

VIA CFTC PORTAL

Mr Christopher Kirkpatrick
Commodity Futures Trading Commission
115 21st Street NW
Three Lafayette Centre
Washington DC 20581

21 January 2020

LCH Limited Self-Certification: Clearing Membership and Non-Clearing Participant Requirements

Dear Mr Kirkpatrick

Pursuant to CFTC regulation §40.6(a), LCH Limited ("LCH"), a derivatives clearing organization registered with the Commodity Futures Trading Commission (the "CFTC"), is submitting for self-certification two amendments to its Procedures related to its membership criteria.

Part I: Explanation and Analysis

Currently, when an LCH clearing member wants to extend its membership to another clearing service it must request this using a specified authorisation form. To provide flexibility and simplify the extension process, this rule change will allow them to request extensions via email to begin the onboarding process for the new service.

Additionally, these rule changes amend the requirements LCH may impose on a clearing member and third party "non-clearing participant" ("NCP"), who may act on behalf of the clearing member to perform some operational tasks. These tasks may include portfolio transfers, processing give ups and take ups and they may only act for the clearing member that has appointed them. Following their appointment NCPs may connect to LCH's technology systems and platforms to perform these tasks. The rule changes set forth LCH's right to require the relevant clearing member and NCP to enter into an agreement with LCH governing such access. NCP appointment is currently only relevant for the Listed Rates and EquityClear services.

The rule changes will go live on, or after, 4 February 2020.

Part II: Description of Rule Changes

Section 1.1 of Procedures Section 1 has been updated to provide that an extension of a clearing member's status to another LCH clearing service must be made in such form and fashion as prescribed by LCH from time to time. Section 1.2 of Procedures Section 1 has been updated to note that LCH may require a clearing member and NCP to enter into an agreement with LCH to, *inter alia*, set forth the terms and conditions of the NCP's connection to LCH's systems.

The text of the changes is attached hereto as **Appendix I – Procedures Section 1**.

Part III: Core Principle Compliance

LCH has reviewed the changes against the requirements of the Core Principles and finds it will continue to comply with all the requirements and standards therein.

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: <http://www.lch.com/rules-regulations/proposed-rules-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 that were not incorporated into the rule.

Certification

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

Should you have any questions please contact me at charlotte.woodwards@lch.com.

Yours sincerely



Charlotte Woodward

Senior Regulatory Advisor
LCH Limited

Appendix I
Procedures Section 1



LCH LIMITED

PROCEDURES SECTION 1

**CLEARING MEMBER, NON-MEMBER MARKET
PARTICIPANT AND DEALER STATUS**

1. CLEARING MEMBER, NON-MEMBER MARKET PARTICIPANT AND DEALER STATUS

1.1 Application Procedure – Clearing Member, Special Clearing Member and Dealer Status

An application for Clearing Member status of the Clearing House, ~~or~~ for dealer status (whether as a ForexClear Dealer, RepoClear Dealer or SwapClear Dealer, each a "Dealer") or for an extension of Clearing Member status to another Clearing House service must be made ~~on the appropriate form which can be obtained from the in such form and fashion as prescribed by the Clearing House from time to time, and may be obtained from the~~ Clearing House's Membership team. Additional information (including legal documents) must be supplied where necessary and submitted to the Clearing House with (or as an addition or supplement to) the completed such prescribed form.

An application for the status of special Clearing Member ("**Special Clearing Member**") must be initiated by a written request to the Clearing House. The nature of the application procedure and the documents and information required from the applicant will be determined by the Clearing House by reference to the nature of the application and will be notified by the Clearing House to the applicant upon receipt of such written request.

Applicants approved by the Clearing House for Clearing Member or Dealer status, including an extension of Clearing Member status to another Clearing House service, ("**Approved Applicants**") must, within six months of notification of their approval, fulfil all conditions attached to their approval. If an Approved Applicant does not fulfil all such conditions within these six months, the Clearing House may, at its sole discretion, consider the grant of approval to have lapsed and may notify the prospective Clearing Member or Dealer accordingly that they will be required to provide further information, following which the application will be submitted for re-approval.

Clearing Members have the right to apply for approval to clear one or more of the markets cleared by the Clearing House, subject to meeting the requirements of the Clearing House in respect of each such market. Please note that Clearing Member status does not provide membership of the company LCH Limited or any right to a shareholding therein, nor does it provide the right to any shareholding in LCH Group Holdings Limited or any entitlement or right to participate in any way in LCH SA or the clearing services it offers. LCH SA has its own arrangements and admission criteria for Clearing Member status – see the LCH SA Sections of the LCH website for further details.

Applicants approved as Dealers for ForexClear, RepoClear and/or SwapClear will be admitted to the Register of ForexClear Dealers, Register of RepoClear Dealers, and/or the Register of SwapClear Dealers ("**the OTC Registers**"), as appropriate. Successful admission to one OTC Register does not confer automatic admission to any other OTC Register.

1.1.1 Clearing Member Status

The terms and conditions binding on each Clearing Member are set out in the Clearing Membership Agreement (as amended). Two copies of this document will be provided to the applicant who must sign both (but not date them) and return them to the Clearing House's Membership team along with the application documentation.

The applicant must pay the stipulated application fee to the Clearing House. This fee must accompany the application for Clearing Member status and is non refundable.

If ~~and when~~(A) Clearing Member status is granted, new Clearing Members will receive a duly executed (and dated) copy of the Clearing Membership Agreement and (B) the Clearing House approves a Clearing Member's extension to a new Clearing House service, the Clearing House shall provide notice to the Clearing Member of such approval, in each case with ~~together with the notification of acceptance and~~ details of any condition(s) attached to Clearing Member status. If granted, Clearing Member status or extension to another Clearing House service is subject to the making of Contributions to the default fund(s) of the Clearing House related to the Services cleared by the relevant Clearing Member, as determined by the Clearing House under the Default Rules.

1.1.2 *Dealer Status*

The terms and conditions of admission to each of the OTC Registers are set out in the ForexClear Dealer Clearing Agreement, the RepoClear Dealer Clearing Agreement and the SwapClear Dealer Clearing Agreement ("**the OTC Agreements**") as amended. Admission to each OTC Register requires that three copies of the corresponding OTC Agreement must be signed by the applicant and their proposed Clearing Member.

The copies of the relevant OTC Agreement should be returned, undated, to the Clearing House's Membership team along with the application documentation.

If and when admission to an OTC Register is granted, new Dealers will receive a duly executed and dated copy of the relevant OTC Agreement, together with the notification of acceptance and details of any condition(s) attached to their admission. The Clearing House will send, under separate cover, a copy of the duly executed and dated OTC Agreement to the elected Clearing Member.

1.1.3 *Conditions of Application*

An applicant for Clearing Member or Dealer status must accept that the Clearing House:

- (a) is entitled to make enquiries of any nature about the applicant and any person connected or associated with the applicant;
- (b) is entitled to ask the applicant to supply additional information and take whatever steps are necessary to verify information;

- (c) is entitled to provide and/or disclose information to an exchange, governmental department, regulatory organisation, other authority, or to the Clearing House's insurers in connection with any form of insurance, or to any person pursuant to the provisions of the Financial Services and Markets Act 2000 as amended and any rules made thereunder, or in accordance with any other statutory requirement, and in accordance with the terms of the Clearing Membership Agreement, the ForexClear Dealer Clearing Agreement, the RepoClear Dealer Clearing Agreement, or the SwapClear Dealer Clearing Agreement as applicable;
- (d) may disclose to any other party the name, address, registered number and details of any exchange or clearing memberships held or applied for; and
- (e) will endeavour to process, consider and decide upon an application in a timely fashion, but owes no duty or obligation to the applicant to do so.

Conditions (a) to (e) apply equally to Clearing Members and to Dealers.

1.2 NCP Status

1.2.1 *Criteria for NCP status*

A Clearing Member may only appoint a person as an NCP in respect of a Service where such person:

- (a) is party to an agreement with an Exchange (including the LSE Derivatives Markets Platform) or Approved EquityClear Trading Platform (as applicable) pursuant to which:
 - (i) such person is a participant of, as applicable, the relevant
 - (A) Exchange; or
 - (B) Approved EquityClear Trading Platform; and
 - (ii) such person is subject to, as applicable,
 - (A) the relevant Exchange Rules (including the LSE Derivatives Market Rules); or
 - (B) the rules and procedures of the relevant Approved EquityClear Trading Platform; and
- (b) is party to a valid and enforceable arrangement with a Clearing Member pursuant to which:
 - (i) such Clearing Member authorises the NCP to act as its agent and on its behalf; and

- (ii) the Clearing Member is entitled at all times to provide to the Clearing House such information and data relating to the NCP as the Clearing House may in its sole discretion deem appropriate; and

~~(c) has been notified to the Clearing House in accordance with Section 1.2.2 below.~~

1.2.2 ~~Notification of appointment~~ Acceptance of the Appointment of NCP as ~~a~~ Agent

A Clearing Member must submit to the Clearing House a static data form (which is available on request from the Clearing House), the purpose of which is to inform the Clearing House of the appointment of an NCP as its agent. The submission of the static data form executed by both the relevant Clearing Member and the relevant NCP shall be definitive proof of the Clearing Member's appointment of the NCP to act as its agent and on its behalf. The Clearing House is not obliged to verify the appropriateness or authenticity of the signatures which appear on such static data form, nor that the person signing on behalf of any of the parties had the correct authority to sign. Without prejudice to the foregoing, the Clearing House may require the Clearing Member and NCP to enter into an agreement with the Clearing House to, *inter alia*, set forth the terms and conditions of the NCP's connection to any Clearing House system.

~~The Clearing House contracts with the Clearing Member alone and, to the fullest possible extent permitted by Applicable Law, disclaims any duties, obligations or liabilities to any NCP.~~

1.2.3 *Termination of NCP*

The Clearing Member may terminate its appointment of an NCP, in respect of a Service (“**Termination**”), at any time by giving 21 days’ written notice (or such other notice period as the Clearing House may specify) to the relevant Exchange(s) or Approved EquityClear Trading Platform(s) (as applicable) and the Clearing House (“**Termination Notice**”). For the avoidance of doubt, the Clearing House need not receive any notice or confirmation of such termination from the relevant NCP.

If a Clearing Member provides a Termination Notice to the Clearing House, in respect of a Service, then the Clearing Member agrees that the Clearing House is authorised to disclose the contents of such Termination Notice to the relevant Exchange(s) or Approved EquityClear Trading Platform(s) (as applicable) within such Service.

1.2.4 *Suspension of NCP*

A Clearing Member may, in a form prescribed and made available by the Clearing House (“**Suspension Form**”), request the Clearing House to advise an Exchange or Approved EquityClear Trading Platform (as applicable) to suspend the trading activity of an NCP of such Clearing Member, so that the NCP cannot effect an EquityClear Novation Transaction, EquityClear ATP

Match, LSE Derivatives Markets Match, Rates Exchange Match and/or Listed Interest Rates Novation Transaction (as applicable) for clearing with the Clearing House in the name of such Clearing Member, until the Exchange or Approved EquityClear Trading Platform (as applicable) receives written notice from the Clearing House of the cessation of such suspension (such suspension, “**Suspension**”) (each such request, a “**Suspension Request**”). For the avoidance of doubt, the Clearing House need not receive any notice or confirmation of such Suspension Request from the relevant NCP.

If a Clearing Member makes a Suspension Request, in respect of an Exchange or Approved EquityClear Trading Platform (as applicable), then the Clearing Member agrees that the Clearing House is authorised to disclose the contents of the completed Suspension Form relating to the Suspension Request to such Exchange or Approved EquityClear Trading Platform (as applicable).

1.2.5 *Exclusion of Liability*

Without prejudice to Regulation 52, neither the Clearing House, nor any other member of the LCH Group, shall have any liability whatsoever to any Clearing Member or to any other person in contract, tort (including, without limitation, negligence), trust, as a fiduciary or under any other cause of action in respect of any damage, loss, cost or expense of whatsoever nature suffered or incurred by a Clearing Member or any other person, as the case may be, as a result of:

- (a) where a Clearing Member makes a Suspension Request, in respect of an Exchange or Approved EquityClear Trading Platform (as applicable) (i) Suspension, (ii) any failure of, or delay in, Suspension to be implemented, or (iii) such Exchange or Approved EquityClear Trading Platform (as applicable) implementing, but then revoking, Suspension; or
- (b) where a Clearing Member provides a Termination Notice to the Clearing House, in respect of a Service and a NCP (i) Termination, (ii) any failure of, or delay in, Termination to be effective, or (iii) an Exchange or Approved EquityClear Trading Platform (as applicable) within such Service continuing to permit such NCP to effect an EquityClear Novation Transaction, EquityClear ATP Match, LSE Derivatives Markets Match, Rates Exchange Match and/or Listed Interest Rates Novation Transaction (as applicable) for clearing with the Clearing House in the name of such Clearing Member.

1.3 **Criteria for Clearing Member Status**

1.3.1 *General*

The Clearing House imposes certain criteria and requirements in relation to Clearing Member status. The relevant criteria have, in all cases, been established by the Clearing House so as to be non-discriminatory and objective and so as to ensure fair and open access by Clearing Members (whether existing or potential) to the Clearing House.

The relevant criteria are without prejudice to the provisions of the Clearing Membership Agreement which must be executed by the applicant, and must equally be met by Clearing Members or approval required to extend Clearing Membership status to another Clearing Houser service.

The Clearing House may, in its sole discretion, refuse an application for membership (including extension to another Clearing House service) where it considers it appropriate to do so in accordance with its internal risk management policies and procedures, as amended from time to time. In the event that the Clearing House refuses an application for membership or an extension to such membership, the Clearing House will provide reasons for such rejection in writing to the relevant applicant. Clearing Members are referred to the Clearing House's website for further information about the relevant internal risk management policies and procedures.

The applicant must either be, or have applied to become, a RepoClear Clearing Member (categories F & G), a SwapClear Clearing Member (category H), an EquityClear Clearing Member (categories I & J), a Clearing Member of the relevant exchange(s) (categories B – D), an LCH EnClear Clearing Member (category B), a Special Clearing Member (category K) or a ForexClear Clearing Member (category M). Clearing Member status may be granted on a conditional basis before any Clearing House requirements have been fully met or before related exchange clearing membership(s) requirements are met, but cannot be operational until such requirements are satisfied.

The applicant must, if it also wishes to submit and clear RepoClear, SwapClear and/or ForexClear trades, meet the additional criteria for such status (see Sections 1.3.2, 1.3.3 and 1.3.4 respectively). The applicant, any controller of the applicant, and those of its staff who exercise an executive or managerial role, must have a high standard of integrity and a level of knowledge, as determined by and acceptable to the Clearing House, of the nature, risks and obligations of trading in the markets and contracts they wish to clear.

A Clearing Member of one or more markets who wishes to clear the Contracts of another market cleared by the Clearing House, must apply to the Clearing House for such extension and have the Clearing House's express written approval before commencing to submit trades in such other market for registration. The prescribed form of document for the relevant new market is available from the Clearing House's Membership team. –Clearing Members should be aware that they also need the appropriate additional exchange clearing membership before they can extend their range of activities in this way. The Clearing Member must, within six months of notification of their approval to extend their activities, fulfil all conditions attached to their approval. If the Clearing Member does not, within these six months, fulfil all such conditions, the Clearing House may, at its sole discretion, consider the grant of approval to have lapsed and may notify the Clearing Member accordingly that they will be required to provide further information, following which the extension will be submitted for re-approval.