

## **LONDON NOTICE No. 3238**

ISSUE DATE: 31 December 2009  
EFFECTIVE DATE: 1 January 2010

### **DESIGNATION OF LIFFE AS A “QUALIFIED BOARD OR EXCHANGE” FOR THE PURPOSES OF SECTION 1256 OF THE UNITED STATES (“US”) INTERNAL REVENUE CODE**

#### **Executive Summary**

This Notice informs Members that the US Internal Revenue Service (“IRS”) has designated LIFFE Administration and Management (“the Exchange”) as a “qualified board or exchange” for the purposes of Section 1256 of the US Internal Revenue Code of 1986, as amended. The designation is effective for LIFFE Contracts entered into on or after 1 January 2010.

#### **1. Introduction**

- 1.1 London Notice No. 3186, issued on 6 August 2009, informed Members of amendments to the LIFFE Rules, Book II which were a pre-requisite for the Exchange to be designated as a “qualified board or exchange” for the purposes of Section 1256 of the US Internal Revenue Code of 1986, as amended (the “Code”). This Notice informs Members that pursuant to IRS’ Revenue Ruling 2010-3, the Exchange has been designated as a “qualified board or exchange” for the purposes of the Code. Under the Ruling, on and from 1 January 2010, eligible US taxpayers who transact the Exchange’s futures and options on futures may benefit from the favourable US tax treatment outlined in section 2 of this Notice.
- 1.2 This Notice informs Members that following LIFFE’s designation as a “qualified board or exchange”, and pursuant to LIFFE Rule 3.29.4, LIFFE Rule 3.29 came into force on 23 December 2009.
- 1.3 Members are advised to consult their tax advisers in relation to the consequences for them of the Exchange’s designation as a “qualified board or exchange”.

#### **2. 60/40 Tax Treatment**

- 2.1 The tax treatment provided by Section 1256 of the Code is commonly referred to as “60/40 tax treatment” and allows eligible US taxpayers to treat 60% of the profits/losses gained/incurred on certain futures, options and other contracts (“Section 1256 Contracts”) as long-term capital gains/losses, and 40% of such gains/losses as short-term capital gains/losses for US tax purposes. Long-term capital gains of qualifying US taxpayers are currently taxed at more favourable rates than short term capital gains.

Web site: [www.nyx.com/liffe](http://www.nyx.com/liffe)

The **Euronext Derivatives Market** comprise the markets for derivatives operated by Euronext Amsterdam, Euronext Brussels, Euronext Lisbon, Euronext Paris and LIFFE Administration and Management, referred to respectively as the Amsterdam, Brussels, Lisbon, Paris and London markets. Euronext is part of the NYSE Euronext group.

- 2.2 Section 1256 requires that each Section 1256 Contract held by a US taxpayer at the close of the taxable year “shall be treated as sold for its fair market value on the last business day of such taxable year (and any gain or loss shall be taken into account for the taxable year)”. This requirement to mark-to-market all Section 1256 Contracts at year end is an exception to the general rule that gains/losses are recognised at the time of the disposal of property and applies to US taxpayers irrespective of whether they are eligible for favourable tax rates on long-term capital gains.
- 2.3 LIFFE’s designation as a qualified board or exchange results for US taxpayers in a change of the method of accounting for LIFFE Contracts within the meaning of Sections 446 and 481 of the Code and the regulations thereunder. However, under the terms of the IRS’ Revenue Ruling 2010-3, US taxpayers are granted consent to change to the Section 1256 mark to market method and there is no requirement for affected US taxpayers to file a Form 3115 (Application for Change in Accounting Method). For the avoidance of doubt, LIFFE Contracts that were entered into before 1 January 2010 will not be covered by the tax treatment provided by Section 1256 of the Code.

### **3. Information collection**

- 3.1 In order to achieve Section 1256 designation, the Exchange was required to make a number of undertakings to the IRS which included making representations that the Exchange will assist the IRS in the performance of its duties in respect of Exchange business undertaken by Members. A consequence of those representations is that the Exchange is obliged to provide US Taxpayer Identification Number (“TIN”) information of certain Members to the IRS on request. The Exchange therefore requires all Members who either have, or are required to have, a TIN to have completed the form attached at Attachment 1 to this Notice and return it to the Exchange if they have not done so already.
- 3.2 As a continuing obligation, Members should notify the Exchange immediately as and when they are given a TIN or where there is any change to TIN information which has been submitted to the Exchange.

### **4. DISCLAIMER**

- 4.1 **PURSUANT TO IRS CIRCULAR 230: NOTHING CONTAINED IN THIS NOTICE CONCERNING ANY US FEDERAL TAX ISSUE IS INTENDED OR WRITTEN TO BE USED, AND IT CANNOT BE USED, BY ANYONE FOR THE PURPOSE OF AVOIDING U.S. FEDERAL TAX PENALTIES UNDER THE CODE.**
- 4.2 **THIS NOTICE IS NOT INTENDED TO BE, AND SHOULD NOT BE CONSTRUED AS, LEGAL OR TAX ADVICE. EACH MEMBER AND ANY OTHER INTERESTED PERSON SHOULD SEEK TAX ADVICE, BASED ON SUCH PERSON’S PARTICULAR CIRCUMSTANCES, FROM AN INDEPENDENT TAX ADVISOR.**

For further information in relation to this Notice, Members should contact their Account Manager or the following:

Laurence Walton	+44 (0)20 7379 2782	lwalton@nyx.com
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**Information required in connection with the designation of LIFFE Administration and Management as a “Qualified Board or Exchange” within the meaning of Section 1256 of the US Internal Revenue Code**

Member Name	
United States Tax Identification Number	
<p>I certify that the above information is provided in good faith and is, to the best of my knowledge and belief, correct:</p> <p>Signed: .....</p> <p>Print Name: .....</p> <p>Title: .....</p> <p>Date: .....</p>	
<p>Please contact Christina Dietel on +001 312 442 7031 or e-mail at CDietel@nyx.com if you have any questions relating to the completion of this form</p>	
<p><b>When completed please fax this form to +44 020 7379 2409 or e-mail a scanned version to derivativesmembership@nyx.com</b></p>	