

## DISCIPLINARY PROCEDURES HANDBOOK

### 1 LME Enforcement and Disciplinary Procedures applicable to all LME Warehouses

#### 1 Status and Definitions

**1.1** The provisions set out in this handbook are supplemental to and form a part of the Warehouse Agreement entered into between the Exchange and each Warehouse (“**the Agreement**”). This handbook is the handbook referred to in clause 8 of the Agreement.

**1.2** In this handbook, the following expressions shall have the following meanings unless otherwise stated:

**1.2.1 “Charges”** – a document served on a Warehouse setting out the alleged Act or Acts of Misconduct;

**1.2.2 “Complainant”** – any third party who alleges misconduct on the part of a Warehouse;

**1.2.3 “Disciplinary Panel” and “Appeal Panel”** – the Disciplinary Panel and the Appeal Panel set up under the LME rules and regulations governing the members of the Exchange;

**1.2.4 “Enforcement Committee”** – the Enforcement Committee set up under the LME rules and regulations governing the members of the Exchange;

**1.2.5 “Notice of Appeal”** – a document setting out the grounds of the appeal and containing a brief statement of all matters relied upon by the appellant;

**1.2.6 “Warehouse Appeal Committee”** – a committee nominated by the chairman of the Appeal Panel consisting of three persons from the Appeal Panel;

**1.2.7 “Warehouse Disciplinary Committee”** – a committee nominated by the chairman of the Disciplinary Panel consisting of three persons from the Disciplinary Panel;

**1.3** Other words and expressions used in this handbook shall, unless the context otherwise requires, have the same meanings as set out in ~~clause 10 of the Agreement~~.



## 2 Obligation to comply

2.1 Each Warehouse shall:-

2.1.1 Comply with the requirements of the Agreement and the LMEsword Regulations and Operating Procedures: and

2.1.2 Not commit any Act of Misconduct (within the meaning of clause 2.2).

2.2 “**Act of Misconduct**” shall mean:-

2.2.1 Any breach of the Agreement or the LME Rulebook, LMEsword Regulations ~~or~~, Operating Procedures, and the LME Policy on Approval and Operation of Warehouses;

2.2.2 ~~failure~~Failure to pay an automatic fine or a fine or order for costs imposed by a Warehouse Disciplinary Committee that has not been overturned by a Warehouse Appeal Committee;

2.2.3 Any conduct which has brought or may be likely to bring the Exchange or any of its markets into disrepute;

2.2.4 Provision to the Exchange of information which is false, misleading or inaccurate in a material particular;

2.2.5 Failure to comply with a direction of the LME as to the apportionment of liability for the registration fee pursuant to the LME’s complaints procedure;

2.2.6 Any other matter of which the Exchange may, from time to time, notify all Warehouses through administrative notices.

## 3 Investigations

3.1 Allegations of an Act or Acts of Misconduct by a Warehouse may be brought either by the Exchange or by a Complainant. The investigation into an alleged Act or Acts of Misconduct must be authorised by the Head of Market OperationsEnforcement.

3.2 In the course of conducting an investigation, the Exchange may appoint any external advisor as it thinks fit. Any external advisor appointed by the Exchange shall be required to treat all information obtained in the course of the investigation as confidential and to disclose it only to the Exchange.

3.3 The Exchange shall issue a Notice of Investigation (“**NoI**”) notifying the Warehouse or Group that an investigation has been commenced. In the event an



investigation is commenced into a Group rather than one Warehouse, the investigation and enforcement processes stipulated in this document will apply in respect of the Group. The Nol shall be in writing and sent to the contact name for the Warehouse and shall contain a brief description of the matter under investigation.

**3.4** ~~Warehouse—companies~~Warehouses shall co-operate fully with all investigations (whether or not they are the Warehouse under investigation). In particular, and without limitation, Warehouses shall:-

**3.4.1** make available for interview such of their officers, employees or agents as may be reasonably requested in order that they may answer questions and explain any matter that the Exchange considers relevant to the investigation;

**3.4.2** Comply fully with their obligation to provide information in accordance with the Agreement;

**3.4.3** Permit an authorised representative of the Exchange to visit their offices at any time, for the purpose of the investigation.

**3.5** A report detailing the findings of the investigation shall be passed to the Head of ~~Market Operations~~Enforcement who, if ~~he believesthey believe~~ that there is reasonable evidence to support an allegation of an Act or Acts of Misconduct, must pass the report to the Enforcement Committee for consideration.

## **4 Institution of Proceedings**

Where the Enforcement Committee decides to institute disciplinary proceedings in respect of an alleged Act or Acts of Misconduct against a Warehouse, Charges together with a summary of facts supporting the Charges shall be served on the Warehouse concerned.

## **5 Defence**

**5.1** The Warehouse has twenty working days from service of Charges in which to serve a statement of defence (“**Defence**”) responding to all or any of the allegations, stating its intended plea and what admissions of fact, if any, it makes.

**5.2** Where no Defence has been served pursuant to clause 5.1, and no settlement under clause 11 has been reached, the Warehouse will be deemed to have accepted the facts and matters alleged in the Charges.

**5.3** Having seen and considered the Defence, the Enforcement Committee, if it deems it appropriate, may choose either to discontinue disciplinary proceedings or to ask the chairman of the Disciplinary Panel to set up a Warehouse Disciplinary Committee to consider the matter.



## **6 The Hearing**

**6.1** The hearing before a Warehouse Disciplinary Committee shall take place no later than twenty working days after service of the Defence, or on such other date as the Warehouse Disciplinary Committee shall require.

**6.2** Representatives of the Warehouse shall be given the opportunity, and may be required by the Warehouse Disciplinary Committee, to attend. The Complainant may be required by the Warehouse Disciplinary Committee to attend. The Warehouse Disciplinary Committee may require any other person to attend the hearing.

**6.3** Unless required by the Warehouse Disciplinary Committee to attend, the Warehouse may opt for the matter to be considered on paper.

**6.4** All parties attending the hearing, including witnesses to be called by either party, shall be given reasonable notice (which shall be not less than ten business days' notice) of the date, time, venue and subject of the proceedings.

**6.5** The Warehouse Disciplinary Committee shall elect a chairman and shall determine the procedure to be followed at the hearing having regard to the following:-

**6.5.1** The Exchange to open the case;

**6.5.2** The Exchange to adduce evidence and to call witnesses whom the Warehouse may cross-examine, the Exchange may re-examine, and who may be asked questions by the Warehouse Disciplinary Committee;

**6.5.3** The Warehouse to adduce evidence and to call witnesses whom the Exchange may cross-examine, the Warehouse may re-examine and who may be asked questions by the Warehouse Disciplinary Committee;

**6.5.4** The Exchange to address the Warehouse Disciplinary Committee;

**6.5.5** The Warehouse to address the Warehouse Disciplinary Committee.

## **7 The Determination**

**7.1** The Warehouse Disciplinary Committee shall announce its findings to the parties as soon as practicable.

**7.2** Where the Warehouse Disciplinary Committee is satisfied that the Warehouse has committed an Act or Acts of Misconduct it shall provide the parties with an opportunity to make representations before determining the penalty to be imposed.



**7.3** The Warehouse Disciplinary Committee shall announce the penalty to be imposed as soon as practicable.

**7.4** 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 before deciding the penalty to be imposed and the costs to be ordered.

**7.5** Within twenty business days of announcing its findings, the Warehouse Disciplinary Committee shall serve on the parties a written decision comprising its findings of fact, its findings as to whether any charges not admitted are proved, the reason for its decision and any penalties to be imposed.

**7.6** Subject to appeal, and unless the Warehouse Disciplinary Committee determines otherwise, any penalty imposed shall take effect ten business days after service of the written decision.

## **8 The Penalties**

**8.1** The Warehouse Disciplinary Committee may impose one or more of the following penalties:-

**8.1.1** A warning or reprimand;

**8.1.2** A fine;

**8.1.3** A requirement to comply with such terms and conditions as appropriate;

**8.1.4** The withdrawal, either temporarily or permanently, of listed warehouse status;

**8.1.5** Such other penalty as the Warehouse Disciplinary Committee shall think fit, including a fine or other sanction conditional upon the Warehouse not remedying a default within a given period.

**8.2** In determining whether to order that metal be moved pursuant to clause 8.1 the Warehouse Disciplinary Committee shall have regard to the reasonable instructions of the holders of the Warrants in question, to the extent practicable.

**8.3** Only where the Act or Acts of Misconduct are serious may the Warehouse Disciplinary Committee withdraw a Warehouse's listed status permanently.

**8.4** The powers of the Warehouse Disciplinary Committee shall be without prejudice to the other powers of the Exchange under the Agreement or under the LMEsword Regulations and Operating Procedures, provided that (for the avoidance



of doubt) a Warehouse may be disciplined by the Exchange under the terms of the Agreement alone.

## **9 Costs**

Costs are at the discretion of the Warehouse Disciplinary Committee. It may order any party to pay such costs as it thinks appropriate, including but not limited to, administration costs, costs incurred in the investigation, preparation and presentation of the case.

## **10 Appeal**

**10.1** Within ten business days of service of the Warehouse Disciplinary Committee's decision, the Warehouse may appeal by serving a Notice of Appeal on the chairman of the Appeal Panel and the Exchange.

**10.2** Within ten business days of service of the Warehouse Disciplinary Committee's decision, the Exchange may appeal by serving a Notice of Appeal on the chairman of the Appeal Panel and the Warehouse.

**10.3** The grounds of the appeal may be one or more of the following:-

**10.3.1** The Warehouse Disciplinary Committee misdirected itself;

**10.3.2** The Warehouse Disciplinary Committee's decision was:

- (i) One which no reasonable Warehouse Disciplinary Committee could have reached;
- (ii) Unsupported by the evidence or was against the weight of the evidence;
- (iii) Based on an error of law, or misinterpretation of the Agreement.

**10.3.3** The penalty imposed by the Warehouse Disciplinary Committee was either excessive or insufficient;

**10.3.4** New evidence is available and that, had it been adduced, the Warehouse Disciplinary Committee could reasonably have come to a different decision provided that this will not apply if the evidence could have been adduced before the Warehouse Disciplinary Committee by the exercise of reasonable diligence.

**10.4** The chairman of the Appeal Panel shall set up a Warehouse Appeal Committee consisting of three persons from the Appeal Panel. The Warehouse Appeal Committee shall determine the procedure at the appeal.



~~10.5 The chairman of the Appeal Panel shall set up a Warehouse Appeal Committee consisting of three persons from the Appeal Panel.~~

#### ~~10.6~~

~~10.5~~ The Warehouse 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.

~~10.76~~ Within twenty business days of the conclusion of the hearing, the Warehouse Appeal Committee shall serve on the parties a written decision setting out its reasons.

~~10.87~~ Costs of the appeal are at the discretion of the Warehouse Appeal Committee.

## **11 Settlements**

**11.1** The Exchange and the Warehouse may agree a settlement of disciplinary proceedings at any time up to the commencement of the disciplinary hearing.

**11.2** A Warehouse wishing to enter into settlement negotiations must submit written proposals for settlement to the Exchange.

**11.3** Settlement negotiations shall proceed on a without prejudice basis.

**11.4** 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 Warehouse Disciplinary Committee.

**11.5** Once the hearing has commenced, the Exchange and the Warehouse may reach an agreed finding. Any agreed finding shall be submitted to the Warehouse Disciplinary Committee.

**11.6** The Warehouse Disciplinary Committee may ratify or refuse to ratify the agreed finding. An agreed finding shall not take effect unless ratified by the Warehouse Disciplinary Committee. Where the Warehouse Disciplinary Committee refuses to ratify the agreed finding, the hearing shall proceed as if no agreed finding was reached.

## **12 Publication of Findings and Penalties**

**12.1** Subject to appeal, where the Warehouse Disciplinary Committee finds that there has been an Act or Acts of Misconduct, notification of such findings and of any



sanction shall be made (once the same has taken effect) by means of a notice to the relevant parties.

**12.2** Where disciplinary proceedings have been concluded by way of settlement ratified by the Enforcement Committee or an agreed finding ratified by the Warehouse Disciplinary Committee, notification of the settlement or agreed finding shall be made by means of a notice to the relevant parties. Such notice to be drafted by the Exchange in consultation with the Warehouse.

**12.3** Relevant parties in this context shall mean:-

**12.3.1** The Warehouse;

**12.3.2** The Complainant;

**12.3.3** All members of the Exchange, Warehouses and their agents;

**12.3.4** The appropriate regulatory or other authorities, as the Exchange deems appropriate;

**12.3.5** Any other person whom the Warehouse Disciplinary Committee, or in the case of an appeal the Appeal Committee, deems appropriate.

**12.4** Where no Act or Acts of Misconduct have been substantiated, such notification shall only be given if the Warehouse so requests.

**12.5** The outcome of disciplinary proceedings being notified to all members of the Exchange shall also be made public by such means as the Exchange shall think fit.

**12.6** Where the Warehouse Appeal Committee upholds the finding of the Warehouse Disciplinary Committee the above rules on publication shall apply.

## **13 Procedural provisions**

**13.1** No person shall be eligible to serve as a member of a Warehouse Disciplinary Committee if ~~he is~~they are a member of the Enforcement Committee as defined in Section 1 of Part 1 of the LME Rules and Regulations.

**13.2** No person shall be eligible to serve as a member of a Warehouse Disciplinary Committee or a Warehouse Appeal Committee in relation to any particular case if ~~he~~they has any financial interest in the matter under investigation either personally or through any company with which ~~he~~they may be connected.

## **14 Legal Adviser**



**14.1** A legal adviser, who shall be a barrister or solicitor, may be appointed by the Warehouse Disciplinary Committee or the Warehouse Appeal Committee to sit throughout the hearing and provide legal advice to the committee.

**14.2** The same legal adviser may not be appointed to advise the Warehouse Disciplinary Committee and the Warehouse Appeal Committee on the same case.

## **15 Hearings in private**

Warehouse Disciplinary Committee hearings and Warehouse Appeal Committee hearings shall be held in private, unless the Warehouse elects to hold the hearing in public.

## **16 Representation**

**16.1** Parties to disciplinary proceedings may be represented.

**16.2** A Warehouse may be represented by one of its officers, employees, its London agent or may be legally represented.

**16.3** The Exchange may be represented by one of its officers, employees or may be legally represented.

**16.4** The availability of a particular legal representative shall not be conclusive when fixing a date for a committee hearing.

## **17 Failure to Attend**

If either party fails to attend, the hearing may proceed in its absence.

## **18 Record of Hearing**

A record shall be made of the hearing electronically or otherwise. The Warehouse shall be entitled to a transcription or copy of the record on payment of costs.

## **19 Burden and Standard of Proof**

The burden of proof shall be on the Exchange. The Warehouse Disciplinary Committee shall not find a charge proved unless it is satisfied on the balance of probability.



## **20 Evidence**

The Warehouse Disciplinary Committee may admit evidence whether oral or written, whether direct or hearsay and whether or not the same would be admissible in a court of law.

## **21 Notice Periods**

Any notice periods specified in this handbook may be amended by agreement in writing between the Exchange and the Warehouse, unless such notice periods have been set by the Warehouse Disciplinary Committee or the Warehouse Appeal Committee.