

VIA CFTC PORTAL

14 December 2023

Mr. Christopher Kirkpatrick
Commodity Futures Trading Commission
1155 21st Street NW
Three Lafayette Centre
Washington, DC 20581

LCH Limited Self-Certification: Changes to the LCH Limited rulebook regarding transferee confidentiality obligations in a default scenario

Dear Mr. Kirkpatrick,

Pursuant to Commodity Futures Trading Commission (“CFTC”) Regulation §40.6(a), LCH Limited (“LCH”), a derivatives clearing organization registered with the CFTC, is submitting for self-certification changes to its rulebook regarding confidentiality, security and use obligations applicable to certain FCM Clearing Members and other Clearing Members in relation to portfolio transfers after the Default of another FCM Clearing Member or Clearing Member.¹

Part I: Explanation and Analysis

LCH will amend the following provisions of its rulebook:

- FCM Regulation 33(c); and
- General Regulation 41.

Currently, FCM Regulation 33(c) provides that LCH may provide information regarding FCM Contracts and Collateral of a Defaulter, except information associated with its Proprietary Account (“Information”) to a non-defaulting FCM Clearing Member in connection with the transfer, or potential transfer, of one or more of the Defaulter’s FCM Contracts and associated Collateral to such non-defaulting FCM Clearing Member (the “Potential Transferee”). Where LCH provides Information to the Potential Transferee, it must:

- preserve the confidentiality of such Information;
- apply equivalent security measures to such Information as those which it applies to its own confidential information; and
- if such Potential Transferee does not become the transferee FCM Clearing Member in respect of one or more of the Defaulter’s FCM Contract(s) and associated Collateral, delete the Information it has received in connection with such potential transfer.

¹ Capitalized terms not defined herein shall, unless otherwise indicated, have the meanings ascribed to such terms in the LCH rulebook.

LCH proposes clarifying the above requirements by adding a provision that limits the use of the Information received by the Potential Transferee only for the purpose of assessing the transfer of one or more of the Defaulter's FCM Contract(s) and associated Collateral to it.

In addition, the changes to Regulation 33(c) are to:

- Ensure correct grammar and sense; and
- State that the Potential Transferee has an obligation to delete, and to confirm deletion of, Information it receives, such that it only needs to do so where such information relates to FCM Contracts and associated Collateral that were not transferred to such Potential Transferee (which means, conversely, that a Potential Transferee is not required to delete, and confirm deletion of, Information relating to FCM Contracts and associated Collateral that was transferred to it).

Provisions to the same effect as the amended FCM Regulation 33(c) will also be inserted as a new General Regulation 41(d) and will apply to all Clearing Members (other than FCM Clearing Members) for consistency and alignment.

Part II: Description of Rule Changes

FCM Regulation 33(c) has been amended to ensure grammatical sense, and to alter three sub conditions within paragraph (c) mandating FCMs to do the following:

- i. Ensure that it preserves the confidentiality of such information;
- ii. Apply equivalent security measures to such information as those which it applies to its own confidential information; and
- iii. Use such information only for the purpose of assessing the transfer of one or more of the Defaulter's FCM Contracts and associated Collateral to it.

Sub condition (iii) has been inserted as a new provision.

General Regulation 41(d) has been amended to ensure grammatical sense, and to insert provisions and structure to the same effect as RCM regulation 33(c). All clearing members under the LCH rulebook will therefore have the same obligations regarding information relating to contracts and collateral in transfer or potential transfer scenarios.

These rule changes are included as **Appendices I and II** (under the General Regulations and FCM Regulations) in black line form. The changes will be effective not earlier than 29th December 2023.

Part III: Core Principle Compliance

LCH reviewed the proposed changes against the requirements of the Core Principles and finds it will continue to comply with all the requirements and standards set forth therein. Specifically, this rule change has potential relevance to Core Principles D (Risk Management) and G (Default Rules and Procedures).

The changes described in this filing ensure that LCH continues to meet the objectives of Core Principle D. The changes do not impact LCH's approach to risk management or the way that it manages risks associated with discharging its obligations as a Derivatives Clearing Organisation. Likewise, the rule changes do not affect the way that LCH manages the exposures from clearing member house or customer positions, nor LCH's management of customer funds. As noted, LCH will ensure confidentiality of information provided to FCM clearing members for the purposes of transfers of contracts and will tighten the requirement of destruction of information if the transfer is not completed. This ensures that no sensitive information will be utilised for illegitimate purposes outside of default scenarios.

Further, in accordance with Core Principle G, the changes do not impact LCH's obligations in default scenarios, nor do they make changes to the actions that can be taken by the LCH in the event of a default. By requiring all members to adhere to more suitable information management requirements with respect to portfolio transfer assessments, incidental knock-on market effects are less likely to materialise, and data confidentiality will remain preserved.

Part IV: Public Information

LCH has posted a notice of pending certification with the CFTC and a copy of the submission on LCH's website at: <https://www.lch.com/resources/rulebooks/proposed-rule-changes>.

Part V: Opposing Views

There were no opposing views expressed to LCH by governing board or committee members, members of LCH or market participants.

Certification

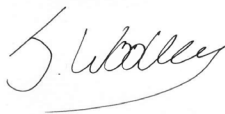
LCH hereby certifies to the CFTC, pursuant to the procedures set forth in CFTC Regulation §40.6, that the attached submission complies with the Commodity Exchange Act, as amended, and the regulations promulgated thereunder.

Definitions

Words that begin with a capital letter, but are not defined, in this document shall have the meaning specified in the general regulations of the LCH rulebook, which rulebook is located at www.lch.com.

Should you have any questions please contact me at james.woolley@lseg.com

Yours sincerely,



James Woolley
Regulatory Compliance Analyst
LCH Limited

Appendix I
General Regulations



**GENERAL REGULATIONS OF
LCH LIMITED**

CHAPTER X – DISCLOSURE, FEES, RECORDS AND AMENDMENTS

REGULATION 41 DISCLOSURE AND REPORTING

- (a) The Clearing House shall have authority to supply any information whatsoever concerning a Member and its trading to: ~~(ia)~~ an Exchange or an exchange with whom the Clearing House has entered into an agreement pursuant to which the parties have agreed to exchange information as required or contemplated by its Exchange Rules; ~~(iib)~~ any Regulatory Body which is entitled to receive or request any such details or information; ~~(iiie)~~ a Co-operating Clearing House pursuant to an agreement entered into with the Co-operating Clearing House; ~~(ivd)~~ any Approved EquityClear Settlement Provider pursuant to an agreement entered into with that Approved EquityClear Settlement Provider; ~~(ve)~~ a member of the LCH Group; ~~(vif)~~ any other person or body to which the Clearing House is, in its reasonable opinion, legally required to disclose the same; ~~(viig)~~ any other person or body to which the Clearing House has agreed to provide such information (including, without limitation, pursuant to Section 5 (*Disciplinary Proceedings*) of the Procedures); ~~(viiih)~~ a trade or data repository or similar body on an ongoing basis in the ordinary course of business; or ~~(ixi)~~ any securities depository or securities settlement system on an ongoing basis in the ordinary course of business.
- (b) The Clearing House shall also be entitled to supply any information whatsoever concerning a Member to any person who has provided or may be contemplating entering into arrangements to provide the Clearing House directly or indirectly with stand-by or other finance, insurance cover, guarantee or other financial backing, which the Clearing House has been requested or is legally required to disclose to assist such person in relation to the provision of, or continued provision of, such finance, insurance cover, guarantee or financial backing.
- (c) The Clearing House shall have authority to: ~~(ia)~~ ~~to~~ obtain and make use of information from securities depositories, warehouses and/or any other trade repositories relating to a Member; and ~~(iib)~~ ~~to~~ disclose such information to any Regulatory Body or Exchange which is entitled to receive or request any such information.
- (d) Where a Member is a Defaulter, the Clearing House may supply any information relating to Contracts and Collateral (other than where such information is associated with such Defaulter's Proprietary Account) to a non-defaulting Member in connection with the transfer or potential transfer of the Defaulter's Contracts or Collateral to that non-defaulting Member. Where a Member receives information pursuant to this paragraph (d), and other than in the event of regulatory or judicial intervention or where the information is made public (other than in violation of this paragraph (d)), it shall:
- (i) ensure that it preserves the confidentiality of such information;
 - (ii) apply equivalent security measures to such information as those which it applies to its own confidential information; and
 - (iii) use such information only for the purpose of assessing the transfer of one or more of the Defaulter's Contracts and associated Collateral to it.

If the Member that receives such information does not act as the transferee Member in respect of one or more of the Defaulter's Contract(s) and associated Collateral, it shall promptly delete the information it has received in connection with the potential transfer and immediately confirm such deletion to the Clearing House.

Appendix II
FCM Regulations



FCM REGULATIONS OF THE CLEARING HOUSE

LCH LIMITED

CHAPTER IX - DISCLOSURE, FEES, RECORDS AND AMENDMENTS

REGULATION 33 DISCLOSURE AND REPORTING

- (a) The Clearing House shall have authority to, on an ongoing basis in the ordinary course of business, supply any information whatsoever concerning an FCM Clearing Member and its trading to:
- (i) an Exchange or an exchange with whom the Clearing House has entered into an agreement pursuant to which the parties have agreed to exchange information as required or contemplated by Exchange Rules,
 - (ii) any Regulatory Body which is entitled to receive or request any such details or information,
 - (iii) a member of the LCH Group,
 - (iv) any other person or body to which the Clearing House is, in its reasonable opinion, legally required to disclose the same,
 - (v) any other person or body to which the Clearing House has agreed to provide such information (including any clearing house, exchange or execution facility or FCM Approved Trade Source System with which the Clearing House has an agreement, and including pursuant to Section 8 (*Disciplinary Procedures*) of the FCM Procedures),
 - (vi) a trade or data repository (including a swap data repository) on an ongoing basis in the ordinary course of business, or
 - (vii) any securities depository or securities settlement system.
- (b) The Clearing House shall also be entitled to supply any information whatsoever concerning an FCM Clearing Member to any person (and the Clearing House will solicit an undertaking from any such person that such person will keep such information confidential) who has provided or may be contemplating entering into arrangements to provide the Clearing House directly or indirectly with stand-by or other finance, insurance cover, guarantee or other financial backing, which the Clearing House has been requested or is legally required to disclose to assist such person in relation to the provision of, or continued provision of, such finance, insurance cover, guarantee or financial backing.
- (c) Where an FCM Clearing Member is a Defaulter, the Clearing House may supply any information relating to FCM Contracts and Collateral (other than where such information is associated with such Defaulter's Proprietary Account) to a non-defaulting FCM Clearing Member in connection with the transfer or potential transfer of the Defaulter's FCM Contracts or Collateral to that non-defaulting FCM Clearing Member. Where an FCM Clearing Member receives information pursuant to this paragraph (c), and other than in the event of regulatory or judicial intervention or where the information is ~~otherwise~~ made public (other than in violation of this paragraph (c)), it shall:
- (i) -ensure that it preserves the confidentiality of such information; ~~and~~

(ii) ~~shall~~ apply equivalent security measures to the such information as those which it applies to its own confidential information; and

(iii) use such information only for the purpose of assessing the transfer of one or more of the Defaulter's FCM Contracts and associated Collateral to it.

If ~~In the event that~~ the FCM Clearing Member that receives the such information does not act as ~~the~~ transferee FCM Clearing Member in respect of one or more of the Defaulter's FCM Contract(s) and associated Collateral related to such information, it shall promptly delete the information it has received in connection with ~~the such proposed potential~~ transfer and immediately confirm such deletion to the Clearing House.