



**Via Electronic mail**

June 13, 2013  
Ms. Melissa Jurgens  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**RE: Corrections to voting provisions in Default Fund Rules**

Dear Ms. Jurgens:

Pursuant to §40.6(a) of the Commission Regulations, LCH.Clearnet Limited ("LCH.Clearnet"), a derivatives clearing organization registered with the Commodity Futures Trading Commission (the "CFTC"), hereby submits for self-certification rule changes to correct an error in the SwapClear and ForexClear Default Fund Rules in relation to member ballots.

**Part I: Explanation and Rationale for the Amendments**

LCH.Clearnet is in the process of amending its default fund waterfall in relation to losses arising from a clearing member default in its "General Business". The General Business includes EnClear, Nodal, and LCH.Clearnet's cash equity and listed derivatives clearing businesses.

In order to implement the forthcoming amendments, LCH.Clearnet is required under the terms of the Clearing Membership Agreement to ballot its clearing members. As the changes only affect clearing members active in the General Business, it is not intended that clearing members that are only active in other services ("non General Business Clearing Members" or "non-GCBMs") should be able to vote. However, as currently drafted, the Default Fund Rules do require LCH.Clearnet to ballot non-GBCMs in some cases.

*Detail*

Under Clause 9.4 of the Clearing Membership Agreement the General Default Fund re-strike, being a major amendment, requires a ballot of "Clearing Members" which, as defined under the agreement, means all members of the Clearing House.



In the individual supplements of the Default Fund Rules for SwapClear, ForexClear and RepoClear, Rules S12, F12 and R12, respectively, introduced revised ballot wording covering eligibility to vote for members of those funds.

Taking S12 as an example: "For the purposes of a ballot conducted under clauses 9.4 and 9.5 of the Clearing Membership Agreement **other than a ballot in relation to an amendment which, in the opinion of the Board of Directors of the Clearing House falls within paragraph (c) of clause 9.5 of the Clearing Membership Agreement but not within paragraph (a)(iii) of this Rule S12, references to "Clearing Members" shall not include SCMs who are not engaged in any business with the Clearing House other than SwapClear Business** and SwapClear Contributions shall not count as "Contributions".

Assuming that the exclusion (in bold text) does not apply, SwapClear-only Clearing Members would not have a right to be balloted for the General Default Fund Re-strike. However, the text in italics gives SwapClear Clearing Members (SCMs) who are also engaged in business other than SwapClear Business a right to be balloted (irrespective of whether or not this other business is General Business).

This would give a Clearing Member who was a member of two, or all, of the other services, but not a GBCM, the right to be balloted. Whilst we would expect a SCM who also engaged in General Business to have a right to vote, we would not expect to ballot a member who was a SCM and RCM but not a GBCM.

The corresponding ForexClear provision, F12, leads us to the same conclusion.

It seems clear that the intention of these clauses is to exempt Clearing Members who are not General Business Clearing Members from having a right to vote in matters impacting the General Default Fund. That being so, the wording for each of the relevant rules (S12 and F12) is being corrected.

## **Part II: Amendments to the Rules & Regulations of LCH.Clearnet**

Amendments are being made to LCH.Clearnet's Default Fund Rules in section S12(c) of the SwapClear Default Fund Supplement and section F12(c) of the ForexClear Default Fund Supplement.

These changes are blacklined in the attached extract.

## **Part III: Certification by LCH.Clearnet**

LCH.Clearnet certifies to the CFTC, in accordance with CFTC Regulation §40.6, that the planned changes comply with the Commodity Exchange Act and the CFTC Regulations promulgated thereunder. LCH.Clearnet further certifies that, upon the submission of this material, in compliance with §39.21 of the Commission's regulations, LCH.Clearnet will post a notice of pending certification with the CFTC and a copy of the submission on LCH.Clearnet's website at

[http://www.lchclearnet.com/rules\\_and\\_regulations/ltd/proposed\\_rules.asp](http://www.lchclearnet.com/rules_and_regulations/ltd/proposed_rules.asp)



#### **Part IV: Compliance with Core Principles**

LCH.Clearnet will continue to comply with all Core Principles following the introduction of the proposed amendments and has concluded that its compliance with Core Principles would not be adversely affected by these changes. The changes reflected herein will ensure continued compliance with the Core Principles. Implementing this change will allow LCH.Clearnet to proceed with amendments to its General Business default fund waterfall, which will ensure the robustness of LCH.Clearnet's compliance with Core Principle B (Financial Resources).

#### **Part V: Opposing Views**

There were no opposing views expressed to LCH.Clearnet by its governing board or committee members, members of LCH.Clearnet or market participants that were not incorporated into the changes.

#### **Certification**

LCH.Clearnet Limited hereby certifies to the Commodity Futures Trading Commission, pursuant to the procedures set forth in Commission regulation §40.6, that the attached rule submission complies with the Commodity Exchange Act, as amended, and the regulations promulgated thereunder.

Should you have any questions regarding this submission please contact me at [julian.oliver@lchclearnet.com](mailto:julian.oliver@lchclearnet.com)

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Julian Oliver".

**Julian Oliver, Director, Compliance and Public Affairs**  
**LCH.Clearnet Limited**

cc:

**Jay Iyer, LCH.Clearnet Ltd**  
**Paul Watkins, LCH.Clearnet Ltd**  
**Kenji Takaki, CFTC**  
**Adam Cohen, CFTC**

return of initial margin received from each such Clearing Member in the form of cash and outstanding Contributions.

- (d) For each FXCCM, the amount due to it or due from it as determined pursuant to (b) shall be aggregated with its claim determined pursuant to (c) above and only the net sum shall be payable. Where the result of such calculations is that an FXCCM owes an amount to the Clearing House, that FXCCM shall pay that amount to the Clearing House immediately. Where the result of such calculations is that an FXCCM is owed an amount by the Clearing House, the Clearing House shall pay that amount to the FXCCM immediately, subject to (f) below.
- (e) The payment of such amount to an FXCCM, pursuant to (d) above subject to any re-calculations performed pursuant to (f) below, shall constitute the full and final payment in respect of the ForexClear Service and such FXCCM shall not be permitted to make any further claims on the Clearing House in respect of amounts relating to the ForexClear Service, nor shall it be permitted to notify the Clearing House of a Termination Date pursuant to Regulation 39A for a failure to pay any amounts in relation to the ForexClear Service.
- (f) The Clearing House may make the payments due under (d) above in one or more instalments to the FXCCMs in proportion to the value of their claims on the Clearing House under (b) above if some but not all of the amounts due under (d) or Rule 16(a) to 16(g) above have not yet been received. The Clearing House shall take reasonable steps to recover such amounts and may deduct therefrom reasonable administration costs for such recovery. To the extent that the Clearing House determines that any such amounts will not in fact be recoverable, it shall re-determine the amounts due to FXCCMs in accordance with this Rule F11.
- (g) This Rule F11 shall not be applied in the event that a Termination Date has been specified in relation to the Clearing House in accordance with Regulation 39A.
- (h) Nothing in the foregoing shall override the obligation of the Clearing House to return initial margin provided by way of security to a FXCCM pursuant to its Regulations and Procedures.

## F12. Ballot Arrangements

- (a) Notwithstanding anything to the contrary in clauses 9.4 and 9.5 of the Clearing Membership Agreement, no proposal for any of the amendments set out in paragraphs (i), (ii) and (iii) below (each a “**ForexClear Amendment**”) shall be capable of coming into effect unless first approved in a ballot of FXCCMs:
  - (i) any amendment to the value of the ForexClear Fund Floor as provided for in paragraph (c) of Rule F2 or as subsequently approved in a ballot under this Rule F12;
  - (ii) any amendment providing for a change in the nature of the liabilities for which an FXCCM’s indemnity is given by virtue of paragraph (b) of Rule 28; and

- (iii) any amendment which, in the opinion of the Board of Directors of the Clearing House would represent a significant change in the commitments of the FXCCMs but not in the commitments of any other Clearing Members,
- (b) For the purposes of a ballot conducted pursuant to this Rule F12, the provisions of clauses 9.4, 9.6 and 9.7 of the Clearing Membership Agreement shall apply with the following amendments:
  - (i) the words “major amendment to the Default Fund Rules” in the first line of clause 9.4 of the Clearing Membership Agreement shall be replaced with the words “ForexClear Amendment”;
  - (ii) all references to “Clearing Members” shall be replaced with references to “FXCCMs”;
  - (iii) in paragraph (c) of clause 9.4 of the Clearing Membership Agreement, the reference to “Contributions” shall be replaced with a reference to “ForexClear Contributions” and the reference to “Quarter Day” shall be replaced with a reference to “ForexClear Determination Date”;
  - (iv) references to “Fund Amount” in clauses 9.6 and 9.7 of the Clearing Membership Agreement shall be replaced with references to “ForexClear Fund Amount”;
  - (v) the reference to “clause 9.4” in clause 9.6 of the Clearing Membership Agreement shall be replaced with a reference to “Rule F12 of the ForexClear Default Fund Supplement to the Default Fund Rules”; and
  - (vi) the references to “Contribution” in clauses 9.6 and 9.7 of the Clearing Membership Agreement shall be replaced with references to “ForexClear Contribution”.

(c) Only General Clearing Members shall be entitled to vote in a ballot conducted under clauses 9.4 and 9.5 of the Clearing Membership Agreement in relation to an amendment which affects exclusively any one or combination of: (i) the EquityClear Fund Amount; (ii) the Exchange Fund Amount; (iii) the nature of the liabilities for which a General Clearing Member's indemnity is given by virtue of paragraph (b) of Rule 28; or (iv) any amendment which, in the opinion of the Board of Directors of the Clearing House would represent a significant change in the commitments of the General Clearing Members but not in the commitments of any other Clearing Members. As a result, for the purposes of a ballot conducted under clauses 9.4 and 9.5 of the Clearing Membership Agreement other than a Cross-Service Ballot, references to "Clearing Members" shall not include FXCCMs who are not also General Clearing Members and ForexClear Contributions shall not count as "Contributions".

(e) For the purposes of this paragraph (c) of this Rule F12, a "Cross-Service Ballot" shall mean: (i) a ballot in relation to an amendment which represents a significant change in the commitments of all of the Clearing Members of the Clearing House or of a significant section of such Clearing Members of the Clearing House who are so categorised together, irrespective of and independently from, the Services which they clear; and, as such (ii) a ballot which falls within paragraph (c) of clause 9.5 of the Clearing

~~Membership Agreement (because, in the opinion of the Board of Directors of the Clearing House, it is an amendment which "would represent a significant change in the commitments of... a significant section of the Clearing Members") but does not fall within paragraph (a)(iii) of this Rule F12, paragraph (a)(iii) of Rule S12 and/or paragraph (a)(ii) of Rule R12 (because the relevant section of the Clearing Members is not restricted to Clearing Members acting in the capacity of Clearing Members in ForexClear, SwapClear and/or RepoClear). For the purposes of a ballot conducted under clauses 9.4 and 9.5 of the Clearing Membership Agreement other than a ballot in relation to an amendment which, in the opinion of the Board of Directors of the Clearing House falls within paragraph (c) of clause 9.5 of the Clearing Membership Agreement but not within paragraph (a)(iii) of this Rule F12, references to "Clearing Members" shall not include FXCCMs who are not engaged in any business with the Clearing House other than ForexClear Business and ForexClear Contributions shall not count as "Contributions".~~

Contributions to be repaid. The claim of each such SCM in respect to the foregoing shall be reduced in proportion to an amount by which (i) the value of the assets available to the Clearing House to meet the return obligations referred to in (ii) bears to (ii) the value of what would be due from the Clearing House to each Clearing Member in aggregate in respect of the return of initial margin received from each such Clearing Member in the form of cash and outstanding Contributions.

- (d) For each SCM, the amount due to it or due from it as determined pursuant to (b) shall be aggregated with its claim determined pursuant to (c) above and only the net sum shall be payable. Where the result of such calculations is that an SCM owes an amount to the Clearing House, that SCM shall pay that amount to the Clearing House immediately. Where the result of such calculations is that an SCM is owed an amount by the Clearing House, the Clearing House shall pay that amount to the SCM immediately, subject to (f) below.
- (e) The payment of such amount to an SCM, pursuant to (d) above subject to any re-calculations performed pursuant to (f) below, shall constitute the full and final payment in respect of the SwapClear Service and such SCM shall not be permitted to make any further claims on the Clearing House in respect of amounts relating to the SwapClear Service nor shall it be permitted to notify the Clearing House of a Termination Date pursuant to Regulation 39A for a failure to pay any amounts in relation to the SwapClear Service.
- (f) The Clearing House may make the payments due under (d) above in one or more instalments to the SCMs in proportion to the value of their claims on the Clearing House under (b) above if some but not all of the amounts due under (d) or Rule 16(a) to 16(g) above have not yet been received. The Clearing House shall take reasonable steps to recover such amounts and may deduct therefrom reasonable administration costs for such recovery. To the extent that the Clearing House determines that any such amounts will not in fact be recoverable, it shall re-determine the amounts due to SCMs in accordance with this Rule S11.
- (g) This Rule S11 shall not be applied in the event that a Termination Date has been specified in relation to the Clearing House in accordance with Regulation 39A.
- (h) Nothing in the foregoing shall override the obligation of the Clearing House to return initial margin provided by way of security to a SCM pursuant to its Regulations and Procedures.

#### S12. **Ballot Arrangements**

- (a) Notwithstanding anything to the contrary in clauses 9.4 and 9.5 of the Clearing Membership Agreement, no proposal for any of the amendments set out in paragraphs (i), (ii) and (iii) below (each a "**SwapClear Amendment**") shall be capable of coming into effect unless first approved in a ballot of SCMs:
  - i any amendment to the value of the SwapClear Fund Floor and/or the value of the SwapClear Fund Cap, in each case as provided for in paragraph (b) of Rule S2 or as subsequently approved in a ballot under this Rule S12;

- ii any amendment providing for a change in the nature of the liabilities for which an SCM's indemnity is given by virtue of paragraph (c) of Rule 28; and
  - iii any amendment which, in the opinion of the Board of Directors of the Clearing House would represent a significant change in the commitments of the SCMs but not in the commitments of any other Clearing Members,
- (b) For the purposes of a ballot conducted pursuant to this Rule S12, the provisions of clauses 9.4, 9.6 and 9.7 of the Clearing Membership Agreement shall apply with the following amendments:
- i the words "major amendment to the Default Fund Rules" in the first line of clause 9.4 of the Clearing Membership Agreement shall be replaced with the words "SwapClear Amendment";
  - ii all references to "Clearing Members" shall be replaced with references to "SCMs";
  - iii in paragraph (c) of clause 9.4 of the Clearing Membership Agreement, the reference to "Contributions" shall be replaced with a reference to "SwapClear Contributions" and the reference to "Quarter Day" shall be replaced with a reference to "SwapClear Determination Date";
  - iv references to "Fund Amount" in clauses 9.6 and 9.7 of the Clearing Membership Agreement shall be replaced with references to "SwapClear Fund Amount";
  - v the reference to "clause 9.4" in clause 9.6 of the Clearing Membership Agreement shall be replaced with a reference to "Rule S12 of the SwapClear Default Fund Supplement to the Default Fund Rules"; and
  - vi the references to "Contribution" in clauses 9.6 and 9.7 of the Clearing Membership Agreement shall be replaced with references to "SwapClear Contribution".
- (c) Only General Clearing Members shall be entitled to vote in a ballot conducted under clauses 9.4 and 9.5 of the Clearing Membership Agreement in relation to an amendment which affects exclusively any one or combination of: (i) the EquityClear Fund Amount; (ii) the Exchange Fund Amount; (iii) the nature of the liabilities for which a General Clearing Member's indemnity is given by virtue of paragraph (b) of Rule 28; or (iv) any amendment which, in the opinion of the Board of Directors of the Clearing House would represent a significant change in the commitments of the General Clearing Members but not in the commitments of any other Clearing Members. As a result, for the purposes of a ballot conducted under clauses 9.4 and 9.5 of the Clearing Membership Agreement other than a Cross-Service Ballot, references to "Clearing Members" shall not include FXCCMs who are not also General Clearing Members and ForexClear Contributions shall not count as "Contributions".

For the purposes of this paragraph (c) of this Rule F12, a "Cross-Service Ballot" shall mean: (i) a ballot in relation to an amendment which represents a significant change in the commitments of all of the Clearing Members of the



~~Clearing House or of a significant section of such Clearing Members of the Clearing House who are so categorised together, irrespective of and independently from, the Services which they clear; and, as such (ii) a ballot which falls within paragraph (c) of clause 9.5 of the Clearing Membership Agreement (because, in the opinion of the Board of Directors of the Clearing House, it is an amendment which "would represent a significant change in the commitments of... a significant section of the Clearing Members") but does not fall within paragraph (a)(iii) of this Rule F12, paragraph (a)(iii) of Rule S12 and/or paragraph (a)(ii) of Rule R12 (because the relevant section of the Clearing Members is not restricted to Clearing Members acting in the capacity of Clearing Members in ForexClear, SwapClear and/or RepoClear). For the purposes of a ballot conducted under clauses 9.4 and 9.5 of the Clearing Membership Agreement other than a ballot in relation to an amendment which, in the opinion of the Board of Directors of the Clearing House falls within paragraph (c) of clause 9.5 of the Clearing Membership Agreement but not within paragraph (a)(iii) of this Rule S12, references to "Clearing Members" shall not include SCMs who are not engaged in any business with the Clearing House other than SwapClear Business and SwapClear Contributions shall not count as "Contributions".~~