

To: All Members and other interested parties

Ref: 21 107

Classification: Membership Disciplinary

Date: 02 June 2021

Subject: **LME: INDICATIVE PENALTIES**

## Summary

1. Pursuant to Regulations 14.32-14.34 of Part 2 of the Rules and Regulations of the LME (the “LME Rulebook”), this Notice sets out indicative financial penalties (“Indicative Penalties”) for Members, Dealers and Member Representatives to be attached to certain acts of misconduct in the LME Rulebook. The Indicative Penalties represent the level of financial penalty the LME and the Enforcement Committee consider may be appropriate for certain acts of misconduct given no aggravating or mitigating circumstances. The Disciplinary Panel has approved the Indicative Penalties contained within this Notice in accordance with Regulation 14.33 of Part 2 of the LME Rulebook.

## Defined Terms

2. Terms not otherwise defined herein shall have the meaning ascribed to them in the LME Rulebook.

## Background

3. This Notice withdraws and replaces Notice 19/414 dated 20 December 2019 (“Notice 19/414”). This Notice sets out:
  - (a) the Indicative Penalties for Members, Dealers and Member Representatives<sup>1</sup> which the LME and the LME Enforcement Committee consider may be appropriate for certain Acts of Misconduct<sup>2</sup> given no aggravating or mitigating circumstances; and

---

<sup>1</sup> This Notice relates to Indicative Penalties for Members, Dealers and Member Representatives pursuant to the LME Rulebook. It does not address indicative penalties for LME-listed warehouses pursuant to the LME Disciplinary Procedures Handbook.

<sup>2</sup> Acts of Misconduct are defined and contained within regulation 14.1 of Part 2 of the LME Rulebook.



- (b) guidance on what the LME might consider to be aggravating and mitigating circumstances when assessing the appropriate level of a financial penalty for breaches of the LME Rulebook for Members, Dealers and Member Representatives.
4. The purpose of this Notice is to explain that the indicative penalties relating to the daily reporting of positions (as set out under paragraph 22(iii) of Notice 19/414) and the delivery of rent unpaid warrants (as set out under paragraph 22(v) of Notice 19/414) have been removed because these errors are covered by the automatic penalty charge regime. However, repeated or egregious position reporting failures may still be subject to the disciplinary process as set out in Part 2 of the LME Rulebook, in addition to any automatic penalty charge.
  5. This Notice provides indicative guidance only and is designed to assist: (i) Disciplinary Committees, (ii) Appeal Committees, (iii) the LME and (iv) the Enforcement Committee in the assessment and determination of appropriate financial penalties or settlement<sup>3</sup> amounts as appropriate for certain (not all) Acts of Misconduct as described in the LME Rulebook.<sup>4</sup> Members, Dealers and Member Representatives should also consider this Notice if subject to possible LME disciplinary action. However Members, Dealers and Member Representatives should also note that the Indicative Penalties are not fixed penalties, and therefore may be adjusted given the circumstances surrounding the relevant Act of Misconduct in question.
  6. Acts of Misconduct may (following an investigation) result in disciplinary proceedings being commenced against a Member and/or a Dealer or Member Representative (as appropriate) in accordance with regulations 13 and 14 of Part 2 of the Rulebook. The Indicative Penalties set out in this Notice shall not limit in any way the discretion of the LME, the Enforcement Committee, a Disciplinary Committee or Appeal Committee to recommend or levy any penalty (including a financial penalty) it deems appropriate in each case. 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, including those for which Indicative Penalties are provided in this Notice.
  7. The LME is mindful that the action it takes against Members, Dealers and Member Representatives for breaches of the LME Rulebook must be appropriate and in accordance with its own regulatory obligations. The LME

---

<sup>3</sup> Pursuant to Regulation 14.45 of Part 2 of the LME Rulebook, the LME and the Member, Dealer or Member Representative may agree a settlement at any time from the issuance of the NoI or the RDC Decision up to the commencement of the disciplinary hearing. Any proposed settlement must be ratified by the Enforcement Committee.

<sup>4</sup> For the avoidance of doubt, this Notice does not cover Acts of Misconduct for which fixed financial penalties have been set out in the LME Rules, including as contained within Regulations 11.6.6 and 11.6.7 of Part 3 of the LME Rules.



believes that it is not possible or appropriate to formulate Indicative Penalties for every potential rule breach. However this Notice provides Indicative Penalties for certain breaches for which the LME considers financial penalties are able to be appropriately set.

8. This Notice relates to financial penalties (i.e. fines) only. However there are circumstances where a non-financial penalty<sup>5</sup> is appropriate, either instead of, or in addition to, a financial penalty. It is the view of the LME that its penalties should constitute a credible deterrent and that although they should be reasonable and proportionate, they must also be adequate and appropriate. In this regard the LME takes aggravating and mitigating circumstances into account when determining appropriate penalties (see paragraphs 24 and 25 of this Notice for further detail). This is the framework upon which this guidance has been prepared and upon which the LME approaches enforcement of the LME Rulebook.
9. The LME may update or supplement this Notice from time to time, whether in the form of Notices or in other communications from the LME.

### **Acts of Misconduct and Indicative Penalties**

10. This section of the Notice sets out a non-exhaustive list of Indicative Penalties for certain Acts of Misconduct. It is the view of the LME that it is inappropriate, however, to prescribe Indicative Penalties for certain Acts of Misconduct, particularly for market abuse.
11. Market abuse may constitute both a civil offence under the EU Market Abuse Regulation (“MAR”) as well as a criminal offence under UK law. Therefore the LME will refer any potential instances of market abuse it detects on its market without delay to the UK Financial Conduct Authority (the “FCA”). This will not preclude the LME from itself commencing an investigation into a potential instance of market abuse and ultimately commencing disciplinary action if appropriate. The LME takes any form of market abuse extremely seriously and the LME Rulebook also makes clear that any such behaviour is prohibited on the LME.<sup>6</sup> Given its serious nature, the LME does not consider it appropriate to prescribe any Indicative Penalties for Acts of Misconduct relating to market abuse.

---

<sup>5</sup> This may include the imposition of (without limitation): (i) settlement terms agreed with the LME requiring certain remedial actions to be undertaken or (ii) any of the non-financial penalty provisions available to a Disciplinary Committee pursuant to regulation 14.30 of Part 2 of the LME Rulebook.

<sup>6</sup> Please especially see regulation 12.7 of Part 2 of the LME Rulebook and regulations 14.1, 14.2, 14.3, 14.4, 14.6, 14.8-9 of Part 3 of the LME Rulebook.



### ***Bringing the LME or any of its Markets into Disrepute***

12. Regulation 14.1(v) of Part 2 of the Rulebook states that an Act of Misconduct includes: “*conduct which has brought or may be likely to bring the Exchange or any of its markets into disrepute.*”

Examples of conduct in breach of this regulation might include, without limitation: (i) a failure to adhere to the Lending Rules, 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). It should be noted that it is possible that this Regulation could be breached in addition to other Acts of Misconduct (e.g. if market abuse occurs on the LME, the behaviour could in turn bring the LME market into disrepute whether with market participants, regulators or the general public as a whole). Due to the potential for this Act of Misconduct to undermine the integrity of the LME market and to bring the orderliness of the market into question, the LME considers the minimum Indicative Penalty set out below is appropriate. However, depending on the extent of the breach and the circumstances in which it occurred, this penalty could be significantly more than the minimum level set out below.

Indicative Penalty: £100,000 and upwards

### ***Member Systems and Controls***

13. Regulation 12.6(b) of Part 2 of the LME Rulebook states that a Member shall: “*organise and control its internal affairs in a responsible and effective manner, with appropriate and adequate risk management systems*”.
14. Without limitation, any failure of any of surveillance, monitoring, compliance, and/or management control would be likely to constitute a breach of this regulation. Examples of failings which might constitute a breach include: (i) failure to provide adequate training for an employee responsible for LME surveillance, (ii) failure to have adequate procedures in place to ensure compliance with the LME Rulebook or (iii) failure to have adequate systems and controls in order to detect, deter and deal with potential incidences of market abuse.
15. Breaches might range from minor to more serious failures. Where such failures were isolated, with no notable market impact (or potential to have a notable market impact) this might only warrant a relatively minor penalty. A more systemic or serious failure of systems, controls or processes might warrant a significantly larger financial penalty. A breach may be serious or systemic (without limitation) where one or more of the following has occurred: (i) where the breach has occurred with significant frequency and/or duration, (ii) where the breach was known to senior management yet senior management took no



action to remedy the situation (iii) where the breach had a notable market impact or had the potential to have had such an impact or (iv) where there are a number of systems and control failures. Along with a financial penalty, Members in breach of this regulation should also expect the LME to consider a non-financial penalty such as (but not limited to) requiring a remedial plan to be undertaken or obtaining independent assurance as to the appropriateness of systems and controls.

Indicative Penalty for minor breach: £30,000 and upwards.

Indicative Penalty for a serious or systemic failure: £150,000 and upwards.

### ***Dealing with the LME in an open and cooperative manner***

16. Regulation 12.6(k) of Part 2 of the LME Rulebook 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”*.
17. This Regulation has two elements, namely:
  - (i) To deal with the Exchange in an open and cooperative manner (“Element 1”); and
  - (ii) To keep the Exchange promptly informed of anything concerning the Member which might reasonably be expected to be disclosed to it (“Element 2”, together with Element 1, the “Elements”).
18. It may be that particular factual circumstances result in both Element 1 and Element 2 being breached, or that only one of the Elements is breached. The LME requires its Members to be open, transparent and cooperative with the LME at all times. This is key to the LME being able to maintain its orderly market. This expectation applies in the ordinary course of the Member’s dealings with the LME, including during the course of enquiries made of the Member by the LME, whether in the course of an Investigation or otherwise<sup>7</sup>. Equally, the LME expects its Members to disclose relevant information pursuant to Element 2 to the LME in a timely manner. Failure to do so may have the potential to impact the market or the LME’s ability to make timely and appropriate decisions in order to maintain its orderly market and comply with its regulatory obligations (as indeed may a breach of Element 1). A minor breach may occur where (without limitation) a Member unintentionally fails to disclose something which might reasonably be expected to be disclosed to the LME but which has no notable market or regulatory impact (or potential to have a notable market or regulatory impact). A serious breach may (without limitation) occur if for example a Member

---

<sup>7</sup> See also regulations 12.1-12.4 and 13.5.2 of Part 2 of the LME Rulebook.



has failed to be honest and truthful with the LME, or has knowingly misled or concealed any matter or if the breach has a notable market or regulatory impact or potential to have a notable market or regulatory impact. The LME would also consider that Members who withhold or fail to disclose relevant information from the LME during the course of an Investigation or as otherwise required under the Rules or otherwise may have breached this Regulation.<sup>8</sup> The LME however notes that depending on the extent of the breach and the circumstances in which it occurred, this penalty could be significantly more than the minimum level for an Indicative Penalty for a serious breach as set out below.

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

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

### ***Conduct of Business and Treatment of Clients***

19. 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 12.6(a) of Part 2 of the LME Rulebook, 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, fairly and professionally at all times in the best interests of its 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. Such failure may also constitute (amongst other things) a breach of Regulation 14.1(v) 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*”).
20. The LME believes that, for the purposes of setting out Indicative Penalties regarding breaches relating to conduct of business and treatment of Clients,

---

<sup>8</sup> Please note the LME would not consider it a breach of this regulation if the Member was unable to disclose information if prevented to do so by another regulatory authority or at law, or if the information was subject to legal professional privilege or its equivalent in the relevant jurisdiction. For the avoidance of doubt, confidentiality provisions in contracts/agreements/arrangements with clients or other parties are not sufficient reason to fail to respond to queries made by the LME or provide relevant documentation to the LME.



breaches can be categorised into different levels of intention/knowledge, as follows: negligent, reckless and deliberate.

### *Negligent*

- (i) This level of intention is distinct from the below 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 Member, Dealer or Member Representative 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 Penalty £50,000 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 Indicative Penalty.

Indicative Penalty £100,000 and upwards

### *Deliberate*

- (iii) This covers cases where the person involved deliberately set out to engage in conduct knowing that a Client would be harmed or where, when a situation arose, the person involved deliberately took advantage of the circumstances. An example would be 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 (see paragraphs 24 and 25 below).

Indicative Penalty £200,000 and upwards





### **Conduct impacting the operation of LMEselect**

21. Conduct which impacts the operation of LMEselect has the potential for a serious impact upon the orderly operation of the LME market. The most serious form of this behaviour may constitute market abuse, in which case the Indicative Penalty set out below will not be sufficient. However for other activity which is not abusive of the market, this paragraph envisages activity such as (but not limited to) the placement of excessive automatically-generated orders by Members using algorithms or instances where a Member has placed erroneous orders in to LMEselect. The starting point for the Indicative Penalty below contemplates a relatively minor and isolated incident. It should be noted that conduct likely to cause a degradation of LMEselect might constitute many different Acts of Misconduct, including but not limited to, a breach of Regulations 12.6(a), 12.6(b)<sup>9</sup>, 12.6(e)<sup>10</sup> and 14.1(v) of Part 2 of the LME Rulebook. However depending on the circumstances and the Acts of Misconduct involved, this penalty could be significantly more than the minimum level of the Indicative Penalty set out below.

Indicative Penalty: £40,000 and upwards

### **Reporting / Business Processing Breaches**

22. Acts of Misconduct relating to e.g. the absence of trading records, or failure to report transactions to the LME, are serious in that they may undermine the LME's ability to continue to operate an orderly market. Failure to comply with reporting requirements or failure to keep proper records may, in addition to breaching the relevant regulation in the LME Rulebook or Administrative Procedures, depending on the circumstances also constitute, (without limitation), a breach of regulations 12.6(b), 12.6(c)<sup>11</sup> and 12.6(j)<sup>12</sup> of Part 2 of the LME Rulebook. If this is the case, the Indicative Penalties outlined in this paragraph below will unlikely be appropriate. Where one of the breaches listed

---

<sup>9</sup> Regulation 12.6(b) of Part 2 of the LME Rulebook states: "A Member shall... organise and control its internal affairs in a responsible and effective manner, with appropriate and adequate risk management systems."

<sup>10</sup> Regulation 12.6(e) of Part 2 of the LME Rulebook states: "A Member shall... ensure that all of its Dealers, Member Representatives, staff and directors involved in the conduct of business on the Exchange are fit and proper, suitable, appropriately and adequately trained, properly supervised, and where appropriate, suitably qualified."

<sup>11</sup> Regulation 12.6(c) of Part 2 of the LME Rulebook states: "A Member shall...ensure its internal record-keeping is appropriate and adequate."

<sup>12</sup> Regulation 12.6(j) of Part 2 of the LME Rulebook states: "A Member shall...retain all relevant documentation, and provide the Exchange with copies thereof on request, in relation to all Contracts arranged, or entered into, by them and also in relation to all other contracts arranged, or 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."





below had been undertaken with the aim of concealing conduct or misleading the LME then this would clearly be an aggravating factor (see paragraphs 24 and 25 below). In addition the existence of a failure of the types outlined below may be indicative of wider failings, and may result in a broader investigation. In those circumstances the Indicative Penalties outlined below may not be appropriate. It is noted that Members may choose to outsource their business process functions and reporting to third parties (for example a Category 4 Member may choose to outsource clearing to its clearing Member) but the obligations set out in the LME Rulebook and relevant Notices remain with the Member. The below is a non-exhaustive list of reporting, business and processing Acts of Misconduct for which the LME considers it to be appropriate to provide Indicative Penalties. However the appropriate penalties for reporting, business and processing breaches not covered in this paragraph will be decided separately on a case by case basis.

#### *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 Penalty 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 Penalty 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) Reporting of Option Volatilities<sup>13</sup>

Members' reporting of options volatilities is expected to be error free. There are various circumstances that may lead the LME to conclude that there is an error with a Member's obligation regarding the reporting of option volatilities. This might include (without limitation) submitting volatilities that are significantly away from the market or which are otherwise erroneous.

Indicative Penalty: 5 days of 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.

#### **Delivery Default**

23. 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 LME 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 Indicative 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, the impact to the market will be more significant and therefore the Indicative Penalty is likely to be increased. Please also note that in the event of a delivery default, the LME Clear Rules would also be applicable. LME Clear in these circumstances would also take such action as it deemed appropriate and as is open to it pursuant to the LME Clear Rules.

Indicative Penalty:  $\frac{1}{2}\%$  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**

24. As explained above, the Indicative Penalties should only be used as the starting point for the assessment of financial penalties whether by a Disciplinary Committee, Appeal Committee, the Enforcement Committee or the LME in negotiating a settlement with a Member, Dealer or Member Representative. When evaluating the appropriate financial (or other) penalty for a particular Act of Misconduct, the full circumstances of the Act of Misconduct must be taken into account. What level of financial (or other) penalty may be appropriate in the circumstances may be impacted by (but not be limited to) the below considerations, which may be aggravating or mitigating. These will be considered by a Disciplinary Committee, Appeal Committee, the Enforcement Committee or the LME in negotiating a settlement, regardless of whether an Indicative Penalty exists for the Act of Misconduct(s) in question:

- (a) the extent to which the Act of Misconduct was committed deliberately recklessly, or negligently;
- (b) the nature, duration and frequency of the Act of Misconduct. Where a Member, Dealer or Member Representatives 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 Indicative Penalty proposed for a single instance of an Act of Misconduct;
- (c) the presence of multiple but different Acts of Misconduct;

<sup>13</sup> Please note that references in LME Notice 19/177 “*Consolidated Traded Options Pricing Procedures – Update and Restatement*” dated 7 June 2019 to Notice 16/006 and Notice 16/031: A/031 dated 28 January 2016 shall be read as references to this Notice.



- (d) whether the Act of Misconduct also increases the risk that financial crime or other breaches of law or regulation might occur;
  - (e) the extent of the Member, Dealer or Member Representative's responsibility for the Act of Misconduct involved and the extent they take responsibility for the Act of Misconduct;
  - (f) the systems and controls which the Member had in place to prevent such Act of Misconduct from occurring and to detect, deter and deal with the relevant behaviour;
  - (g) whether the Act of Misconduct reveals serious or systemic issues with the Member's procedures, management, systems or controls;
  - (h) the extent, if any, to which the Member, Dealer or Member Representative benefited (or sought to benefit) from the Act of Misconduct;
  - (i) the impact or potential impact on the market and its participants and the extent to which this was serious or potentially serious;
  - (j) the prior conduct and disciplinary record of the Member, Dealer or Member Representative (including any informal warnings issued by the LME);
  - (k) the degree of co-operation and assistance provided by the Member, Dealer or Member Representative to the LME following the occurrence of the Act of Misconduct and during the Investigation; and
  - (l) any remedial action undertaken by the Member since the Act of Misconduct was identified.
25. Whilst financial penalties of an appropriate level must be set for individual Acts of Misconduct pursuant to the LME Rulebook, it may be appropriate in certain circumstances to ascertain an appropriate aggregate penalty for multiple Acts of Misconduct, looking at the underlying conduct and circumstances as a whole. However it should be noted that aggregation will not always be appropriate and will not automatically occur where multiple Acts of Misconduct are present. The financial penalty imposed must be appropriate and proportionate to the breach(es) that have taken place, and must be reasonable in all the circumstances. Members, Dealers and Member Representatives should note that the financial penalty must also support the LME's ability to maintain an orderly market and therefore act as (amongst other things) a deterrent to other Members, Dealers or Member Representatives and any clients from undertaking similar activity.

**Tom Hine**  
**General Counsel, LME Group**

cc: Board directors  
Enforcement Committee  
Disciplinary Panel  
Appeal Panel