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EUROPEAN
COMMODITY
CLEARING AG
APPEAL, COMPLAINT,
DISCIPLINARY (ACD)
PROCEDURES

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1. Document history

1.1 Change History

Version	Date	Reason for change	Changed section	Author
V1.0	20.08.2012	Initial Version		Markus Konz
V2.0	17.05.2016	General Update		Ute Schlottmann
V3.0	13.06.2016	Update for CAP2	2.1 and 2.2	Anja Greenwood

2. Appeal and Complaint Procedures

2.1 Introduction

Appeal and Complaint Procedures describe how a Member (Clearing Member, Bidders and Auctioneers participating in EU Primary Auctions according to section 6.1.1 and 6.1.2 of the Clearing Conditions) may:

- appeal against a decision made by European Commodity Clearing AG (“ECC”),
- make a complaint about the conduct or behavior or other actions of a another Clearing Member with regard to that Clearing Member’s clearing activities with ECC AG; or
- make a complaint arising in connection with the performance of, or failure to perform any of ECC’s regulatory functions;
- make a formal complaint, and how that complaint is investigated and resolved.

Any issue disagreement or other legal or operational question which concerns the relationship between a Bidder in its capacity as a Non-Clearing Member and its Clearing Member cannot be made subject to an appeal or complaint raised towards ECC.

2.2 Appeal/Complaint Reasons

A Member may appeal against any of the following decisions made by ECC:

- to rescind that Member’s eligibility to have contracts of a certain category cleared,
- to suspend or terminate that Member’s Membership Agreement unless such a decision occurs in connection with ECC’s default rules and procedures.

An entity which is not yet a Member may appeal against the decision made by ECC declining to grant the status of a Member to that entity.

A Member may raise a complaint referring to the

- conduct, behavior or other actions of another Clearing Member in respect of its clearing activities,
- performance of, or failure to perform, any of ECCs regulatory functions; or
- behaviour or actions of an officer or employee or other staff member of ECC.

A Member may not appeal or file a complaint:

- in relation to the KYC-procedure as performed during the admission process or during the course of the membership of Member; or
- in relation to any measures of ECC for the implementation of EU, UN or other sanctions as stipulated under section 2.5.2 in conjunction with section 2.5.3 of the Clearing Conditions.

2.3 Initiating an Appeal or a Complaint

A complaint or appeal to the Management Board under this section 2 must be made in writing, dated and addressed to the Chief Risk Officer of ECC AG Augustusplatz 9, 04109 Leipzig, Germany.

An appeal or complaint will not have a dilatory effect on the underlying case.

The form set out in appendix 1 should be used for an appeal/complaint. The form must be fully completed in all material respects by the person lodging the appeal/complaint. The sender must enclose a payment of EUR 500 which shall be reimbursed if the appeal/complaint is subsequently upheld by the Management Board.

An appeal may only be commenced under these Procedures within 28 days after the date upon which the decision to which it relates was notified to the Appellant.

A complaint must be made no later than three (3) months after the conduct, behavior or other actions complained of, or, if the conduct, behavior or other actions complained of consist of a series of events no later than three (3) months after the end of the last such event.

ECC's Chief Risk Officer may waive the time limit and payment if the Appellant/complainant provides a satisfactory explanation and no prejudice would be caused to any other person by proceeding with the appeal in the circumstances.

The Chief Risk Officer will acknowledge receipt of the appeal/complaint usually no later than 14 days after receipt. The Chief Risk Officer may request further information or clarification relating to the subject matter or grounds of the appeal.

2.4 Referring the Appeal/Complaint to the Management Board

Usually no later than one month from receipt of any form the Chief Risk Officer shall:

- refer the appeal/complaint to the Management Board of ECC and
- notify the Appellant in writing thereof.

The Management Board shall define its own procedure for considering and determining the appeal which normally takes place without an oral hearing.

The Management Board may request further or other documentation and information.

In order to deal with a complaint/appeal the Management Board may conduct an investigation into the subject matter of the complaint/appeal, following an investigation procedure decided upon on a case by case basis.

The Management Board may make such recommendations as it deems fit for resolving the subject matter of the complaint/appeal. An internal investigation may take up to 12 weeks. A prolongation of such period may be required due to the nature or complexity of the matter. In such case the Chief Risk Officer shall notify the Complainant in writing and provide a further date for the completion of the investigation.

The Chief Risk Officer will prepare a report documenting the decisions of the Management Board on the complaint/appeal or on the results of the internal investigation. The report shall give reasons on the decision of the Management Board. The report is usually submitted to the complainant/Appellant within one (1) week of the Management Board's decision.

In ECC's written report it may:

- dismiss the complaint/appeal,
- uphold the complaint/appeal in its totality,
- uphold part of the complaint/appeal and dismiss part of the complaint/appeal,
- make such recommendations as it deems fit in the circumstances including a recommendation that ECC make a compensatory payment and/or takes such action as may be reasonably practicable to remedy the cause.

The costs of the internal investigation and review shall be borne by ECC.

2.5 Requests for Review

A Member who is aggrieved by any action taken by the Management Board or decision of the Management Board, and has lodged an unsuccessful appeal or complaint, may, no later than 14 days after the date of the decision or action, request a review of such action or decision by the Risk Committee of ECC.

A request for review shall be made in writing, addressed to the Chief Risk Officer of ECC at the registered office and shall set out details of the relevant decision or action, the reasons why the Member is aggrieved and details of such reasonable remedial or other action or monetary payment as that Member requests to be carried out in the circumstances. The CRO will forward such request to the ECC Risk Committee.

The Risk Committee shall consider the Member's request for review and such further or other documents and information as it considers reasonably relevant and shall notify the Member in writing of the outcome of its review. The notification should not take longer than 4 months from the date of such request for review.

2.6 Market Disorders and Default

For the avoidance of doubt, ECC shall be under no obligation to consider any complaint, and no appeal or request for review may be lodged under this section or otherwise, in respect of any decision or action taken by ECC under the provisions or in respect of any decision, action or other matter arising out of or connected to the operation of the default rules and default procedures and ECC's power thereunder.

2.7 Appendix 1

APPEAL/COMPLAINT/REQUEST FOR REVIEW FORM

Hereby I request a formal (please mark accordingly)

- Appeal
- Complaint
- Request

Lodged under the ACD Procedures as published by ECC and updated from time to time.

- Full Name of firm/company etc. lodging the appeal ("the Appellant"):
- Registered office address:
- Contact address and telephone number and email (if different from the above):
- Contact name:
- Position:
- Description of decision appealed against:
- Name(s) of person(s) involved
- Outcome sought
- Decision date communicated to Appellant/complainant:

Please provide the grounds for appeal with details of the conduct, behaviour or other actions. (If there is not enough space, please use additional sheets and staple to this form).

What action or remedy are you seeking?

- Pursuant to the ACD Procedures, we request that this appeal/complaint be referred to the Management Board.
- Pursuant to Section 2.5 we request that our Request for Review will be referred to the Risk Committee.

Signed for and on behalf of the Appellant/complainant
(Print name)

Notes:

Please enclose a cheque payable to ECC AG drawn on a bank branch resident in Germany, in the sum of EUR 500. If your appeal is successful, this sum will be refunded to you.

If there are any written representations, any documentation or further material which you would like the Management Board to consider when determining your appeal/complaint, you may send it with this form. Alternatively you may send it later. However, please note that the procedures place a time limit on the submission of such material. See Section 2.4 of these Procedures.

For any enquiries or further information please contact the Chief Risk Officer, ECC AG on +49 341 24680 444.

3. Disciplinary Procedure

3.1 Scope of Disciplinary Procedures

All Clearing Members are subject to disciplinary proceedings pursuant to section 3 (“Disciplinary Procedures”).

Any alleged breach by a Clearing Member of an obligation set out in the Clearing Conditions (the “Alleged Breach”) may be dealt with in accordance with the provisions of these disciplinary procedures.

These disciplinary procedures are related to:

- general obligations of Clearing Members related to clearing processes, especially in relation to information rights, audits or examinations,
- any other action and/or measures that may be taken by ECC based on the Clearing Conditions,
- any provision of applicable law concerning enforcement by the regulatory body.

The ECC shall be under no obligation to consider the disciplinary procedure in respect of any decision or action taken by ECC under the provisions or in respect of any decision, action or other matter arising out of or connected to the operation of the default rules and default procedures including any significant risk reasons avoiding damages to ECC.

Furthermore, where the Alleged Breach comprises a breach of:

- any of a Clearing Member's obligations set out in the Clearing Conditions when such breach constitutes a threat to the integrity or safety of ECC or increases the risk exposure of ECC or other Clearing Members,
- a Clearing Member's obligation to satisfy the relevant Membership criteria,
- a Clearing Member's obligation to provide information and reporting to ECC,
- a Clearing Member's obligations to submit its clearing activity to audits and inspections,
- a Clearing Member's obligations to satisfy its record keeping requirements,
- a Clearing Member's obligation to furnish ECC with margin by the required time.

The Chief Risk Officer shall be entitled at his sole discretion to:

- (a) issue a letter to the relevant Clearing Member, reminding such Member of their obligations under the Clearing Conditions or
- (b) impose penalties on the Clearing Member, without being required to follow the procedure set out in this paragraph.

In such circumstances ECC must notify the Clearing Member of its decision and the sanction that is to be imposed by way of a decision notice.

3.2 Investigation Procedure

- (1) The investigation of an Alleged Breach pursuant to these disciplinary proceedings shall be handled in accordance with this paragraph.
- (2) To open investigation procedures ECC will:
 - a) send a written notice to the Clearing Member, setting out details of the alleged breach, including a summary of the facts relied on in sufficient detail for a reasonable person in the Clearing Member's position to properly understand and respond to the allegations made against it.
 - b) identify a suitably senior representative of ECC (usually the Chief Risk Officer) that shall lead the investigation procedure on behalf of ECC and shall inform the Clearing Member who this representative will be in the written notice which is sent in accordance with this paragraph.
- (3) Following receipt of the written notice, the Clearing Member shall be permitted to raise objections in writing following the complaint procedure.
- (4) The Clearing Member shall be required to provide any information, copies or records and documents that may be reasonably requested, in connection with the examination of the Alleged Breach, to the Clearing House, save that the Clearing Member shall not be compelled to disclose any information which it is prohibited from disclosing by virtue of applicable law or regulation, as a result of agreements signed with third parties or as a result of legal professional privilege (in which case the Clearing Member shall provide ECC with proof of such prohibition).
- (5) The Clearing Member is permitted to request that ECC provides to it copies of the documentation it relies on during the investigation, provided that ECC shall not be required to reveal any information which it deems to be confidential;
 - a) the ECC may send a representative (being either the representative identified as leading the investigation procedure on behalf of ECC or another representative) to the Clearing Member's offices at any time during normal business hours, having provided reasonable notice (being proportionate to the seriousness of the Alleged Breach) to the Clearing Member as part of the investigation procedure. The Clearing Member shall only be entitled to refuse access to such representative in the event of a substantiated conflict of interest. The Clearing Member shall make available all information, records, and documents kept by the Clearing Member, that may be reasonably required for the examination of the Alleged Breach, to ECC's representative; and
 - b) the Clearing Member shall exercise best endeavours to procure the attendance of any of its directors, officers, employees, agents and representatives, as may be reasonably requested, at a specified time at reasonable notice (at either the offices of ECC or those of the Clearing Member) in order to answer questions or provide explanations that may be relevant for the examination of the Alleged Breach.

3.3 Report

Following the conclusion of the investigation procedure, ECC shall:

- notify the Clearing Member of the conclusion of the investigation procedure; and
- produce a written report.

The report in relation to the Alleged Breach shall be provided to the Clearing Member usually not more than 14 days as from the notification by ECC of the conclusion of the investigation procedure.

The report shall contain the findings of the investigation, reference the provision of the Clearing Conditions allegedly breached by the relevant Clearing Member and indicate ECC's intended course of action in relation to the Alleged Breach, being either:

- a) to proceed with disciplinary proceedings, in accordance with these disciplinary procedures if ECC believes there to be prima facie evidence of the Alleged Breach having been committed;
- b) to take no further action.

3.4 Disciplinary Process Formation

If ECC determines that it wishes to proceed with disciplinary proceedings in accordance with paragraph 3.3 above, it will start the disciplinary process. The disciplinary process is run by the Management Board of ECC.

3.5 Clearing Member Response

The Clearing Member shall respond to the Management Board, within 14 days of receiving a report which indicates that ECC intends to proceed with disciplinary proceedings, providing a statement of defense responding to the allegations.

If no response has been received by the Management Board within 14 days or such extended period as has been agreed between the Clearing Member and the Management Board, ECC shall be relieved of its obligations to follow the remaining steps of the investigation procedure and the Management Board may instead make a determination in respect of the Alleged Breach.

3.6 Exploratory Meetings

Once the Clearing Member has responded to the report, either the Clearing Member or the Chief Risk Officer can, within 7 days, request a meeting with the other party to ask further questions and discuss the Alleged Breach.

Unless otherwise agreed between the Clearing Member and the Chief Risk Officer, the meeting will be held at ECC's offices in Leipzig. If appropriate, the meeting may take place at another location if agreed by the Chief Risk Officer.

The Chief Risk Officer and the relevant Clearing Member are each entitled to bring to the meeting any person relevant to the disciplinary proceedings which includes but is not limited to the following:

- relevant experts;
- legal advisors;
- auditors, and
- accounting advisors.

ECC and/or the Clearing Member shall only be entitled to object to the attendance by any of the above if there is a substantiated conflict of interest.

The Chief Risk Officer shall, in addition, invite the representative of ECC that led the investigation procedure to attend the meeting.

The Chief Risk Officer shall, subject to the provisions of these disciplinary proceedings, decide upon its own procedure for conducting the meeting and considering and determining the matters to be discussed in the course of the meeting, on the basis of the report, the Clearing Members response to the report, and such other information and documentation as the Chief Risk Officer considers appropriate. A secretary will be appointed to keep minutes of the meeting.

The Chief Risk Officer may reasonably request further or other documentation and information from the Clearing Member, save that the Clearing Member shall not be compelled to disclose any information which it is prohibited from disclosing by virtue of applicable law or regulation, as a result of agreements signed with third parties or as a result of legal professional privilege (in which case the Clearing Member shall provide ECC with proof of such prohibition).

The matters discussed at the meeting are confidential. The Chief Risk Officer and the Clearing Member must ensure that any persons attending the meeting are subject to a confidentiality agreement.

To ensure the efficiency of the meeting, neither the Chief Risk Officer nor the Clearing Member shall bring more than six representatives, unless otherwise agreed.

3.7 Determination

Having considered the Report, the Clearing Member's response to the report, any other information and documentation provided to the Management Board and having conducted the meeting, the Management Board must determine whether, in its view, the Alleged Breach has been committed.

The Management Board shall decide whether or not to sanction the Clearing Member in accordance with the provisions of the Clearing Conditions.

3.8 Decision Note

Usually within 14 days after determination ECC should notify the Clearing Member of its decision by registered mail to the address notified to ECC in its admission application (the "Decision Notice").

A Decision Notice shall include details of the grounds on which ECC has come to its decision and the sanction(s), if any, to be imposed on the Clearing Member pursuant to this procedure or otherwise in accordance with the provisions of the Clearing Conditions.

3.9 Action

ECC's Management Board may at any time choose to:

- a) Discontinue the disciplinary proceedings;
- b) Determine that, in light of the relevant facts and circumstances, no sanction should be imposed upon the relevant Clearing Member or otherwise in accordance with the provisions of the Clearing Conditions;
- c) Amend the scope of matters being considered by the Management Board by amending the Report, add, delete or alter any detail of the Alleged Breach or to add detail of an additional Alleged Breach. If the Report is amended in this way the provisions of this section 3 will apply in respect of the amended Report to avoid any doubt. Unless otherwise agreed between the Clearing Member and the Management Board, any timing specified in this section 3 will restart.

3.10 Sanctions

ECC shall be entitled to impose any of the following sanctions against a Clearing Member provided that any such sanction is proportionate and commensurate with the seriousness of the Alleged Breach:

- a) Damages in the amount and as far as covered by the Clearing Conditions,
- b) Suspension for a fixed period, as determined by ECC AG in its sole discretion from anyone or all of the clearing services offered by ECC,
- c) Position or trading limits,
- d) Restriction of all trading activity allowing only risk reducing transactions,
- e) Audit or inspection at the Clearing Members offices,
- f) Private warning to the senior management of the Clearing Member,
- g) Restriction of the products and/or markets the Clearing Member is allowed to trade,
- h) Termination or suspension of Clearing Membership Agreement,
- i) Any combination of the above.

3.11 Disputing a Decision

Where a Clearing Member wishes to dispute ECC's decision to impose sanctions a Clearing Member may file an appeal.

3.12 Reporting and Publication

ECC shall have the right to:

- a) report on its monitoring procedures in respect of the Clearing Conditions, compliance and breaches of the Clearing Conditions to its regulatory body pursuant to applicable law and/or on the basis of any arrangements between ECC and any regulatory body,
- b) immediately notify the regulatory body of a decision to suspend or terminate a Clearing Member's membership rights or declare a Clearing Member to be subject to an event of default (in each case in accordance with the Rulebook),

- c) prepare and publish a general report on the application of these disciplinary proceedings, from time to time but at least once a year, provided however that only the details of those Clearing Members who have defaulted or whose membership rights have been suspended or terminated by ECC shall be disclosed.

3.13 Infringement of Applicable Law

If ECC finds, in the course of the investigation procedure, or otherwise, serious indications of a possible infringement of applicable law, it shall report the matter to the relevant regulatory body.

3.14 Clearing Member's Right to Terminate Clearing Membership

At any time the Clearing Member may terminate its membership which will end the process at this time. The right to demand compensation for damages and the obligation to perform Clearing Member's duties according to the Clearing Conditions will remain unaffected.