

## CIRCULAR NO: 92/24

6 March 1992

To All Members and Associate Members and “D” Share Applicants

### **CLIENT AGREEMENTS**

1. Introduction
  - 1.1 The Exchange has requirements, relating to the transaction of business on LIFFE, for inclusion in members' clients documentation. With the exception of a requirement notified to members in 1989 (General Notice No. 269) regarding an exclusion of liability on the part of the Exchange, the Exchange's requirements have remained substantially unchanged since 1984.
  - 1.2 However, the changed legal and regulatory environment, including the revised rules recently promulgated by SFA and the planned merger with LTOM, has necessitated a review of the requirements.
  - 1.3 Whilst some clauses are no longer necessary, there are several clauses which the Board has concluded members should continue to include in client documentation for the mutual benefit of members and their clients, and for the Exchange to be confident that it continues to satisfy the obligations placed upon it as a recognised investment exchange under the Financial Services Act 1986.
2. The Revised Requirements
  - 2.1 The Exchange's revised requirements are set out in General Notice No. 399 dated 6th March 1992, a copy of which is attached to this Circular. Members and “D” Share applicants may wish to note the following points in connection with the revised requirements. The timetable for notifying clients is set out in paragraphs 3.1 and 4.1 below.
  - 2.2 Changes to the client consent requirement

The Board has concluded that the policy of requiring all clients to agree in writing to the Exchange-prescribed requirements should be amended.

The Exchange's new requirements for client consent may be summarised as being the same as those of SFA. Where written consent is required from a client in respect of matters contained in SFA's conduct of business rules, then written consent is required from that client in respect of the Exchange's requirements. Where written consent is not required under SFA's conduct of

business rules, it is not required by the Exchange in relation to the Exchange's requirements.

The Exchange's new requirements provide considerable advantages for members and their compliance officers in that they avoid the creation of two differing sets of client consent requirements. Notwithstanding this, members may decide to obtain written consent from clients in respect of whom SFA's requirements and those of the Exchange do not require written agreement. The Exchange's new requirements do not, of course, prevent a member from obtaining written consent from such clients.

If a client objects to an Exchange-prescribed provision, the member should seek to have the objection withdrawn without compromising the provision. If the client will not withdraw the objection the member should not represent to the client that the member is transacting business in LIFFE contracts between himself and the client. There is no constraint in LIFFE's Rules on the member transacting business with such a client and using the LIFFE market to hedge that client business. The member should, however, appreciate that the contract(s) made by him with the client may not be regarded by the Exchange as being contracts in the terms of Exchange Contracts. If SFA conduct of business rules are applicable to the business being done with such a client, the member should note the Exchange's view that the contract(s) between member and client might constitute off-exchange transactions in assessing the impact of SFA rules on the client relationship.

### 2.3 Discretion in drafting of clauses to meet the Exchange's requirements

General Notice No. 399 sets out the Exchange's requirements to notify clients of particular matters. Examples of clauses which will achieve the purpose of each requirement are provided, in most cases, in the General Notice. However, members may draft the appropriate clauses in different form if they wish, for example to cover a wider range of business, but they must ensure that, in using a different form, they are achieving the same purpose and legal effect as that of the Exchange's specimen clause.

In some cases no specimen clause is given. For example, no wording is given in respect of the margin liability clause; whilst it is important that margin arrangements are properly documented between members and their clients, including in particular the rights of the member to take appropriate action when the client fails to meet a margin call, there are a number of alternative ways in which such a provision can be worded taking into account various considerations which may differ from member to member and from client to client.

### 2.4 Agency brokers and unidentified principals

The Board has concluded that a member who deals with an agency broker who does not identify his client-principals to the LIFFE member will not be in breach of the requirement to notify “all” clients. However, the member must serve notice of the prescribed provisions on the agency broker, notwithstanding the fact that the agency broker is not the client-principal. This is provided for in the General Notice. The rationale for this approach is exemplified by a particular feature of the merger with LTOM. Stock Exchange member firms have traditionally acted as agents in broking their client business on the Stock Exchange. A Stock Exchange member who does not join LIFFE and continues to transact client business in equity and index options and other LIFFE contracts may choose to act as an agent or as a principal. If such a broker acts as a principal, the LIFFE member whose client the broker becomes can comply with the client documentation requirements by serving notice of them on the broker. Where the broker acts as an agent for a customer whose identity he does not disclose to the LIFFE member, the LIFFE member is nonetheless required to serve the broker with notice of the requirements and should take due account of the considerations set out in 2.5 below.

## 2.5 Considerations for members who deal with agency brokers and unidentified principals

Whilst there is no obligation to serve notice of the Exchange's prescribed provisions on an unidentified client of an agency broker, a member who is transacting business with such a client ought to consider obtaining agreement from the agency broker to the effect that the agency broker will make the Exchange's provisions known to the unidentified client. In particular, the member might agree with the agency broker the form of the agency broker's client agreement (insofar as it is applicable to LIFFE business) in order to ensure that the Exchange's provisions are notified to the client. The member would then have the comfort of knowing that the form of agreement being used by the agency broker is consistent with the terms of business that the member has advised to the agency broker.

A further consideration for a member transacting business of this kind is whether it is appropriate to require the agency broker to give an indemnity, or assume the liability of a principal, in respect of any default by an unidentified client. In this context, members may wish to note that in respect of Stock Exchange business, Stock Exchange member firms who are agency brokers are required to accept the liability of a principal, in the event that the member firm's client defaults on a bargain.

## 2.6 Requirements with which the Exchange is dispensing

The revised requirements do not contain the previous provisions concerning:

- (i) a risk disclosure statement in a form prescribed by the Exchange;

- (ii) a statement regarding contemplation of actual performance of a contract;
  - (iii) disclosure of information to LIFFE officials; and
  - (iv) variation of terms only by written consent of both the member and the client.
- 3. Deadline for Notifying the Revised Requirements and Client Consent
  - 3.1 The revised requirements are effective immediately. They should be notified to all clients before 1st April 1992 (although new members are advised to note paragraph 4.1 below).
  - 3.2 Written client consent to the Exchange's prescribed provisions is required only from clients who are required under SFA's conduct of business rules (which are generally effective from 1st April 1992) to give written consent.
  - 3.3 In respect of clients who are required go give written consent in relation to the Exchange's prescribed provisions, such consent must be received by the member no later than 31st May 1992, provided that, in respect of those who are new clients after 31st March 1992, in view of SFA's requirements, such consent must have been given before any transactions in Exchange Contracts are undertaken.
- 4. "D" Share Applications: New Members of the Market
  - 4.1 Those "D" Share applicants who transact client business and who will become members of LIFFE when the merger takes place are advised to notify their clients of the Exchange's prescribed provisions in advance of the transfer of positions, expected to take place on 22nd March 1992, into the clearing arrangements for the merged market. As indicated in Stock Exchange Notice N9/92, this would enable a single communication with clients in respect of LIFFE's client notification requirements.
  - 4.2 Those "D" Share applicants for whom the Exchange's client documentation requirements may be unfamiliar are asked to note that copies of client agreements are not required to be filed with the Exchange. This will, of course, represent a change in practice for such applicants from the arrangements on LTOM regarding the client letter of authority.
- 5. Members should address any enquiries in relation to this Circular to Julie Elbourne, Deputy Market Secretary, at LIFFE.

N Carew Hunt  
Market Secretary