

VIA CFTC PORTAL

06 March 2019

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

LCH Limited Self-Certification: GCM suspension of a NCP

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 changes to its rules to make more clear the relationship between a General Clearing Member (GCM) and their non-clearing participant (NCP).

Part I: Explanation and Analysis

A GCM of LCH may appoint an entity as a NCP, in respect of the Listed Interest Rates service (it can also do so for the EquityClear and LSEDM service but those services are not offered to US based clearing members). This enables the NCP to effect transactions and/or matches on a trading venue for clearing with LCH in the name of the GCM (Trading Activity).

However, for certain trading venues, only the NCP (and not the GCM) will have a contractual relationship with the trading venue. This makes it difficult for the GCM to direct the trading venue to suspend the Trading Activity of its NCP.

These rule changes would allow the GCM (using a LCH template suspension form) to request and authorise LCH to advise a trading venue to suspend the Trading Activity of its NCP. This proposal does not require changes to risk models or methodologies.

In addition, LCH will be making a conforming change to replace references to “Non-Member Market Participant” in the Rulebook with “Non-Clearing Participant” to conform to industry parlance.

The rule changes will go live on, or after, 20 March 2019.

Part II: Description of Rule Changes

There are minor changes to Regulation 1 (Definitions) and Regulation 7 (non-clearing member status) of the General Regulations to remove references to “Non-Member Market Participant” and replace them with “Non-Clearing Participant”.

There are changes to the definition of “Non-Clearing Participant” in Regulation 1 of the General Regulations to ensure it more accurately reflects the defining characteristics of a person who is a Non-Clearing Participant.

There are clarifying and conforming changes to Section 1.2.1 and 1.2.2 of Section 1 of the Procedures.

Section 1.2.3 of Section 1 of the Procedures has been amended to authorise LCH to disclose the contents of a termination notice to the relevant trading venue and for minor clarifying changes.

Section 1.2.4 of Section 1 of the Procedures is a new section and sets out the process by which a GCM may request LCH to advise a trading venue to suspend the Trading Activity of a NCP, in respect of the GCM. Section 1.2.4 of Section 1 of the Procedures also authorises LCH to disclose the contents of a Suspension Notice to the relevant trading venue.

Section 1.2.5 of Section 1 of the Procedures is a new section and excludes the liability of LCH and members of the LCH Group, in relation to suspension requests and termination notices, which a GCM makes or provides to LCH.

There is a minor change to Section 1.6 of the Settlement Finality Regulations to remove the reference to “Non-Member Market Participant” and replace it with “Non-Clearing Participant”.

The texts of the rule changes are attached hereto as:

- i. **Appendix I**, General Regulations
- ii. **Appendix II**, Section 1 of the Procedures
- iii. **Appendix III**, Settlement Finality Regulations

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 julian.oliver@lch.com.

Yours sincerely



Julian Oliver
Chief Compliance Officer
LCH Limited

Appendix I
General Regulations



**GENERAL REGULATIONS OF
LCH LIMITED**

"Non-Defaulting SCM"	means an SCM which is not a Defaulter under Rule 4 of the Default Rules
"Non-Eligible Listed Interest Rates Contract"	means those Listed Interest Rates Contracts other than Eligible Listed Interest Rates Contracts
"Non-Identified Client Omnibus Net Segregated Account"	means, in relation to a Relevant Client Clearing Business, an account opened within the Clearing House by the relevant Clearing Member on behalf of one or more of its Non-Identified Omnibus Segregated Clearing Clients which is designated by the Clearing House as a Non-Identified Client Omnibus Net Segregated Account but, for the avoidance of doubt, does not include any Omnibus Segregated Account comprising Determined Omnibus Net Segregated Clients
"Non-Identified Omnibus Segregated Clearing Client"	means, in relation to a Relevant Client Clearing Business, certain Omnibus Segregated Clearing Clients of the relevant Clearing Member or FCM whose identities are not recorded by the Onboarding department of the Clearing House and who are grouped together in an Omnibus Segregated Account which is not an Identified Client Omnibus Segregated Account, an Affiliated Client Omnibus Segregated Account or an Indirect Net Account of the Clearing Member but, for the avoidance of doubt, does not include any Determined Omnibus Net Segregated Clients
"Non-Impacted ForexClear Option Clearing Member"	means, with respect to a ForexClear Settlement Event, each ForexClear Option Clearing Member that is not an Impacted ForexClear Option Clearing Member in respect of such ForexClear Settlement Event
"Non-Clearing Member Market Participant ("NCP")"	means, in respect of a particular Service, a person, other than (a) who is not a Clearing Member in such Service, who meets the criteria set out in Procedure 4 (b) whom a (Clearing Member, Non Member Market Participant and Dealer Status) has appointed as an NCP, in respect of such Service, in accordance with the Procedures (c) who and has been notified to the Clearing House in accordance with Regulation 7 (Non Member Market Participant Non-Clearing Participant Status) Section 1.2.2 of Section 1 of the Procedures, and (d) whose appointment as an NCP, in respect of such Service, has not been terminated in accordance with Section 1.2.3 of Section 1 of the Procedures
"Non-Performance Notice"	has the meaning assigned to it in Chapter XIV(m)
"Non-Performer"	has the meaning assigned to it in Section 2C1.27.4 of the Procedures

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REGULATION 7 ~~NON-MEMBER MARKET PARTICIPANT~~NON-CLEARING PARTICIPANT STATUS

- (a) In accordance with this Regulation 7 and the Procedures, an NCP may submit instructions and present LSE Derivative Markets Matches, EquityClear ATP Matches, EquityClear Novation Transactions, Rates Exchange Matches or Listed Interest Rates Novation Transactions to the Clearing House on behalf of a Clearing Member.
- (b) A Clearing Member must, in accordance with the Procedures, notify the Clearing House of the appointment of an NCP as the Clearing Member's agent.
- (c) The Clearing House shall be entitled to rely on information and instructions received from an NCP. The Clearing Member remains fully responsible for meeting all obligations to the Clearing House in respect of all Contracts arising from such instructions delivered by or on behalf of an NCP.
- (d) The termination by the Clearing Member of its [arrangement with an NCP appointment of an NCP, in respect of a Service and in accordance with the Procedures](#), shall be without prejudice to the Clearing Member's obligations arising from or in relation to any LSE Derivative Markets Match, EquityClear ATP Match, EquityClear Novation Transaction, Rates Exchange Match, Listed Interest Rates Novation Transaction or Contract arising prior to such termination.

Appendix II
Procedures Section 1



LCH LIMITED

PROCEDURES SECTION 1

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

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1. **CLEARING MEMBER, ~~NON-MEMBER MARKET PARTICIPANT~~NON-CLEARING 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") must be made on the appropriate form which can 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 the completed 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, ("**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.Clearnet Limited or any right to a shareholding therein, nor does it provide the right to any shareholding in LCH.Clearnet Group Limited or any entitlement or right to participate in any way in LCH.Clearnet SA or the clearing services it offers. LCH.Clearnet SA has its own arrangements and admission criteria for Clearing Member status – see the LCH.Clearnet SA Sections of the LCH.Clearnet 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 Clearing Member status is granted, new Clearing Members will receive a duly executed (and dated) copy of the Clearing Membership Agreement together with the notification of acceptance and details of any condition(s) attached to Clearing Member status. If granted, Clearing Member status 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 ~~Non-Member Market Participant~~**Non-Clearing Participant Status**

1.2.1 *Criteria for NCP status*

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

- (a) is party to an agreement with an Exchange (including, ~~for the avoidance of doubt, TGHL LSE Derivatives Markets Platform~~) or Approved EquityClear Trading Platform (as applicable) pursuant to which:
 - ~~(i)~~ such person is a ~~P~~participant ~~of it~~, as ~~applicable~~,
 - ~~(i)~~ ~~the applicable, the relevant Trading System~~
 - ~~(A)~~ ~~(A)~~ Exchange; or
 - ~~(B)~~ ~~(B)~~ Approved EquityClear Trading Platform; ~~and or~~
 - ~~(C)~~ ~~a Turquoise Derivatives Platform; and~~
 - (ii) such person is subject to, as applicable,
 - (A) the ~~_~~relevant Exchange Rules (including, ~~for the avoidance of doubt, the Turquoise LSE Derivatives Markets~~ 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

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- (ii) the Clearing Member is entitled at all times to provide to the Clearing House, ~~in accordance with Regulation 41 (Disclosure and Reporting)~~, 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 of NCP as 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.

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

1.2.3 Termination of NCP *status*

The Clearing Member may terminate its ~~agreement with 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 ~~of~~ or any confirmation of such termination from the relevant NCP.

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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 Platforms(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

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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.

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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 Exclusions 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:

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(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

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(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.

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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.

Appendix III
Settlement Finality Regulations

LCH Limited

CLEARING HOUSE SETTLEMENT FINALITY REGULATIONS

Introduction

The Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999 No. 2979) (the "**SF Regulations**") implement the Settlement Finality Directive (Directive 98/26/EC) of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (the "**SF Directive**").

The SF Directive seeks to reduce the risks associated with participation in payment and securities settlement systems by minimizing the disruption caused by insolvency proceedings brought against a participant in such a system. The protection provided by the SF Regulations is given to any system which has been designated as a "designated system" by the Financial Conduct Authority or the Bank of England as the "designating authority".

In order to obtain such designation the Clearing House is required to satisfy the relevant designating authority that the requirements of the Schedule to the SF Regulations, and certain other matters, are satisfied in respect of the Clearing House.

These Settlement Finality Regulations (which form part of these Regulations) have been promulgated by the Clearing House in order to meet such of those requirements as are not addressed elsewhere in these Regulations.

1. Definitions

- 1.1 "**Concentration Bank**" means a bank or other credit institution which has a current agreement with the Clearing House to participate in the Clearing House Protected Payments System (as described in the Regulations) as a concentration bank.
- 1.2 "**Institution**" shall have the same meaning as in the SF Regulations.
- 1.3 "**The Clearing House System**" means the standardized formal arrangements, common rules, procedures as described in the Regulations, Procedures and service descriptions (each as amended from time to time) published from time to time by the Clearing House pursuant to which LCH acts as clearing service provider, and related functionality which:
 - (a) enable the Clearing House in operating its Clearing House Protected Payments System to give instructions to place at the disposal of its Members (as set out the Regulations) amounts of money on the accounts of certain banks or other credit institutions; and
 - (b) enable Members through the Clearing House Protected Payments System to give instructions to place at the disposal of the Clearing House (as set out in the Regulations) amounts of money on the accounts of certain banks or other credit institutions; and
 - (c) enable Members to give instructions to place amounts of money at the disposal of the Clearing House through crediting a nominated cash account provided by a Settlement Service Provider to the Clearing House; and
 - (d) enable the Clearing House to give instructions to Securities Systems Operators to transfer title to, or interest in securities; and

- (e) enable the Clearing House to give instructions to a Settlement Service Provider in relation to the Clearing House's use of settlement services provided by such Settlement Service Provider; and
 - (f) enable Members and Non Member Participants to give instructions to Securities Systems Operators to transfer title to or interest in securities; and
 - (g) enable the Clearing House to become central counterparty to Members in respect of eligible trades in certain derivative instruments, equities, repos, bonds GC and €GC and products, as described in the Regulations; and
 - (h) enable the Clearing House and Members to fulfil the obligations they incur in respect of contracts registered by the Clearing House and in respect of which it has become central counterparty; and
 - (i) facilitate supplementary and incidental matters.
- 1.4 **"Member"** has the same meaning as in the Regulations.
- 1.5 **"Member Settlement Bank"** means a bank or other credit institution, including a central bank, approved by the Clearing House from time to time for the provision of settlement services in connection with settlements on behalf of a Member under the ForexClear Service not taking place through the Clearing House Protected Payment System.
- 1.6 **"Non Member Participant"** means a person:
- (a) who is not a Member or an exchange, and who is party to any one or more of the following agreements as described in the Regulations:
 - (i) a RepoClear Dealer Clearing Agreement;
 - (ii) a SwapClear Dealer Clearing Agreement; or
 - (iii) a ForexClear Dealer Clearing Agreement; or
 - (b) who acts as settlement agent for any person described in section 1.6(a) above; or
 - (c) who is a Non-~~Clearing Member Market~~ Participant.
- 1.7 **"PPS Bank"** means a bank or other credit institution which has a current agreement with the Clearing House to participate, other than solely as a Concentration Bank, in the Clearing House Protected Payment System, as described in the Regulations.
- 1.8 **"Participant"** means all or any of the following:
- (a) LCH Limited ("the Clearing House");
 - (b) any Member;
 - (c) any Non-Member Participant;
 - (d) any PPS Bank;
 - (e) any Settlement Service Provider;
 - (f) any Member Settlement Bank.

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