Fee Participants could be party to transactions with a variety of differing terms, which could require more complex calculations to determine the Exchange Equivalent Tonnage. The LME is therefore amenable to the suggestion that structured products should be covered by a new structured products licence, and subject to a per-transaction structured products licence fee (which will be subject to a cap and a floor). The LME is of the view that the principle of fairness is not compromised by offering Booking Fee Participants the choice to have their structured products governed by such a licence fee. The LME has therefore included a further exclusion from the definition of Relevant OTC Contracts that would apply to any transaction covered by an LME structured product licence – thereby excluding such transactions from the scope of the Financial OTC Booking Fee Policy. With respect to structured products, Booking Fee Participants will therefore have a choice:
- (a) either sign a structured products licence with the LME, which will cater for Booking Fee Participants that wish to pay a simple licence fee for the use of LME prices, data, etc for structured products; or
 - (b) alternatively, not enter into the structured products licence, which will cater for those Booking Fee Participants that would prefer to pay the booking fee for transactions in structured products as determined by the pricing mechanism set out in the Financial OTC Booking Fee Policy.

- 18 Whether a Booking Fee Participant selects the option in 17(a) or 17(b) above is for the Booking Fee Participant to determine based on whether such Booking Fee Participant wishes its structured transactions to be subject to the scope of the Financial OTC Booking Fee Policy or covered by an LME structured product licence.

Complexity and Administrative Burden

- 19 Some respondents have commented on the complexity of the FOTC Booking Fee Proposal, noting that Booking Fee Participants will need to apply additional administrative processes to monitor and report trades that fall within the scope of the Financial OTC Booking Fee Policy.
- 20 The LME believes that the FOTC Booking Fee Proposal strikes the correct balance and has been designed to ensure that the process for reporting trades is as simple as possible so as to minimise the impact on Booking Fee Participants. The diverse nature of LME markets and the multitude of businesses that use those markets mean there is an innate level of complexity. However, the LME has endeavoured to be as clear as possible in the design and drafting of the Financial OTC Booking Fee Policy. The LME has also tried to ensure that the Financial OTC Booking Fee Policy is as simple as possible. For example, Booking Fee Participants are able to decide the structure of their own reporting groups, so they can determine the most appropriate groups of entities to include within the reporting structure.

Other Minor Modifications

- 21 Further clarifications have been made to the Financial OTC Booking Fee Policy, in response to feedback, to clarify:
- (a) that where there are multiple Members within the same group, the OTC Booking Fee will not apply to transactions between such affiliated Members;
 - (b) the determination of whether physically settled transactions are Relevant OTC Contracts (see paragraph 3.1(b) of the revised Financial OTC Booking Fee Policy);

- (c) that the provisions applying fees to modifications and cancellations of trades should apply only where there are lifecycle events which introduce new incremental market risk;
- (d) that where trades are novated but the market risk does not change, the OTC Booking Fee will not apply;
- (e) that where an OTC trade is brought onto exchange, such that the original OTC trade would be cancelled and then a new exchange trade created, there should be an exemption from the application of the fee for the cancellation of the OTC trade (to acknowledge that the OTC Booking Fee will already have been paid on the original OTC trade); and
- (f) that in paragraph 5.13, 30 days' notice will be given in all circumstances apart from when an audit is required by a competent regulatory body; and
- (g) that the definition of "Spot Physical Trade" should be broadened to cover same day or T+1 settlement and furthermore, that the Physical Spot Waiver does not apply to two Spot Physical Trades executed as a calendar spread between each other. The LME has also amended the term "Spot Physical Trade" to "Physical Spot Trade" to align with the waiver.

Further Comment

22 The Comment Table sets out further detail on the responses to the consultation, and the LME's responses to such comments.

Timing of Implementation

23 Some respondents have expressed concern about the timetable for implementation of the Proposals, noting that the FOTC Booking Fee Proposal in particular will require a degree of operational change, particularly in respect of the reporting obligations, in order for firms to be able to comply with the requirements of the Financial OTC Booking Fee Policy.

- 24 The LME has always acknowledged that market participants will require time to establish internal procedures to enable compliance with the requirements of the Financial OTC Booking Fee Policy. The LME recognised the challenges that Booking Fee Participants would encounter and accordingly designed the original FOTC Booking Fee Proposal timeline such that implementation of the Financial OTC Booking Fee Policy would be achievable by all Booking Fee Participants. However, in furtherance of the LME's desire to enable Booking Fee Participants the time needed to build the appropriate internal procedures, the LME is allowing the Booking Fee Participants more time to ensure that their internal procedures have been tested such that Booking Fee Participants can comply with the Financial OTC Booking Fee Policy upon the policy coming into effect. The LME therefore proposes to allow a period of 3 months following the issue of this Decision Notice before the FOTC Booking Fee Proposal will come into effect.
- 25 Consequently, the modified Proposals, as set out in the revised Rulebook and the Financial OTC Booking Fee Policy (as set out in **Appendix IV** and **Appendix VI** respectively) shall be implemented as of the date of this Decision Notice. However, the Financial OTC Booking Fee shall only apply to transactions entered into (as per paragraph 3.1(h)) from 1 June 2018, as set out in Notice 18/061, issued on 1 March 2018.
- 26 Under paragraph 2.5 of the Financial OTC Booking Fee Policy, Booking Fee Participants are required to register their Reporting Group using Forms 1 & 2 (in annexures 1 and 2 of the Financial OTC Booking Fee Policy). Notice 18/061 issued on 1 March 2018 notifies market participants of the requirement to register Reporting Groups with the LME by 1 June 2018. However, the LME encourages Booking Fee Participants to engage with the LME in advance of 1 June 2018 to ensure that Booking Fee Participants have correctly completed the requisite form(s), such that they are ready for submission, on or in advance of 1 June 2018.
- 27 The LME has also updated its data usage licence terms and data distribution terms to incorporate references to the Financial OTC Booking Fee Policy and these licence terms will be available from the LME, as of the date of this Decision Notice. Furthermore, the LME has introduced a structured products

licence, which Booking Fee Participants may choose to enter into in order to cover structured product transactions.

Questions

- 28 If Members or any other respondents have any questions or requests for further clarification regarding the implementation of the Proposals as described in this Decision Notice, please contact Jamie Turner (at jamie.turner@lme.com).

Jamie Turner
Head of Sales

cc: Board directors
User Committee
All metal committees
Physical Market Committee
Trading Committee
Ring Dealers Committee
Traded Options Committee
Warehousing Committee

List of Appendices

- I. Table of feedback and responses
- II. LME Rulebook Rider with list of LME Rulebook changes (content substantively unchanged from version circulated with Consultation Notice)
- III. LME Rulebook (redline against current version)
- IV. LME Rulebook (clean version)
- V. Financial OTC Booking Fee Policy (redline against the version appended to the Consultation Notice)
- VI. Financial OTC Booking Fee Policy (clean version)

Appendix I

Table of feedback and responses

Question 1: Do you have any comments on the FOTC Booking Fee Proposal (excluding the Financial OTC Booking Fee Policy)?

#	Issue	Summary / Typical Comment	LME Response
1.1	Rationale	<p>Some comments challenged the concept of an “inequality” between firms providing client contracts rather than OTC contracts. These included concerns that:</p> <ul style="list-style-type: none"> - the policy operates to penalise the OTC market which has its own benefits and enhances liquidity; - the persons who are the most impacted are those who already pay the most to the LME in terms of fees and liquidity and it would materially increase such firms' fees; - such firms may be 	<p>OTC transactions typically make use of LME pricing, intellectual property and/or other benefits arising from the operation of LME as a leading exchange for metals trading.</p> <p>On-exchange contracts traded on the LME also make use of these benefits, and market participants pay for them as part of an all-in fee to LME. However, currently, the LME does not charge an equivalent fee for OTC transactions even though they also take advantage of these benefits. (The only LME charges arising in connection with an OTC transaction are its fees for the licensing of its prices to create derived data, such as commodity indices and the trades done against this derived data.)</p> <p>Addressing this fee disparity issue will allow the LME to recoup from those OTC market participants a fair</p>

#	Issue	Summary / Typical Comment	LME Response
		<p>incentivised to trade away; and</p> <ul style="list-style-type: none"> - it may be better to use a data licence model used by other exchanges for data services, that charges per service and with a tiered or volume rebate approach. 	<p>share of the overall investment it makes in operating the exchange. Rebalancing the responsibility for bearing the costs incurred for all transactions, on- and off-exchange, will also mean that LME Members trading on the exchange and paying fees are no longer cross-subsiding OTC trading where market participants are receiving a share of the benefits, but at reduced cost.</p> <p>Firms that trade higher volumes – on and/or off exchange – will pay more in fees than those trading lower volumes, but this will be proportionate to their use of LME pricing data, and consistent with the aim of rebalancing the responsibility for paying fees fairly between all market participants. The LME is conscious that firms may trade away from the LME, but this possibility does not diminish the need to address the disparities in the LME’s fee structure.</p> <p>In recognition of the merits of a tiered model for structured products, the LME has provided an option to carve these out of the scope of the FOTC Booking Fee Proposal by giving market participants the option of a structured products licence.</p>

#	Issue	Summary / Typical Comment	LME Response
1.2	Rationale	Other comments were more supportive of the proposal on the basis that it will provide a more level playing field for all Members and will encourage liquidity back onto the Exchange.	The LME is grateful for this feedback.
1.3	Regulatory and Competition Considerations	Some respondents asked for confirmation that the LME has considered all relevant regulatory issues when designing, and deciding to implement, the FOTC Booking Fee Proposal. One respondent raised concerns about whether the FOTC Booking Fee Proposal complied with competition law.	<p>The LME confirms that, in designing the FOTC Booking Fee Proposal and then also in reviewing comments made on it by respondents to the consultation, the LME has considered in detail the regulatory and competition law issues relevant to the FOTC Booking Fee Proposal. As regards competition law, it has undertaken a full analysis with the assistance of specialist external legal advisers. Following this assessment, the LME considers that the FOTC Booking Fee Proposal is in full compliance with all relevant legal and regulatory requirements, including competition law, as well as being carefully thought out and justifiable from a commercial perspective.</p> <p>In particular, the LME notes that the OTC Booking Fee Proposal is:</p> <ul style="list-style-type: none"> - transparent, being publicly available and clear in

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			<p>its terms as to its scope and method of application;</p> <ul style="list-style-type: none"> - fair, particularly having regard to the intention behind the FOTC Booking Fee Proposal, which is to rebalance certain inequalities currently existing between the OTC and on-exchange uses of LME Contracts; and - non-discriminatory, in both design and operation, given that the scope of application of the Financial OTC Booking Fee Policy (including the various exclusions from its application, which are consistent with its rationale) has been carefully developed so as to operate on a non-discretionary basis, in accordance with objective criteria.
1.4	Comparability of Fees	<p>Certain responses questioned the level of fees against benefits when compared to exchange traded contracts and various perspectives were:</p> <ul style="list-style-type: none"> - The OTC booking fee should be equivalent to the comparable fee for an exchange-traded derivative 	<p>Both LME futures and OTC contracts derive certain benefits from the use of LME pricing, for which a fee is justified.</p> <p>LME futures include certain additional benefits which OTC contracts do not benefit from, including the benefits of:</p> <ul style="list-style-type: none"> - being Cleared Contracts, which OTC contracts do not benefit from;

#	Issue	Summary / Typical Comment	LME Response
		<p>transaction.</p> <ul style="list-style-type: none"> - The incentive to bring contracts on-exchange is to have a Market Contract, which has beneficial treatment in insolvency under English law, and that is what justifies the fee for such contracts. 	<ul style="list-style-type: none"> - being Market Contracts, which benefit from insolvency protections; and - other administrative procedures and protections under the LME rules. <p>As such it is appropriate that there is a fee for both types of contract, but the fee for OTC Contracts is lower.</p>
1.5	Level of Fees	<p>The OTC fee should remain competitive, and should not price OTC contracts out of the market by promoting the transference to other potential alternative price references.</p> <p>Client contract fee structures with discounts for short and medium dated carries should be extended to cover OTC trades.</p>	<p>While any increase in cost to trade OTC may at the margin reduce the volume of OTC transactions, the LME believes the fees and discounts laid out in the policy will not adversely affect the market as a whole. This is broadly supported by the responses received, as the level of the fee itself has not come into question, aside from for short-dated carries, where the LME has set out a specific discount (the Short-Dated Spread Discount). The LME believes that the specific discounts for OTC contracts offered in the Policy need to be structured in a different manner to the discounts for on-exchange short and medium dated carries, to take account of the different manner in which OTC contracts are traded.</p>
1.6	Price Structure	<p>A flat pricing structure (e.g. of \$1/lot) would have a</p>	<p>The LME recognises this concern and had already included a discount for short-dated carries to</p>

#	Issue	Summary / Typical Comment	LME Response
		disproportionate impact on the short-dated end of the market, where spreads are generally tighter and volumes traded are higher.	address it.
1.7	Complexity and Administrative Burden	The proposal is complex and will be difficult to implement and monitor across large and complex organisations.	<p>The LME has endeavoured to simplify the FOTC Booking Fee Proposal to the extent possible, while addressing the issues and exceptions that it expects to be of concern to market participants.</p> <p>The diverse nature of LME markets and the multitude of businesses that use the market mean there is an innate level of complexity, however, the LME endeavoured to be as clear as possible in the design and drafting of the Financial OTC Booking Fee Policy.</p> <p>Booking Fee Participants are able to decide the structure of their own reporting groups, so they can determine the most appropriate group of entities to include within the reporting structure.</p>
1.8	Complexity and Administrative Burden	The LME should reduce the complexity of the reporting process and limit the reporting to trades actually in scope for the	The LME believes it is useful to be able to check the LME's data against that held by firms to ensure that the full offset is provided as expected.

#	Issue	Summary / Typical Comment	LME Response
		<p>fee.</p> <p>It is unnecessary and duplicative to report Affiliate Client Contracts as the LME is already in possession of this data and OTC Contracts within a reporting group are not reportable.</p> <p>It should not be necessary to report trades out of scope for the fee, such as physical trades.</p> <p>OTC trade reporting to the LME should be limited to firms who participate in such OTC activity.</p>	<p>The LME also believes it is important to monitor certain trades that are out-of-scope to help with the auditing process when undertaken.</p> <p>The LME views the regular “nil” reports that would need to be made by firms who do not trade Relevant OTC Contracts as a way for those firms to self-certify that they do not hold Relevant OTC Contracts at some later stage. The LME believes submitting a single “nil” report will not be overly burdensome, as the LME has provided a straightforward template reporting form for them to complete and return.</p>
1.9	Complexity and Administrative Burden	The relevance of the Reporting Officer has been queried. It was noted that the Reporting Officer would require administrative support to accurately report transactions.	In order to effectively report trades that are subject to the Financial OTC Booking Fee Policy, it will be necessary to have a central point of co-ordination within a firm’s organisation. This will help to ensure that the transactions are being monitored, recorded and reported in a consistent fashion.
1.10	Complexity and Administrative	The relevance of specific record keeping requirements has been queried, given that investment	The records required to be maintained under the policy are those that will be required to be produced by the firms themselves to enable them to report to

#	Issue	Summary / Typical Comment	LME Response
	Burden	firms are already subject to extensive regulatory requirements regarding record keeping.	the LME, and for the LME to be able to determine the level of booking fee payable. The LME understands that regulated firms are required to maintain certain records and it is intended that the record keeping requirements in the FOTC Booking Fee Proposal are not much more onerous than what is required of regulated firms anyway.
1.11	Timeline	The timeline between the issue of the decision notice and the commencement of the reporting obligation is tight and it may be difficult for participants to implement the necessary changes within such timescales.	The LME has always acknowledged that market participants will require time to establish internal procedures to enable compliance with the requirements of the Financial OTC Booking Fee Policy. The LME recognised the challenges that Booking Fee Participants would encounter and designed the original FOTC Booking Fee Proposal timeline with that in mind. However, in light of feedback, to ensure that Booking Fee Participants have the time needed to build the appropriate internal procedures, the LME is allowing Booking Fee Participants more time to ensure that their internal procedures have been tested such that Booking Fee Participants can comply with the Financial OTC Booking Fee Policy upon the policy coming into effect. The LME therefore proposes to allow a period of 3 months following the issue of this

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			Decision Notice before the FOTC Booking Fee Proposal will come into effect.
1.12	Scope, Complexity and Administrative Burden	<p>The definition of “Relevant OTC Contract” is very broad and can capture contracts that are not necessarily “lookalikes” of LME Contracts.</p> <p>Some respondents suggested that:</p> <ul style="list-style-type: none"> - the proposal should be limited to those contracts that are capable of being entered into the LME clearing system but the parties choose not to; and - there are numerous motivations for trading OTC Contracts including the desire to tailor contract specifications, to trade more complicated transactions than available as 	<p>The LME has designed the policy to catch a broad range of transactions, in order to be fair to the various firms that book trades in different ways, and to prevent possible abuse of the arrangements by firms that deliberately structure trades in order to avoid the application of the Financial OTC Booking Fee Policy.</p> <p>The LME understands the various motivations for trading OTC Contracts and has taken care to structure the Financial OTC Booking Fee Policy in order to ensure that users are treated in a fair way.</p> <p>Introducing a flat data usage fee for OTC Contracts would not achieve one of the objectives of the LME’s change; namely to apply a similar charging basis for both Cleared Contracts and OTC Contracts for the use of the LME’s facilities. This is because a flat fee is not the basis on which Cleared Contracts are charged for and so introducing such a fee for OTC Contracts would not be sensitive to volumes in the</p>

#	Issue	Summary / Typical Comment	LME Response
		<p>Cleared Contracts, and to simplify margin and liquidity requirements;</p> <ul style="list-style-type: none"> - any other use of LME IP should be covered by data licencing (on the basis that a data usage fee is a more proportionate and easier system to introduce); - for structured transactions much of the data required to make the calculation of Exchange Equivalent Tonnage is not recorded on the trade. It will therefore be necessary to build additional systems to record such data and to comply with the requirements of the policy, which will have an associated cost for firms; - more generally, compliance with the policy will require 	<p>same way, thereby leading to a disparity in approach between OTC Contracts and Cleared Contracts.</p> <p>Although firms will need to ensure that they have the systems in place to identify and report the trades that are subject to the policy, most firms will already have systems in place that capture a wide range of relevant data in order to enable them to comply with regulatory record keeping and transaction reporting requirements.</p> <p>However, the LME does consider that the reporting mechanisms required to identify the in-scope transactions, so as to enable LME to calculate the relevant booking fee, may be particularly burdensome in the context of transactions for structured products, where Booking Fee Participants could be party to transactions which would need bespoke calculation. The LME is therefore amenable to the suggestion that structured products should be covered by a new structured products licence, and subject to a structured products licence fee. The LME has therefore included a further exclusion from the definition of Relevant OTC Contracts that would apply to any transaction covered by an LME structured product licence – thereby excluding such</p>

#	Issue	Summary / Typical Comment	LME Response
		<p>firms to develop the systems and processes to capture the data required by the policy, which will have an associated cost for firms.</p>	<p>transactions from the scope of the Financial OTC Booking Fee Policy.</p> <p>With respect to structured products, Booking Fee Participants will therefore have a choice:</p> <p>(a) either sign a structured products licence with the LME, which will cater for Booking Fee Participants that wish to pay a simple licence fee for the use of LME prices, data, etc for structured products; or</p> <p>(b) alternatively, not enter into the structured products licence, which will cater for those Booking Fee Participants that would prefer to pay the booking fee for transactions in structured products as determined by the pricing mechanism set out in the Financial OTC Booking Fee Policy.</p> <p>Whether a Booking Fee Participant selects option (a) or (b) above is for the Booking Fee Participant to determine based on whether such Booking Fee Participant wishes its transactions to be caught by the scope of the Financial OTC Booking Fee Policy or covered by a structured products licence.</p>

#	Issue	Summary / Typical Comment	LME Response
			A new definition of “LME Structured Products Licence” has been inserted into Part 8 of the Financial OTC Booking Fee Policy and the definition of “LME Derived Data Licence” has been amended to more clearly reflect its scope and to distinguish it from the structured products licence.
1.13	Scope	The policy/rules should be drafted in such a way that contracts that are entered into specifically to facilitate the financing of metal inventories should be excluded.	The LME understands the concern around financing transactions, and it was not the LME’s intention that such transactions should be subject to the booking fee. The wording of the Financial OTC Booking Fee Policy has therefore been clarified to specifically exclude such trades (see paragraph 3.1(g) of the revised Financial OTC Booking Fee Policy).
1.14	Scope	What is meant by the reference in the Consultation Notice to the policy not being intended to apply to entities trading LME metals “for investment needs”?	<p>The reference to entities trading LME metals for investment needs is intended to capture those entities that invest client assets, and seek to gain price exposure to LME metals in order to benefit from medium- to long-term changes in metals prices, or to help risk manage existing price exposure to LME metals derived from investment activity elsewhere.</p> <p>These entities are excluded from the policy:</p> <ul style="list-style-type: none"> - under the Client Asset Manager exception

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			<p>(paragraph 1.2 (b) ii) should they be an Affiliate of a Member; or</p> <ul style="list-style-type: none"> - because they are not captured in the definition of Financial Intermediary, should they be a Licensee.
1.15	Scope	The fee does not apply equally to all types of physical trades—e.g. when a firm forward sells or buys physical LME metal it will be bound to pay the fee which is a disincentive for pure physical traders to be Members of the LME.	<p>Many financial derivatives are booked as physically settling trades (as are LME futures themselves). Consequently, it would not be possible to carve out all physically settling contracts while maintaining the fairness that the LME is seeking to achieve.</p> <p>Additionally, “pure physical traders” which are Members will benefit from the Non-Financial Group Exemption, and Affiliates of Members can benefit from the Physical Participant Exemption under the Financial OTC Booking Fee Policy.</p>
1.16	Scope	One respondent raised a specific concern that the FOTC Booking Fee Proposal could give rise to a situation whereby a Member was competing with a non-Member to undertake LME-priced business with a third party, and the former would be subject to the FOTC	<p>This situation would not arise:</p> <ul style="list-style-type: none"> - any non-Member engaged in financial intermediation of LME-priced business would be expected to be classified as a Booking Fee Participant pursuant to the relevant data licensing arrangements, and so would be paying a fee in that way;

#	Issue	Summary / Typical Comment	LME Response
		<p>Booking Fee, but the latter would not be.</p>	<ul style="list-style-type: none"> - while certain types of non-Members undertaking certain types of LME-priced business would not be expected to be classified as Booking Fee Participants (for example, a merchant selling physical metal at a forward fixed price), it would still (in general) be necessary for that non-Member to access the underlying LME market in order to lay-off the LME price risk exposure thus generated. As a non-Member, such access would need to be effected via a Member - and the contract between the Member and the non-Member would be subject to either a Client Contract fee, or to the FOTC Booking Fee. Furthermore, the cost of the Client Contract fee or the FOTC Booking Fee would be expected to be borne (directly or indirectly) by the non-Member. Accordingly, in a situation where a Member and non-Member were competing to offer LME-priced business to a third party, the non-Member would face a similar "all-in" cost to that of the Member; and - in a more limited set of cases (for example, the sale of physical metal, or the financing of metal), it may be possible for a non-Member who was

#	Issue	Summary / Typical Comment	LME Response
			<p>not classified as a Booking Fee Participant to offer LME-priced business without the need to lay-off the LME price risk exposure. However, in respect of such business (as understood by the LME), the LME has decided not to subject Booking Fee Participants, including Members, to the FOTC Booking Fee either - and, as set out in this Notice, the LME has clarified that key categories of business which could be caught under this heading (e.g. financing business) would indeed not be subject to the FOTC Booking Fee.</p> <p>Accordingly, the LME is satisfied that the FOTCBF Proposal has been designed in such a manner as to ensure a "level playing field" between similarly-situated service providers within the metals value chain.</p> <p>Furthermore, while it is not the role of the LME to prescribe business models to its Members or other market participants, the LME notes that client feedback to the consultation was broadly supportive of the FOTC Booking Fee, suggesting that if such fees were passed on to Clients, the sharing of costs</p>

#	Issue	Summary / Typical Comment	LME Response
			involved would strike the right balance.

Question 2: Do you have any comments on the Financial OTC Booking Fee Policy?

#	Issue	Summary / Typical Comment	LME Response
2.1	Scope of Application (1)	Consider adding an additional paragraph which would allow Members to seek an exemption in miscellaneous cases.	While the LME understands this reason for this request, the LME is aiming to introduce a fair and clear policy, such that there need not be a requirement to consider the application of the policy on a case-by-case basis. The LME needs to apply the policy on a transparent, non-discriminatory basis.
2.2	Reporting (2.2)	Where multiple Members exist in a group, the current drafting suggests that the fee would apply to each of them in respect of trades between them. This should be clarified to ensure that the fee would not apply on OTC transactions between affiliated Members.	The LME understands this concern and has amended the policy accordingly (see paragraph 2.2 of the revised Financial OTC Booking Fee Policy).
2.3	Modifications and Cancellations (4.8)	This should apply only where there are lifecycle events with incremental market risk.	The LME agrees and has clarified the language in the policy accordingly (see paragraph 4.8 of the revised Financial OTC Booking Fee Policy).
2.4	Modifications and Cancellations	Where an OTC trade is brought onto exchange, the OTC trade would be cancelled and then a new exchange	The LME agrees and has clarified the language in the policy accordingly (see paragraph 4.8 of the revised

#	Issue	Summary / Typical Comment	LME Response
	(4.8)	trade created. Given that in such circumstances, the OTC Booking Fee will have been paid on the OTC trade, there should be an exemption for the cancellation of the OTC trade where it is being brought onto exchange.	Financial OTC Booking Fee Policy).
2.5	Modifications and Cancellations (4.8)	There should be an exemption for OTC trades where the OTC trade is novated to another counterparty.	The LME agrees and has clarified the language in the policy accordingly (see paragraph 4.10 of the revised Financial OTC Booking Fee Policy)
2.6	Modifications and Cancellations (4.8)	Modifying or terminating an OTC contract early will attract an additional fee. This could potentially have an impact on firms' ability to continue servicing clients who require the restructuring of existing transactions.	Any modification or termination of an OTC contract which impacts the market risk on that trade will require the on-LME hedges to that OTC contract to be restructured, and thereby generate trading and clearing fees. Consequently, it is consistent to charge an additional FOTC Booking Fee for modifications. Trading businesses are able to take these fees into account when conducting client business.
2.7	Waivers (4.10 – now 4.11)	The definition of Spot Physical Trade should cover same day or T+1 settlement.	The LME agrees and has clarified the language in the policy accordingly (see the revised definition of Physical Spot Trade and paragraph 4.11 of the revised Financial OTC Booking Fee Policy).

#	Issue	Summary / Typical Comment	LME Response
2.8	Offsets (4.11 – now 4.12)	OTC Offset Credits should be open ended and not be restricted to the Reporting Period.	<p>Allowing “Offset Credits” to be rolled would require more stringent rules and monitoring to ensure the Financial OTC Booking Fee Policy is not abused by bringing-on OTC contracts that were entered into prior to when the Financial OTC Booking Fee Policy was introduced. The LME believes it has struck the correct balance by allowing any bring-on to give the offset, but limiting the use to within the month. While the LME accepts that the period between an OTC transaction and the associated bring-on may result in the transactions taking place in different months, a “steady-state” business would be expected to see a balance of OTC trades and bring-ons during a given month; it is for this reason that the OTC offsets do not require the matching of specific trades between the OTC trade and the corresponding bring-on.</p>
2.9	Offsets (4.11 – now 4.12)	In order to avoid the application of the reporting process, a member could confirm to the LME in writing that it will not bring OTC contracts to settlement and will inform LME when it does so.	<p>The LME believes that this type of amendment to the policy would unduly complicate the application of the policy and reporting, as the policy does not only apply to the settlement of OTC contracts, but to the trading of them prior to settlement. This approach would then necessitate different reporting requirements dependent on the perceived intention at the outset of the trade.</p> <p>Ultimately, the LME believes it has found the correct</p>

#	Issue	Summary / Typical Comment	LME Response
			balance with the reporting requirements as set out in the Policy.
2.10	Offsets (4.11 – now 4.12)	All contracts in non-LME currencies should be exempt from the OTC booking fee.	Excluding non-LME currencies could potentially encourage trades to be based in non-LME currencies specifically to avoid the Financial OTC Booking Fee, which would subvert the intention of the Policy and be an undesirable outcome.
2.11	Reporting Relevant OTC Trades (5.2)	It is not appropriate for the compliance function to either validate the accuracy of or submit a Report.	The LME has considered this point and notes that the appropriate senior compliance officer need not be the individual that compiles the data for the Report, but compliance ought to be the function that oversees the processes for collection of such data for the Report, thereby ensuring accuracy of the Report.
2.12	Audit and Record Keeping (5.13)	The power to gain physical access to the firm's premises and remote access to the firm's systems without notice is too extensive.	The LME understands this concern and has amended the policy accordingly (see paragraph 5.13 of the revised Financial OTC Booking Fee Policy).
2.13	Change to FOTCBF Policy (6.5)	In the event that any change to the Financial OTC Booking Fee Policy requires adjustments to the way in which trades are reported, 30 days would not be adequate time to	While 30 days' notice is the minimum that the LME will give when making changes to the Financial OTC Booking Fee Policy, this does not preclude the LME from providing a longer period in certain circumstances.

#	Issue	Summary / Typical Comment	LME Response
		implement changes in IT systems.	
2.14	Example Scenarios (7)	Please review the extent and scope of the fee on either scenarios or trade types to be quite clear as to when the fee will apply.	The complex nature of LME trading means that attempting to capture every possible scenario within the examples would not be possible. The LME has provided some scenarios to clarify some areas that could cause confusion. For any additional clarification, Booking Fee Participants should contact the LME.
2.15	Example Scenarios (7)	A "Float Deliver" is not a carry equivalent and therefore should not be subject to 2X fees.	The equivalent risk of a Float Deliver is a carry (hence being hedged with a carry). This is therefore the most representative way to charge for the trade.

Question 3: Do you have any comments on the Facilities Proposal?

#	Issue	Summary / Typical Comment	LME Response
3.1	General	Respondents were generally neutral or supportive of the Facilities Proposal.	The LME is grateful for this feedback.
3.2	Compliance by Affiliates	The LME acknowledges that Relevant OTC Contracts could be entered into using a Non-LME Multi Dealer Trading System (as defined in the Rules). However, the Policy then expressly prohibits any Member, affiliate and licensee from entering into Relevant OTC Contracts on such a platform. How this would be enforced against affiliates is not clear and the LME Member will not have oversight or control of such activities. In a large organisation an LME Member could attempt to do this on a best efforts basis but it would be unable to guarantee compliance across the whole group. This issue should be managed by data licencing rather	<p>This concern was only highlighted by one respondent, despite the fact that many market participants have complicated group structures.</p> <p>The LME is of the view that central compliance functions should be able to make all Affiliates aware of their obligations and that the Affiliate(s) within a Group that are responsible for metals trading will be able to ensure the compliance of other Affiliates with the Facilities Proposal.</p>

		than through this proposal.	
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Question 4: Do you have any comments on the Gross Trades Proposal?

#	Issue	Summary / Typical Comment	LME Response
4.1	General	Respondents were generally neutral or supportive of the Gross Trades Proposal and noted that it reflects market practice.	The LME is grateful for this feedback.
4.2	Hedging	One Member asked for confirmation that the proposal would not prohibit trading on an OTC basis and managing net OTC risk by a single transaction in the inter office market (on the assumption that any OTC activity would be subject to the LME OTC booking fee).	The Gross Trades Proposal applies only to LME Cleared Contracts, ensuring that trades are transparently reported to the LME in the manner that they have been traded (with applicable fees paid). Any party is free to hedge an OTC contract in the way it deems appropriate.

Question 5: Do you have any comments on the LMEselect Order Transparency Proposal?

#	Issue	Summary / Typical Comment	LME Response
5.1	General	Respondents were generally neutral or supportive of the LMEselect Order Transparency Proposal.	The LME is grateful for this feedback.

Question 6: Do you have any comments on the API Terms Proposal?

#	Issue	Summary / Typical Comment	LME Response
6.1	General	Respondents were generally neutral or supportive of the API Terms Proposal.	The LME is grateful for this feedback.



Appendix II

LME Rulebook Rider with list of LME Rulebook changes (content substantively unchanged from version circulated with Consultation Notice)

Distributed with this Notice.

Appendix III

LME Rulebook (redline against current version)

Distributed with this Notice.

Appendix IV
LME Rulebook (clean version)

Distributed with this Notice.

Appendix V

Financial OTC Booking Fee Policy (redline against the version appended to the Consultation Notice)

Distributed with this Notice.

Appendix VI

Financial OTC Booking Fee Policy (clean version)

Distributed with this Notice.