

VIA CFTC PORTAL

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

10 March 2021

LCH Limited Self-Certification: Supplementary client clearing 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 changes to its rules to clarify the requirements related to segregation of client assets. This change is not relevant for Futures Commission Merchants (FCM) and their customers.

Part I: Explanation and Analysis

Under Article 39(5) of the European Market Infrastructure Regulation (EMIR), clearing members must offer their clients, at least, the choice between an omnibus segregated account (OSA) or an individual segregated account (ISA) and inform them of the costs and level of protection associated with each option.

Where a clearing member is unable to do so due to the insolvency regime in its jurisdiction, it must offer alternative arrangements that would allow clients to receive at least omnibus or individual client segregation (which could include clearing solutions provided by an affiliate). Where a client, notwithstanding the alternatives offered, chooses to clear with such a clearing member, then that clearing member must disclose any relevant risks in full to the client.

LCH has become aware in one jurisdiction that there is a discrepancy compared to the LCH rulebook requirement on this topic which means that this segregation may not be fully respected if a clearing member in that jurisdiction becomes insolvent. As a result of the conflict of law, LCH is proposing to amend its rulebook to clarify what the clearing member must offer its clients in terms of segregation of client assets.

These rule changes will go live on, or after, 24 March 2021.

Part II: Description of Rule Changes

A definition of “EMIR Client Clearing” has been included in the General Regulations. A new paragraph has been inserted into section 1.5.3 of Procedures Section 1 to note the points noted in Part I above.

The text of the changes is attached hereto as:

Appendix I – General Regulations

Appendix II – 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.

In particular, CFTC Regulation 39.27(b) which requires a DCO to have a well-founded, transparent, and enforceable legal framework. Also 39.27(c) requires a DCO providing Clearing Services outside the US to identify and address any material conflict of law issues.

LCH operates pursuant to a legal framework that covers all material aspects of LCH’s activities and provides a clear and certain legal basis for its operations, as well as the rights and obligations of both LCH and its clearing members and clients.

LCH has identified a conflict of law issue in one jurisdiction where there is a discrepancy compared to the LCH rulebook requirements on this topic which means that client asset segregation may not be fully respected if a Member in that Jurisdiction becomes insolvent. As such LCH is making this change to make clear what the clearing member must offer its clients in terms of segregation of client assets.

As a result, LCH believes that the extension is consistent with the requirements of Core Principle R and Commission Rule 39.27 (b) and (c).

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/rules-and-regulations/proposed-rule-changes-0>.

Part V: Opposing Views

There were no opposing views expressed by LCH’s governing board or executive committee, members of LCH or market participants that were not incorporated into the change.

Certification

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

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Should you have any questions please contact me.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Julian Oliver', enclosed in a thin blue rectangular border.

Julian Oliver
Chief Compliance Officer
LCH Limited

Appendix I
General Regulations



**GENERAL REGULATIONS OF
LCH LIMITED**

“Eligible Trading Venue Transaction”

means:

- (i) in respect of a SwapClear Clearing Member, a transaction, entered into by a third party Executing Party other than a SwapClear Dealer, recorded in the Clearing House’s systems (via applicable messaging from the relevant Trading Venue, Approved Trade Source System or otherwise) as a transaction that was executed on a Trading Venue that, as at the time of such execution, was an Eligible Trading Venue in respect of such SwapClear Clearing Member; and
- (ii) in respect of an FXCCM, a transaction, entered into by a third party Executing Party other than a ForexClear Dealer, recorded in the Clearing House’s systems (via applicable messaging from the relevant Trading Venue, ForexClear Approved Trade Source System or otherwise) as a transaction that was executed on a Trading Venue that, as at the time of such execution, was an Eligible Trading Venue in respect of such FXCCM

"Eligible Transferee"

means a SwapClear Clearing Member or ForexClear Clearing Member, acting for its own account or for the account of a Clearing Client, that the Clearing House permits, in its sole and absolute discretion, and subject always to compliance with Applicable Law, to receive Transferring SwapClear Contracts or Transferring ForexClear Contracts transferred by an Eligible Transferor pursuant to Regulation 60 or Regulation 95 and in accordance with the Procedures and (where applicable) any relevant Collateral Management Agreement

"Eligible Transferor"

means an SCM, acting for its own account or for the account of a SwapClear Clearing Client, that the Clearing House permits, in its sole and absolute discretion, and subject always to compliance with Applicable Law, to transfer all or part of its Transferring SwapClear Contracts to an Eligible Transferee pursuant to Regulation 60 of these Regulations and in accordance with the Procedures and (where applicable) any relevant Collateral Management Agreement

"EMIR"

means Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC Derivatives, Central Counterparties, and Trade Repositories

“EMIR Client Clearing”

means the provision of Client Clearing Services on an Individual Segregated Account or Omnibus Segregated Account basis as set out in the Regulation 10 and Regulation 11

Appendix II
Procedures Section 1



LCH LIMITED

PROCEDURES SECTION 1

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

1.5.2 *Extension to LCH EnClear Services/EquityClear/RepoClear/SwapClear/ForexClear Clearing*

In addition to the requirements noted above, a Clearing Member wishing to commence clearing on each of the LCH EnClear services (Freight, OTC Emissions and/or gold divisions), the EquityClear markets and/or clearing or dealing on ForexClear, RepoClear and/or SwapClear, must complete additional documentation and be approved by the Clearing House. Clearing Members who wish to either clear directly or to submit for clearing EquityClear ATP Matches, RepoClear Transactions and/or Bond/Repo Trades, ForexClear Transactions and/or SwapClear Transactions originating from a Dealer, should contact the Clearing House's Membership team.

Dealers who wish to clear their own transactions must apply for Clearing Member status. Potential applicants should contact the Clearing House's Membership team.

1.5.3 *Extension for Clearing Members to clear for clients*

Subject to obtaining approval from the Clearing House's Membership team, a Clearing Member may offer certain Client Clearing Services to its clients (Clearing Clients).

A key (but not isolated) factor which will be considered by the Clearing House in determining whether or not to grant such approval to an individual Clearing Member will be whether the offering of Client Clearing Services by such Clearing Member would contravene the Clearing House's conflicts of law policies by giving rise to conflicts of law issues which cannot be mitigated by the rules and procedures the Clearing House has developed to mitigate such risks. In particular, the Clearing House will need to be satisfied (in its sole discretion and based, where appropriate, on external legal advice) that the Clearing House's arrangements for (i) the segregation of positions entered into by the Clearing Member on behalf of its Clearing Clients and of the Collateral held by the Clearing House in respect of such positions; and (ii) the porting of such positions and Collateral, would be effective under the laws (including, in particular, the insolvency laws) applicable to the relevant Clearing Member.

Where the insolvency regime applicable to a Clearing Member in a given jurisdiction could interfere with the Clearing Member's provision of EMIR Client Clearing in a manner which provides for the intrinsic client protections set out in Articles 39 and 48 of EMIR, the Clearing Member must offer its Clearing Client(s) alternative possibilities that ensure those Clearing Clients receive, at least, the choice of an Individual Segregated Account or an Omnibus Segregated Account. Such possibilities may include procuring the availability of EMIR Client Clearing through an affiliated Clearing Member or another Clearing Member. Where the Clearing Client, notwithstanding the alternatives offered, chooses to clear with the Clearing Member, then that Clearing Member must disclose those risks in full to the Clearing Client, in accordance with Articles 39(5) and 39(7) of EMIR.

Clearing Members should contact the Clearing House's Membership team for further details of the arrangements for client clearing in place within the Clearing House.

1.5.4 *Special Clearing Members*

A Special Clearing Member is only approved to clear the types of contract on the Clearing House service(s) and/or on the market(s) stipulated in its Clearing Membership Agreement, subject to the terms of that Agreement.

1.6 **Termination Of Clearing Member Status**

1.6.1 In the event that a Clearing Member wishes to retire from Clearing Member status, it may do so by giving written notice to the Clearing House not less than three months ahead of the proposed termination date. By the close of business on the proposed termination date, the Retiring Member shall ensure that all Contracts registered in the Retiring Member's name have been closed-out or transferred so as to ensure that there are no open Contracts to which the Retiring Member is a party at the proposed termination date. Once all such Contracts have been closed-out or transferred, such Retiring Member shall be entitled to request that the Clearing House releases and returns to it any Collateral held by the Clearing House for such Retiring Member. Retiring Members will need to give the Clearing House notice of termination in respect of all such Dealer agreements in accordance with the terms of those agreements and the relevant Section of the Rulebook. For further information on the retirement process, Clearing Members should contact the Clearing House's Membership team.

1.6.2 If a Clearing Member has not been active on any exchange or market for a continuous period of three months, they will be asked to confirm that they intend to utilise their Clearing Member status and failing a satisfactory response, they will be asked to retire from Clearing Member status.

1.7 **Net Capital Requirements**

1.7.1 *Categories of Clearing Member Status*

There are ten categories of Clearing Member status currently in use. These are as follows:

Category B

Rates Exchange - Clearing Member (clearing own business)