

To: All members and other interested parties

Ref: 21/099

Classification: Consultation General

Date: 19 May 2021

Subject: **DECISION NOTICE – CONSULTATION ON AUTOMATIC PENALTY CHARGES FOR COMMODITY POSITION REPORT AND WARRANT MANAGEMENT FAILURES**

Executive Summary

1. Following the consultation set out in Notice 21/049 dated 17 March 2021 (the “**Consultation Notice**”), this Notice announces that on 2 June 2021 the LME shall be implementing automatic penalty charges for position reporting failures.

Defined Terms

2. Capitalised terms not otherwise defined herein shall have the same meanings ascribed to them in the LME Rulebook (the “**Rulebook**”).

Background

3. The Consultation Notice sought feedback on a proposal to introduce automatic penalty charges for a Member’s failure to provide the LME with timely and accurate Commodity Position Reports (the “**CPR Obligations**”) and a Member’s failure to manage their Warrant holdings in LMEsword in a timely and accurate manner (the “**WM Obligations**”), as is required by the LME’s Policy Relating to Position Management Arrangements, issued by way of Notice 21/042 (the “**Proposal**”). The LME considers that the Proposal will ensure that reporting failures in respect of the CPR Obligations and WM Obligations are dealt with in a fair, resource-efficient and timely manner.

Consultation Feedback

4. The LME has collated and carefully considered all of the feedback that it has received in relation to the Consultation Notice and the Proposal. The LME would like to thank all Members and other interested parties for their feedback. For further information, please refer to Appendix 1 of this Notice which details the feedback received and sets out the LME’s response to the feedback. For the avoidance of doubt, the fact that any particular issue raised in any particular feedback response is not expressly included in Appendix 1 does not indicate that the LME has not considered it.
5. Overall, respondents were broadly supportive of the Proposal. Some comments and questions were received regarding: (i) the circumstances that the LME considers to constitute a reporting error; (ii) the CPR Obligations; and (iii) the process for disputing an automatic penalty charge. The LME’s responses to these questions, along with its responses to other questions are set out in Appendix 1.

Summary of Findings and Implementation

6. Having reviewed and analysed the feedback received in respect of the Proposal, the LME is today announcing that it will be implementing the Proposal (along with the process that will apply in respect of the Proposal set out in Appendix 2) in full. The Proposal will take effect on 2 June 2021. The implementation of the Proposal will require the LME to issue a new Indicative Penalties Notice which will supersede and replace Notice 19/414 entitled “LME: Indicative Penalties”. The new Indicative Penalties Notice will be issued on 2 June 2021.



7. Should market participants have any questions in relation to this Notice, or requests for further clarification regarding the implementation of the Proposal as described in this Notice, please contact the LME legal team at legal@lme.com, or speak to your Relationship Manager.

Tom Hine
General Counsel, LME Group

cc: Board Directors



Appendix 1

LME Responses to Consultation Notice 21/049

	Question/Comment	LME Response
Clarification Regarding the Automatic Penalty Charge Process/Procedure		
1	Will the payment of an automatic penalty charge be taken from a Member's clearing account, or will a separate payment be taken by the LME from a Member?	<p>An automatic penalty charge will not be taken from a Member's clearing account. A separate payment will be required.</p> <p>If a Member is required to pay an automatic penalty charge, the LME will write a letter to the Member and provide the bank account details to which payment of the automatic penalty charge should be made.</p>
2	Can the LME confirm that the first incidence of an Error refers to a Member's failure to submit CPR for 5 or more days in a calendar month (i.e. the first incidence is not only for 1 day – it is for 5 or more days). Can the LME also confirm whether the second incidence would be for 10 or more Errors?	<p>As a general guide, 5 or more days of Errors (as defined in Appendix 1 to Notice 21/049 and as defined in Appendix 2 to this Notice) in a single calendar month would be considered to be a first incidence of Errors having occurred. A further 5 or more days of Errors in a separate calendar month would constitute a second incidence of Errors having occurred.</p> <p>Members should note that the LME may open an investigation and take disciplinary action in respect of egregious or repeated occurrences of Errors.</p>
3	While Members will know if CPR files/Warrants have been allocated late, when would the LME inform Members of the same inaccuracies?	When a Member becomes aware that there are late allocations or other CPR discrepancies, it is the responsibility of the Member to inform the LME as soon as possible and immediately correct its CPR submissions. Members are advised to perform data reconciliations in order to ensure that CPR data is complete and accurate at the time of submission to the LME.
4	Will Members have an opportunity to comment on the wording of an automatic penalty charge Notice before it is published?	As with the process that applies for automatic penalty charges for rent unpaid Warrants (see Notice 20/258 dated 19 November 2020), the LME will provide Members who are subject to payment of an automatic penalty charge in respect of



	Question/Comment	LME Response
		<p>CPR/WM reporting failures, a copy of the Notice as a courtesy prior to publication.</p> <p>The LME will not be inviting comment from Members on the automatic penalty charge Notices because such Notices will not be published as a result of the LME having commenced an investigation and taken disciplinary action (pursuant to Regulations 13 and 14 of Part 2 of the Rulebook) in respect of the occurrence of Errors.</p>
5	<p>The rolling 24 month period is a significant change in approach compared to the period that applied in respect of daily position report submission (“DPRS”) errors. Will the LME consider amending the 24 month period for CPR/WM reporting failures?</p>	<p>The LME has applied the same 24 month rolling period for CPR/WM reporting failures as it applied in respect of DPRS reporting failures. Please see paragraph 22(iii) of Notice 19/414 entitled “LME: Indicative Penalties” dated 20 December 2019.</p>
6	<p>Will the proposed penalty apply retrospectively from the date that DPRS was decommissioned or a specific date following the end of the consultation?</p>	<p>The automatic penalty charge regime in respect of CPR/WM reporting failures will take effect on 2 June 2021.</p>
7	<p>What is the timeframe for the Enforcement Committee making a decision in respect of a Member disputing an automatic penalty charge?</p>	<p>The LME is unable to provide a timeframe. This is because the Enforcement Committee will consider each appeal on its merits and the time taken to consider each appeal by the Enforcement Committee will vary from case to case depending on factors such as the extent to which a Member has submitted evidence in support of its appeal.</p> <p>Nevertheless, the LME will inform Members of decisions reached by the Enforcement Committee as soon as possible and without undue delay.</p>
8	<p>The fine amounts are not reasonable, proportionate or set at the appropriate level to drive improved behaviour.</p>	<p>In setting the automatic penalty charge amounts, the LME has considered the fine amounts and thresholds that it set for DPRS reporting failures and the impact that those had on encouraging Members to submit DPRS files in a timely and accurate manner. The LME observed that the fine amounts and thresholds had a positive impact on driving improved behaviour with regards to the accurate and timely reporting of DPRS files. As such, the LME considers it</p>



	Question/Comment	LME Response
		<p>reasonable and proportionate to set automatic penalty charges at the same amounts and thresholds for CPR/WM reporting failures as it did in respect of DPRS reporting failures.</p> <p>The LME believes that the automatic penalty charges for CPR/WM reporting failures will encourage improved behaviour and contribute to the orderly operation of the market, whilst also simplifying administrative burden for both the LME and Members. However, the LME will keep the automatic penalty charge amounts under review and, subject to appropriate consultation, may amend the amounts in future where appropriate.</p>
9	<p>The process for appealing an automatic penalty charge appears to be weighted against a Member and in favour of the LME.</p>	<p>The LME believes that the process for appealing an automatic penalty charge is fair and adequate.</p> <p>Members who wish to dispute an automatic penalty charge may do so by submitting an appeal in writing within 30 calendar days of receiving a letter from the LME informing the Member of the LME's intention to impose an automatic penalty charge. If a Member wishes to provide evidence in support of its appeal, the Member's appeal (including all evidence submitted in support thereof) will be submitted by the LME as part of a report, which it will send to the Enforcement Committee. The Enforcement Committee will consider the report and reach its own conclusion, independent of the LME's view, as to whether the LME's decision to impose an automatic penalty charge should be overturned.</p>
<p>Guidance for Disputing an Automatic Penalty Charge</p>		
10	<p>Can the LME provide further guidance on what it considers to be valid reasons to dispute an automatic penalty charge?</p>	<p>Whilst the LME cannot be prescriptive on the circumstances in which a member may have a valid reason for disputing an automatic penalty charge, such circumstances may include errors of fact, or where LME systems were the cause of the erroneous or late reporting.</p>



	Question/Comment	LME Response
11	Can the LME provide further guidance on the situations/circumstances that it considers would constitute an Error?	<p>The LME is unable to provide an exhaustive list of the situations/circumstances that it considers would constitute an Error.</p> <p>However, examples of Errors include, but are not limited to, instances where CPR/WM reports have been reported by a Member in an untimely and/or inaccurate manner, for example whether as a result of internal systems issues, third party systems issues or staff shortages or some other reason.</p>
12	In considering whether to impose an automatic penalty charge, the LME should consider whether third party vendor issues or LME system issues which are outside the control of Members contributed to the occurrence of Errors.	<p>In considering whether to impose an automatic penalty charge, the LME will seek to obtain and consider all information that contributed to the CPR/WM reporting failure(s). This will include an assessment as to whether LME systems issues were the cause of the reporting error. If this were the case, no automatic penalty charge would be imposed.</p> <p>However, Members are responsible for the actions of third parties engaged to provide services on their behalf, such as IT software vendors. Therefore, automatic penalty charges will be imposed for inaccurate or late reporting where the submission of such reports are due to the act or omission of a third party such as a software vendor.</p>
13	Would a technology outage or a third party vendor issue be valid reasons for disputing an automatic penalty charge?	<p>Technology outage issues will not be a valid reason for disputing an automatic penalty charge. For issues that relate to third party vendors, please see above.</p>
CPR Reporting Obligations		
14	The CPR Obligations state that CPR files need to be submitted to the LME by 8am each day. Given that UK business hours are generally 9am to 5pm will the LME consider delaying the CPR reporting deadline to 10am in order to provide more flexibility and allow Members to correct Errors in time?	<p>The deadline for the submission of CPR files to the LME is 8.30am rather than 8am.</p> <p>As advised in previous LME Notices (see Notice 20/038 dated 19 February 2020 and Notice 21/036 dated 26 February 2021), CPR data is now used by the LME for the calculation of member obligations under the Lending Rules. The LME must issue the Lending Rules obligations at exactly 9am each trading day. The LME must therefore</p>



	Question/Comment	LME Response
		receive CPR files no later than 8.30am. It should be noted that this 8.30am deadline is unchanged from the previous deadline for the submission of position files to the now decommissioned DPRS.
Implementation Period – Automatic Penalty Charge Regime		
15	The process of using CPR data for position management calculations and for determining the Lending Rules is new. The LME should afford market participants the opportunity to work with itself for a six month period to remediate any potential issues and implement further controls before the LME implements the automatic penalty charge regime.	<p>The LME first advised Members of the proposal to amend position reporting arrangements for CPR and the submission deadline to 8.30am in Notice 20/038 dated 19 February 2020. The LME and Members also engaged in an extended period of parallel run which ended on 12 March 2021.</p> <p>The LME considers that Members have been given sufficient time prior to the implementation of the automatic penalty charge regime to make any changes to their systems and controls that were required in order to ensure compliance with the CPR and WM Obligations.</p>



Appendix 2

Automatic Penalty Charges for Breaches of Commodity Position Report Obligations and Warrant Management Obligations

Automatic Penalty Charge

1. Any Member who fails to submit Commodity Position Report (“CPR”) files and/or manage Warrant holdings in LMEsword in a timely and accurate manner, in accordance with paragraphs 26 and 27 of the LME’s Policy Relating to Position Management Arrangements (the “Policy”)¹ on 5 or more days in a calendar month (the “Errors”) will be subject to an automatic penalty charge as set out below:
 - £1,000 for a first incidence;
 - £2,000 for a second incidence; and
 - £5,000 for each incidence thereafter within a 24 month rolling period (starting from the first incidence).
2. The LME Market Surveillance department shall write a letter to each Member who submitted Errors and set out: (i) the number of Errors that occurred; and (ii) the date and time on which the Errors occurred. The letter will also set out the automatic penalty charge that is payable by a Member, giving the Member thirty (30) calendar days to pay the automatic penalty charge. The Member shall pay such charge, unless such charge is disputed, (in which case the process set out at paragraph 3 below for disputing an automatic penalty charge shall be followed). Where an automatic penalty charge has been paid, the LME shall issue a Notice to the market setting out the name of the Member and amount of the automatic penalty charge.
3. Any Member that wishes to dispute the imposition of an automatic penalty charge may do so by giving notice to the LME in writing within thirty (30) calendar days of receiving the letter from the LME. A Member may only dispute a penalty charge where it has a valid reason to do so, for example that the penalty charge was imposed in error (see also paragraph 5 below). The notice from the Member should set out the reasons for disputing the automatic penalty charge and any evidence in support thereof. The following process shall then apply:
 - a. the LME shall prepare a report to the Enforcement Committee (which would take account of, and include, any representations made by the Member and any evidence in support thereof);
 - b. the Enforcement Committee shall consider the report and whether the automatic penalty charge should be upheld; and
 - c. the LME, on behalf of the Enforcement Committee, shall inform the Member of the Enforcement Committee’s decision in writing. If the Enforcement Committee determines that the automatic penalty charge should be overturned, then the Member shall not be required to pay the automatic penalty charge. If the Enforcement Committee determines that the automatic penalty charge should be upheld, then the Member shall pay the automatic penalty charge within thirty (30) calendar days of being informed of the Enforcement Committee’s determination. Once the Member pays the automatic penalty charge, the LME shall publish a notice to the market setting out the name of the Member and amount of the automatic penalty charge.
4. Failure by a Member to pay either: (i) an undisputed automatic penalty charge within thirty (30) calendar days of receiving a letter detailing the imposition of automatic penalty charges in accordance with paragraph 2 above; or (ii) a disputed penalty charge upheld by the Enforcement Committee within thirty (30) calendar days of receiving a letter from the LME confirming the Enforcement Committee’s decision

¹ The Policy was issued by way of Notice 21/042 dated 12 March 2021.



in accordance with paragraph 3(c) above, shall constitute an act of misconduct pursuant to Part 2 of the LME Rulebook and may result in the institution of disciplinary proceedings against the Member concerned.

5. For the avoidance of doubt, the automatic penalty charge process was introduced in order to assist the LME in ensuring that Errors are dealt with in a fair, resource-efficient and timely manner. The imposition of a penalty charge occurs automatically as a result of a Member committing the Errors as described in paragraph 1, irrespective of why the Errors occurred. It is the responsibility of Members to ensure that they are able to submit CPR files and manage Warrant holdings in LMEsword in accordance with paragraphs 8 to 25 of the Policy. Requests for leniency (citing, for example, unforeseen events, systems issues, staff shortages etc) shall not constitute a valid reason for disputing the imposition of an automatic penalty charge. The LME reserves its rights to open an investigation in respect of egregious or repeated occurrences of Errors.

Peter Mason
Head of Market Surveillance