



**VIA EMAIL TO: SUBMISSIONS@CFTC.GOV**

April 22, 2014

Ms. Melissa Jurgens  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street NW  
Three Lafayette Centre  
Washington DC 20581

Dear Ms. Jurgens,

Pursuant to CFTC regulation §40.6(a), LCH.Clearnet Limited ("LCH.Clearnet"), a derivatives clearing organization registered with the Commodity Futures Trading Commission (the "CFTC"), is submitting for self-certification changes to its Rulebook and FCM Rulebook to have rules in place for the allocation of solvency threatening losses arising other than as a result of a clearing member default ("non-default losses") and rule changes that enable LCH.Clearnet to more predictably manage contingent liquidity outflows. These changes will be implemented and effective on May 6, 2014 in order to meet UK Central Counterparty Recognition Requirements.

Please find attached as Appendix I the relevant changes to the LCH.Clearnet Rulebook and FCM Rulebook.

**Part I: Explanation and Analysis**

Due to revisions in Section 3 of SI 2013/1908, The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories)(No.2) Regulations 2013 ("UK CCP Recognition Requirements"), which become effective on May 1, 2014, LCH.Clearnet is required to have rules in place for the allocation of non default losses.

Cash collateral that is provided to LCH.Clearnet as margin and default fund contributions is reinvested primarily in reverse repos and high quality sovereign debt instruments. The investment criteria are conservative and consistent with those permissible in regulation, which along with internal controls ensure that the risk within the investment portfolio is minimal. However, in the event that LCH.Clearnet suffers a loss on its treasury investment portfolio due to either the default of the issuer of a debt instrument (e.g. a sovereign government) and/or the default of an investment counterparty, LCH.Clearnet will allocate the loss to clearing members in proportion to each clearing member's average margin weight. LCH.Clearnet will absorb the loss first by utilising its own capital of €15m and then allocating any remaining loss to clearing members (a "Solvency Threatening Treasury Default Loss"). The FCM Regulations and Procedures have been amended to specify LCH.Clearnet's investment criteria in respect of FCM customer funds.

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In addition to Solvency Threatening Treasury Default Losses, LCH.Clearnet will implement a rule change to clarify the extent of its liability in the event of the failure of a certain market infrastructure providers (e.g. a Central Securities Depository).

Finally, under the UK CCP Recognition Requirements, LCH.Clearnet must maintain a plan that sets out the steps that it will take in order to maintain the continuity of its exempt activities in the event that such continuity is threatened ("Recovery Plan"). In order to augment LCH.Clearnet's Liquidity management tools to be able to flexibly deal with times of market stress, two rulebook changes will be implemented to:

1. Lower the threshold amount for substitution of non-cash collateral; and
2. Enable LCH.Clearnet to disable auto-repayment of excess collateral during times of stress.

LCH.Clearnet will only utilise the above provisions after regulators have been notified of the intention to do so.

The above changes will be made to the LCH.Clearnet Rulebook and FCM Rulebook as described in Part II and shown in Appendix I.

#### **Part II: Description of Rule Changes**

1. FCM Procedure 3.2.1(d); and LCH Clearnet Rulebook (Procedure) 3.2.1.5: enables LCH.Clearnet to disable auto-repay functionality;
2. FCM Procedure 4.1.7; and LCH.Clearnet Rulebook (Procedure) 4.1.4: enables LCH.Clearnet to vary the threshold amount for substitution of non cash collateral;
3. FCM Regulation 24(e); and LCH.Clearnet Rulebook (General Regulation) 39(i): clarifies the extent of LCH.Clearnet's liability in the event of a failure of a market infrastructure provider; and
4. LCH.Clearnet Rulebook (General Regulation) 39C; FCM Regulation 4(n), 24(e) and 27; and FCM Procedure 3.3.4: sets out LCH.Clearnet's approach to allocating Solvency Threatening Treasury losses.

#### **Part III: Core Principle Compliance**

The rule changes submitted herein ensure continued compliance with the DCO Core Principles. LCH.Clearnet will continue to comply with all Core Principles following the introduction of these changes and has concluded that its compliance with the Core Principles will not be adversely affected by these changes.

#### **Part IV: Public Information**

LCH.Clearnet has posted 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 V: Opposing Views**

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



**Certification**

LCH.Clearnet Limited 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 [jay.iyer@lchclearnet.com](mailto:jay.iyer@lchclearnet.com) or Vikesh Patel at [vikesh.patel@lchclearnet.com](mailto:vikesh.patel@lchclearnet.com)

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Jay Iyer', written over a light grey horizontal line.

Jay Iyer, Chief Compliance Officer,  
LCH.Clearnet Limited

Cc: Robert Wasserman, CFTC  
Phyllis Dietz, CFTC  
Kenji Takaki, CFTC  
Shawn Durrani, CFTC



**Appendix I**  
**LCH.Clearnet Rulebook Changes**

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#### 3.2.1.4. **Intraday PPS Calls**

The intra-day margin call by the Clearing House is for intra-day Collateral transfers. GBP, EUR or USD can be used to collateralise margin obligations intraday. Between 14.30 - 16.00 (London time) only USD will be called in London.

Normally the Clearing House will call Collateral in respect of intra-day margin obligations through London PPS accounts. However where the Clearing House wishes to make such an intra-day call after London PPS closes (16:00 London time), such a call will be made upon the Clearing Member's nominated US PPS account.

Clearing Members must designate a currency (GBP, EUR or USD) that will be called by default during the hours of London PPS for each mnemonic/sub-account. Clearing Members may request a change to the default currency no later than 09.30 am London time in order for the change to be undertaken the following day. Member can submit a request to change their currency at the following link:

[www.lchclearnet.com/risk\\_management/ltd/preferential\\_currency\\_for\\_intraday\\_margin\\_calls\\_form.asp](http://www.lchclearnet.com/risk_management/ltd/preferential_currency_for_intraday_margin_calls_form.asp)

The Clearing House has the ability to call US dollars in respect of an intra-day margin call up until 16:00 hours New York Time (21:00 hours London Time).

It is noted that the Clearing House will not accept delivery of US dollar cash other than in satisfaction of an intra-day margin call after 14:00 hours New York time.

The Clearing House must receive confirmation of payment from the Clearing Member's nominated PPS bank(s) within one hour of receipt of the intraday call by the relevant bank branch.

Failure of a bank to confirm a PPS call within one hour may result in the Clearing Member being declared in default. Late confirmation of PPS calls are reported to the regulators of LCH.Clearnet.

#### 3.2.1.5. **Auto repay**

Clearing Members may request that they are automatically repaid any excess cash balances that remain on their accounts at the end of each day. Clearing Members must contact Treasury Operations in order to have auto-repay applied to their accounts. (LCHOperations-Treasury@lchclearnet.com or Tel +44 (0)20 7426 7505). In certain circumstances and following notification to one or more relevant Regulatory Bodies, the Clearing House may disable the auto-repay functionality for one or more Clearing Members. The Clearing House will notify affected Clearing Members in the event that the functionality is disabled.

#### 3.2.1.6. **Value Date**

Although confirmation from the banks that PPS payments will be made must be received within the deadlines set out in sections 3.2.1.4, subject to section 3.2.1.8, all currency transactions are processed by PPS with next business day value with the exception of the following currencies: CAD, EUR, GBP and USD which are processed with value for the same business day.

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If the Clearing House has received a Substitution Request, it shall, promptly following the Clearing House being satisfied that the New Collateral has been transferred or paid to the Clearing House in accordance with Rules 4.3 and 4.4, take such steps as are necessary to transfer such Original Collateral to or to the order of the Clearing Member, *provided that*, if the Clearing House determines, acting in a commercially reasonable manner, that following such substitution, the Clearing House would be unable to satisfy its policies on concentration limits in respect of the various types of Collateral held by it from time to time, it shall notify the Clearing Member thereof and shall not be obliged to transfer the Original Collateral.

#### 4.1.4 Lodgement of Non-Cash Collateral as Replacement for Cash Collateral

Clearing Members should note that they must give Treasury Operations no less than two (2) business days notice of their intention to transfer non-cash Collateral to the Clearing House with a value of £50 million sterling or more, and which is reasonably likely to have the effect that cash Collateral of a similar value is repayable by the Clearing House to that Clearing Member as a result of such transfer. Treasury Operations must be advised no later than 15:30 two business days prior to the transfer. In the event that a Clearing Member requests the return ~~of such of such~~ cash Collateral without giving such notice, the Clearing House will decline to release such cash Collateral until the end of the required notice period. The Clearing House may extend the required notice period or vary the minimum Collateral value by written notice to Clearing Members.

#### 4.1.5 Force Majeure

The Clearing House will not be liable for any failure, hindrance or delay in the performance (in whole or in part) of any of its obligations to Clearing Members with regard to non-cash Collateral where such failure, hindrance or delay arises from causes beyond the control of the Clearing House, such as but not limited to the failure (whether partial or total), interruption or suspension of any Collateral Agent, depository or custodian or other service ("depository") that the Clearing House is using, the termination or suspension of the Clearing House's membership or use of the depository or any variation of the depository's operational timetable, whether or not occasioned by action of the depository operator or other party, or any embargo, unavailability or restriction of bank transfer systems or wires, malfunction or overload of the depository or any other emergency. This provision is without prejudice to the *force majeure* provisions of Clearing Members' agreements with the Clearing House.

#### 4.1.6 Regulatory and Supervisory Information

In every case, the Clearing House will be entitled to supply a depository or Collateral Agent with all the information it requires for any purposes relating to a Clearing Member, or relating to non-cash Collateral received by the Clearing House from a Clearing Member which is or may at any time have been held by the depository or Collateral Agent. Non-cash Collateral will be lodged and held within such depository or other systems as the Clearing House may select or allow, subject to the conditions of such systems and to any applicable law and subordinate rules relating thereto as well as to the terms of the Deed of Charge and these procedures.

#### 4.1.7 Interest Payments (coupons)

The Clearing House will remit interest amounts, taking into account any withheld tax, to Clearing Members' PPS banks on the appropriate value date. These are processed using "Tender" sub-accounts designated "I" for house or "L" for segregated client.

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Only USD will be called by default during the hours of London PPS for each mnemonic/sub-account. FCM Clearing Members may request a change to the default currency no later than 09.30 London time in order for the change to be undertaken the following day. FCM Clearing Member's may submit a request to change their currency at the following link:

[www.lchclearnet.com/risk\\_management/ltd/preferential\\_currency\\_for\\_intraday\\_margin\\_calls\\_form.asp](http://www.lchclearnet.com/risk_management/ltd/preferential_currency_for_intraday_margin_calls_form.asp)

The Clearing House has the ability to call US dollars in respect of an intra-day margin call up until 16:00 hours New York Time (21:00 hours London Time).

The Clearing House must receive confirmation of payment from the FCM Clearing Member's nominated PPS bank(s) within one hour of receipt of the intraday call by the relevant bank branch.

Failure of a bank to confirm a PPS call within one hour may result in the FCM Clearing Member being declared in default. Late confirmation of PPS calls are reported to the regulators of LCH.Clearnet.

(d) Auto repay

FCM Clearing Members may request that they are automatically repaid any excess cash balances that remain on their accounts at the end of each day. FCM Clearing Members must contact Treasury Operations in order to have auto-repay applied to their accounts. (LCHOperations-Treasury@lchclearnet.com or telephone +44 (0)20 7426 7505). [In certain circumstances and following notification to one or more Regulatory Bodies, the Clearing House may disable the auto-repay functionality for one or more FCM Clearing Members. The Clearing House will notify affected FCM Clearing Members in the event that the functionality is disabled.](#) This paragraph 3.2.1(d) only applies to Proprietary Accounts.

(e) Value Date

Although confirmation from the banks that PPS payments will be made must be received within the deadlines set out in Sections 3.2.1(b) and 3.2.1(c), subject to Section 3.2.1(g), all currency transactions are processed by PPS with next business day value with the exception of the following currencies: CAD, EUR, GBP and USD which are processed with value for the same business day.

(f) Foreign Bank Holidays

The Clearing House has made arrangements with London PPS banks to operate the PPS on all UK banking days including foreign bank holidays.

Confirmation that PPS payments will be made must be received within the deadlines set out in Sections 3.2.1(b) and 3.2.1(c). However, the value date for any PPS transactions made on a day which is a bank or public holiday in the country of that currency will be for the next business day on which both the foreign currency center and the Clearing House are open for business. This applies to GBP, CAD, EUR and USD.

Example: 20 August is a public holiday in the USA but not in the UK. 21 August is a normal banking day in the USA.

membershipteam@lchclearnet.com) for each bank branch at which they wish to operate an account before clearing can commence. The original of the mandate must be signed by a person with the appropriate authority within the FCM Clearing Member institution and then forwarded to the relevant bank. A copy must also be forwarded at the same time to the Clearing House Membership Department.

### 3.3 **Acceptable Forms Of Collateral**

The Clearing House accepts certain types of securities and cash in the Clearing House's prescribed form as Collateral against liabilities of the relevant FCM Clearing Member

The Clearing House may vary, at its discretion, the standard requirements and valuation procedures set out in this Section, either generally or in a particular case, without giving prior written notice to FCM Clearing Members. Further, the Clearing House may vary the types of collateral acceptable to it as Collateral, including but not limited to cash, performance bonds or securities.

To view a list of acceptable Collateral, go to: [http://www.lchclearnet.com/risk\\_management/ltd/acceptable\\_collateral.asp](http://www.lchclearnet.com/risk_management/ltd/acceptable_collateral.asp).

#### 3.3.1 **Cash**

In order not to fall within the scope of deposit-taking regulations applying to banks and similar institutions, the Clearing House can accept cash from FCM Clearing Members only in relation to current or anticipated obligations.

FCM Clearing Members must give LCH.Clearnet Limited Treasury Operations no less than two (2) Business Days' notice of their intention to request withdrawal of cash Collateral and its replacement by the lodgment of non-cash Collateral. In the event that an FCM Clearing Member seeks to withdraw such cash Collateral without giving such notice, the Clearing House may decline to release such cash Collateral until the end of the required notice period. This paragraph applies only to the Proprietary Account of an FCM Clearing Member.

#### 3.3.2 **Securities**

Please refer to the following section of the Clearing House's website for both prevailing haircuts and notes on types of collateral acceptable as Collateral:

[http://www.lchclearnet.com/risk\\_management/ltd/acceptable\\_collateral.asp](http://www.lchclearnet.com/risk_management/ltd/acceptable_collateral.asp)

#### 3.3.3 **Securities Value Notification**

FCM Clearing Members may obtain details on the Margin value of securities on their account by viewing the relevant reports available on the Member Reporting Website.

#### 3.3.4 **Investment of FCM Client Funds**

[Pursuant to the application of Regulation 4\(n\), the investment of cash Collateral held on behalf of FCM Clients by the Clearing House is limited to investments in U.S. Treasury securities \(through outright purchases, repurchase or reverse repurchase transactions\).](#)



Each FCM Clearing Member shall instruct the Clearing House as to whether or not to invest such cash Collateral delivered by such FCM Clearing Member to the Clearing House by submitting to the Clearing House such documents as the Clearing House shall provide to FCM Clearing Members for such purpose. If an FCM Clearing Member fails to issue any such instruction to the Clearing House in accordance with such documents, the Clearing House shall invest such cash Collateral from such FCM Clearing Member in accordance with Regulation 4(n).

The Clearing House shall be entitled to charge a cash management fee to FCM Clearing Members that elect to instruct the Clearing House not to invest such cash Collateral. The Clearing House shall notify FCM Clearing Members of the details of such cash management fee via member circular.

### **3.4 Distribution Of Collateral**

#### **3.4.1 Overview**

As different types of Collateral attract different utilization fees and different contracts are assessed for VAT in different ways (see Section 3.5.4), the Clearing House identifies the Collateral applied to liabilities in order to allow utilization fees and VAT to be calculated correctly.

This is done by establishing a specified order for both types of liabilities and types of Collateral and applying Collateral sequentially, such that Collateral type 1 is applied first to liability type 1, Collateral type 2 to liability type 1 if there is a deficiency when Collateral type 1 has been exhausted and so on.

The following procedures are not in any way intended to restrict, vary, or alter the Clearing House's rights to apply Collateral held (including any described in LCH.Clearnet Limited reports/records as "unutilized" or "excess") to meet the FCM Clearing Member's liabilities/obligations to LCH.Clearnet Limited.

#### **3.4.2 Collateral Application**

**Note:** The following provision applies solely for the purpose of calculating fees during the overnight offsetting of FCM Clearing Members' Collateral against FCM Clearing Members' liabilities. In case of default by an FCM Clearing Member, please see Section 3.4.4-3 below.

An FCM Clearing Member may choose to have cash Collateral applied before securities Collateral to its liabilities or fees, or vice versa.

#### **3.4.3 Order of Priority on Default**

Post-default the Clearing House is entitled to realize and/or apply Collateral in whatever order it deems appropriate.

### **3.5 Interest And Accommodation Charge Structure**

#### **3.5.1 Cash Balance Interest Rate**

The Clearing House applies interest to FCM Clearing Member's cleared cash balances. The following rates are applied:

The Clearing House reserves the right to change the information required on instructions received via the Collateral Management system, whenever the Clearing House, at its sole discretion, considers that it would be appropriate.

#### 4.1.5 Excess Margin Maintained in Proprietary Accounts

In accordance with FCM Regulation 9(v), FCM Clearing Members are permitted to maintain Excess Margin in their Proprietary Accounts (regardless of whether any such FCM Clearing Member has elected to have one or more of its FCM Omnibus Swaps Client Accounts with LCH subject to the With Excess Client Model), but subject to the right of the Clearing House, in its sole discretion, to return such Excess Margin to the FCM Clearing Member. Alternatively, the Clearing House may notify that FCM Clearing Member of the intention to levy a charge in respect of Excess Margin with effect from such date as is notified to the FCM Clearing Member. In the event that the FCM Clearing Member does not remove Excess Margin before the date so notified, the Clearing House may, in its discretion, charge the FCM Clearing Member at the rate of 1 basis point per day until Excess Margin is removed by the FCM Clearing Member through use of a release instruction. Payment of this charge shall be collected on a monthly basis through that FCM Clearing Member's PPS sterling account. This charge applies only to Margin lodged with respect to FCM Contracts registered to the FCM Clearing Member's Proprietary Account.

The Clearing House shall have absolute discretion to decide whether and to what extent it is holding Excess Margin at any time.

#### 4.1.6 Return and Provision of Cash Excess Margin

Requests for the return of USD cash Excess Margin must be received by the Clearing House before 09:30 hours. Requests received after 09:30 hours will be rejected.

The Clearing House will not accept deposits of USD cash Collateral as Excess Margin after 14:00 hours.

The ability of FCM Clearing Members to maintain Excess Margin in its FCM Client Sub-Accounts is governed by the provisions of the FCM Rulebook, including FCM Regulation 9A.

#### 4.1.7 Lodgement of Non-Cash Collateral as Replacement for Cash Collateral

This Section 4.1.7 applies only to Proprietary Accounts of FCM Clearing Members. FCM Clearing Members should note that they must give Treasury Operations no less than two (2) Business Days' notice of their intention to lodge Collateral with a value of £50 million sterling or more, and which is reasonably likely to have the effect that cash to a similar value is repayable by the Clearing House to that FCM Clearing Member as a result of such lodgment. In the event that an FCM Clearing Member seeks to withdraw such cash Collateral without giving such notice, the Clearing House will decline to release such cash Collateral until the end of the required notice period. The Clearing House may extend the required notice [or vary the minimum Collateral value](#) by written notice to FCM Clearing Members.

#### 4.1.8 Force Majeure

The Clearing House will not be liable for any failure, hindrance or delay in the performance (in whole or in part) of any of its obligations to FCM Clearing

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transactions of, or to secure or extend the credit of, any person other than its FCM Clients. FCM Futures Client Funds held in an FCM Futures Client Segregated Depository Account shall not be used to carry trades or positions other than in connection with (A) Futures Products or (B) other Futures/Options Contracts.

- (ii) FCM Client Funds held in an FCM Futures Client Segregated Depository Account that are deposited by a specific FCM Client shall not be used to purchase, margin or settle any Futures Product, Futures/Options Contracts or other trade or contract of, or to secure or extend the credit of, any person other than such FCM Client.
- (l) Interest of FCM Clearing Members in FCM Client Funds; Additions and Withdrawals. FCM Regulation 4(g) and FCM Regulation 4(h), which prohibit the commingling of any FCM Client Funds with the funds or assets of an FCM Clearing Member, shall not be construed to prevent an FCM Clearing Member from having a residual financial interest in FCM Client Funds, segregated as required under Section 4d the CEA, the CFTC Regulations and the FCM Rulebook and set apart for the benefit of FCM Clients; nor shall such provisions be construed to prevent an FCM Clearing Member from adding to FCM Client Funds in an FCM Client Segregated Depository Account such amount or amounts of money, from its own funds or unencumbered securities from its own inventory of the type permitted under FCM Regulation 4(n), as it may deem necessary to ensure that such FCM Client Segregated Depository Account holds at all times, at a minimum, an amount equal to the amount required by the CEA, CFTC Regulations and the FCM Rulebook. The books and records of an FCM Clearing Member shall at all times accurately reflect its interest in the segregated FCM Client Funds. An FCM Clearing Member may draw upon FCM Client Funds in the relevant FCM Client Segregated Depository Account to its own order, to the extent of its actual interest therein, including the withdrawal of securities held in such FCM Client Segregated Depository Account; provided, that any such withdrawals do not result in any such account holding less in segregated FCM Client Funds than such account is required to contain at such time.
- (m) Funds Held in FCM Client Segregated Depository Accounts; Exclusions Therefrom. Money held in an FCM Swaps Client Segregated Depository Account or an FCM Futures Client Segregated Depository Account by an FCM Clearing Member shall not include (i) money invested in obligations or stocks of any clearing organization or in memberships in or obligations of any contract market or (ii) money held by any clearing organization which may be used for a purpose other than to purchase, margin, guarantee, secure, transfer, adjust, or settle the FCM Contracts of the FCM Clients of such FCM Clearing Member.
- (n) Investments of FCM Client Funds. An FCM Clearing Member may invest FCM Client Funds as permitted by and in accordance with the terms and conditions set forth in CFTC Regulation 1.25. and ~~†~~The Clearing House may invest Collateral held on behalf of FCM Clients in U.S. Treasury securities (in accordance with the FCM Procedures) as permitted by and in accordance with the terms and conditions set forth in CFTC Regulation 1.25; and subject to all other applicable laws and regulations, including Articles 43, 45 and Annex II of Commission Delegated Regulation (EU) No 153/2013.
- (o) Deposit of Instruments Purchased with FCM Client Funds.

**Regulation 24 Exclusion of Liability**

- (a) Neither the Clearing House nor any other member of the LCH.Clearnet Group shall have any liability to an FCM Clearing Member or any other person in respect of any dispute arising from or in relation to any FCM Contract, including but not limited to, any dispute as to the validity or otherwise of such FCM Contract, the terms of such FCM Contract or whether any alleged agreement or arrangement constitutes an FCM Contract.
- (b) Without prejudice to the provisions of FCM Regulation 1 and FCM Regulation 24(d), neither the Clearing House nor any other member of the LCH.Clearnet Group shall be liable whatsoever to any FCM Clearing Member, or to any other person in contract, tort (including negligence), trust, as a fiduciary or under any other cause of action in respect of any damage, loss, cost or expense of ANY NATURE whatsoever suffered or incurred as a result of: any suspension of clearing services, whether for a temporary period or otherwise, a step taken by the Clearing House under FCM Regulations 11, 12, 30 or 40(f) or any failure or malfunction of any systems, communication lines or facilities, software or technology supplied, operated or used by the Clearing House or the relevant approved agent; the occurrence of any event which is outside the control of the Clearing House; or any exercise by the Clearing House of its discretion under the FCM Regulations, or any decision by the Clearing House not to exercise any such discretion.
- (c) Without prejudice to FCM Regulation 24(b) and FCM Regulation 24(d), unless otherwise expressly provided in the FCM Regulations or in any other agreement to which the Clearing House is party, neither the Clearing House nor any other member of the LCH.Clearnet Group shall be liable under any circumstances (including as a result of any negligence by the Clearing House, or any other member of the LCH.Clearnet Group Limited, or their respective officers, employees, agents or representatives) to any FCM Clearing Member or any other Executing Party for any indirect or consequential loss or damage, or loss of anticipated profit (whether direct or indirect) or loss of bargain, suffered or incurred by any such FCM Clearing Member or other Executing Party and shall not in any circumstances be liable for any loss, cost, damage or expense suffered or incurred by any person as a result of any negligence on the part of the Clearing House, or any other member of the LCH.Clearnet Group Limited, or their respective officers, employees, agents or representatives.
- (d) Nothing in this FCM Regulation 24 shall be construed as an attempt by the Clearing House to exclude any liability for any fraud, fraudulent misrepresentation or willful default on the part of the Clearing House. The Clearing House accepts liability for any personal injury or death caused by the negligence of the Clearing House and for any fraud or willful default on the part of the Clearing House.
- (e) Without prejudice to the provisions of FCM Regulation 1 and FCM Regulation 24(d) neither the Clearing House, nor any other member of the LCH.Clearnet Group shall have any liability whatsoever to any FCM Clearing Member or to any other person (including any FCM Client) in contract, tort (including 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 an FCM Clearing Member or any other person, as the case may be, as a result of the failure of any systems, communication facilities or technology.

- (f) Without prejudice to FCM Regulation 1 and FCM Regulation 24(d), neither the Clearing House, nor any other member of the LCH.Clearnet Group, shall have any liability whatsoever to any FCM Clearing Member or to any other person (including, without limitation, any FCM Client) 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 an FCM Clearing Member or any other person as the case may be, as a result of any service failure, whether complete or partial, of any payment or securities services provider, including (without limitation) any Securities System Operator, custodian, settlement agent, securities depository, securities settlement system, settlement facility or central bank.

**Regulation 27 Solvency Threatening Treasury Default Loss**

(a) In this Regulation:

**“Calculation Period”** means, in respect of a type of Business, a period of the number of days specified in the “Combined Loss Value” calculation in relation to the Fund Amount of that type of Business and ending on the business day preceding the date on which the Clearing House determines that a Solvency Threatening Treasury Default Loss has occurred (and the terms “Business”, “Combined Loss Value” and “Fund Amount” have the meanings set out in the Default Fund Rules);

**“Margin Weight”** means:

(i) the aggregate of an FCM Clearing Member’s total margin requirement (in respect of all of its Proprietary Accounts and all of its Client Accounts) for each type of Business undertaken by the FCM Clearing Member averaged over the relevant Calculation Period preceding a determination of a Solvency Threatening Treasury Default Loss under Regulation 27(b) below;

divided by

(ii) the total average margin requirement of all FCM Clearing Members and “Clearing Members” under the UK General Regulations during the same period; and

**“Treasury Default”** means, in connection with the Clearing House’s treasury management activities, the default of: (A) an issuer of a debt instrument underlying a treasury management contract; and/or (B) a counterparty to a treasury management contract (including a deposit-taking institution), as determined by the Clearing House in its sole discretion.

(b) In the event of a Treasury Default, the Clearing House may determine in its sole discretion that a loss has been caused by or arises out of a Treasury Default. If the Clearing House so determines, it must determine the quantum of that loss by ascertaining the gross amount of the loss and reducing it by EUR 15 million. The result is referred to as a **“Solvency Threatening Treasury Default Loss”**.

(c) The Clearing House will, in respect of each FCM Clearing Member, determine an amount of the Solvency Threatening Treasury Default Loss to be allocated to that FCM Clearing Member based on that FCM Clearing Member’s Margin Weight (an **“Allocated Loss”**). The day on which the Clearing House determines that a Solvency Threatening Treasury Default Loss has taken place shall be the determination day for the purposes of establishing the Calculation Period.

(d) The maximum Allocated Loss that each FCM Clearing Member can be allocated is equal to: (i) the total Clearing House treasury investment portfolio immediately prior to the Solvency Threatening Treasury Default Loss, reduced by EUR 15 million; multiplied by (ii) that FCM Clearing Member’s Margin Weight. For the purpose of the calculation of Margin Weight, the margin requirements for any FCM

- Clearing Member who has become a defaulter at any point prior to the date of allocation, shall be disregarded.
- (e) Each FCM Clearing Member shall pay to the Clearing House within an hour of demand a cash amount equal to its Allocated Loss. The Clearing House shall be entitled to debit such cash amount from the PPS account associated with that FCM Clearing Member's Proprietary Account.
- (f) Any determination made by the Clearing House, and any action taken by the Clearing House, pursuant to this Regulation is binding on a FCM Clearing Member and may in no circumstances be challenged or called into question.
- (g) If, after exercising its rights under this Regulation, the Clearing House makes a recovery in respect of the Treasury Default, the Clearing House will (after replenishing its own losses and expenses) distribute the net proceeds of such recovery pro rata to the amount of the Allocated Loss paid by each FCM Clearing Member and each "Clearing Member" under the UK General Regulations in respect of that Treasury Default by crediting the relevant FCM Clearing Member's Proprietary Account. Nothing in this Regulation 27(g) obliges the Clearing House to pursue any litigation or take other action in order to recover the amounts contemplated hereby.

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**Regulation 39 Exclusion of Liability**

- (a) Without prejudice to the provisions of Regulations 1 and 22 and 39(e) or to the provisions of a Member Link Agreement, neither the Clearing House, nor any other member of the LCH.Clearnet Group shall have any liability whatsoever to any Member or to any other person (including, without limitation, any client of a Member) 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 Member or any other person, as the case may be, as a result of: any suspension, restriction or closure of the market administered by an Exchange, an ATP or a Participating Exchange, whether for a temporary period or otherwise or as a result of a decision taken on the occurrence of a market emergency; any failure by the Clearing House or an Exchange or a Participating Exchange or an ATP or its operator or the relevant approved agent or the Approved EquityClear Settlement Provider to supply each other with data or information in accordance with arrangements from time to time established between any or all of such persons; the failure of any systems, communication facilities or technology supplied, operated or used by the Clearing House, an Exchange, or a Participating Exchange for the purposes of a Link; any event which is outside the control of the Clearing House; any act or omission of an Exchange, or a Participating Exchange in connection with a Linked Exchange Contract or a Participating Exchange Contract or any contracts made on such terms, including, without limitation, any error in the establishment of a settlement price made by an Exchange; any act or omission of the Clearing House, an Exchange, or a Participating Exchange (as the case may be) in connection with the operation of a Link or the arrangements for the transfer of Contracts under a Link; or any act or omission of a Board or an Exchange or any determination made under Exchange Rules in connection with LIFFE Credit Default Swap Index Contracts or the terms thereof.
- (b) Neither the Clearing House nor any other member of the LCH.Clearnet Group shall have any liability to a Member or any other person (including without limitation a SwapClear Dealer, or a RepoClear Dealer or an EquityClear NCM or a ForexClear Dealer) in respect of any dispute arising from or in relation to any OTC Transaction, Eligible OTC Trade, or an ATP Match including, but not limited to, any dispute as to the validity or otherwise of such OTC Transaction, Eligible OTC Trade, the terms of such OTC Transaction, Eligible OTC Trade, trade or ATP Match, or whether any alleged agreement or arrangement constitutes an OTC Transaction or Eligible OTC Trade.
- (c) Without prejudice to the provisions of Regulation 1 and Regulation 39(e), neither the Clearing House nor any other member of the LCH.Clearnet Group shall have any liability whatsoever to any SwapClear Clearing Member, a RepoClear Clearing Member, EquityClear Participant, LCH EnClear OTC Clearing Member, ForexClear Participant or to any other person (including, without limitation, a SwapClear Dealer or a RepoClear Dealer) 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 as a result of: any suspension of an OTC Service or the EquityClear Service or the LCH EnClear OTC Services (or any part thereof), whether for a temporary period or otherwise, a step taken by the Clearing House under Regulations 26, 27, 47(f), 54(f) or 67 or any failure or malfunction of any systems, communication lines or facilities, software or technology supplied, operated or used by the Clearing House or the relevant approved agent; the occurrence of any event which is outside the control of the Clearing House; or any exercise by the Clearing House of its discretion under the Regulations, or any decision by the Clearing House not to exercise any such discretion.

- (d) Without prejudice to Regulation 39(c) and 39(e), unless otherwise expressly provided in the Regulations or in any other agreement to which the Clearing House is party, neither the Clearing House nor any other member of the LCH.Clearnet Group shall have any liability under any circumstances (including, without limitation, as a result of any negligence by the Clearing House, or any other member of the LCH.Clearnet Group Limited, or their respective officers, employees, agents or representatives), be liable to any Member, or a SwapClear Dealer, a RepoClear Dealer, an EquityClear NCM, or a ForexClear Dealer for any indirect or consequential loss or damage, or loss of anticipated profit (whether direct or indirect) or loss of bargain, suffered or incurred by any such Member, SwapClear Dealer, RepoClear Dealer, an EquityClear NCM, or a ForexClear Dealer, and shall not in any circumstances be liable for any loss, cost, damage or expense suffered or incurred by any person as a result of any negligence on the part of the Clearing House, or any other member of the LCH.Clearnet Group Limited, or their respective officers, employees, agents or representatives.
- (e) Nothing in this Regulation 39 shall be construed as an attempt by the Clearing House to exclude any liability for any fraud, fraudulent misrepresentation or wilful default on the part of the Clearing House. The Clearing House accepts liability for any personal injury or death caused by the negligence of the Clearing House and for any fraud or wilful default on the part of the Clearing House and for any actions that it may take on the basis of advice given to it by the SwapClear DMG, and for the accuracy of the information that it distributes to the SwapClear Clearing Members in connection with the SwapClear DMP pursuant to the SwapClear DMP Annex, and for any actions that it may take on the basis of advice given to it by the ForexClear DMG, and for the accuracy of the information that it distributes to the ForexClear Clearing Members in connection with the ForexClear DMP pursuant to the ForexClear DMP Annex.
- (f) Without prejudice to the provisions of Regulations 1 and 22 and 39(e) neither the Clearing House, nor any other member of the LCH.Clearnet Group shall have any liability whatsoever to any Member or to any other person (including, without limitation, any client of a Member or a member of a Participating Exchange or any client of such member) 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 Member or any other person, as the case may be, as a result of the failure of any systems, communication facilities or technology supplied, operated or used by TGHL or as a result of any negligence, wrongdoing, or other act, error, failure or omission on the part of TGHL, in supplying any services to the Clearing House with regard to the Clearing House Turquoise Derivatives Services or as a result of or in connection with any inconsistency or conflict between any provision contained in the Turquoise Derivatives Rules on the one hand and any provision of these Regulations, Default Rules and Procedures and any other Clearing House documentation on the other hand.
- (g) Without prejudice to the provisions of Regulations 22 and 39(e) neither the Clearing House, nor any other member of the LCH.Clearnet Group shall have any liability whatsoever to any Member or to any other person (including, without limitation, any client of a Member or a member of a Participating Exchange or any client of such member) 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 Member or any other person, as the case may be, as a result of the failure of any systems, communication facilities or technology supplied, operated or used by LIFFE, or as a result of any negligence, wrongdoing, or other act, error, failure or omission on the part of LIFFE in relation to the physical settlement of any Contracts or any failure in its administration of deliveries under any Contracts or as a result of or in connection with any inconsistency or conflict between

any provision relating to such settlement contained in the LIFFE Rules on the one hand and any provision of these Regulations, Default Rules and Procedures and any other Clearing House documentation on the other hand.

(h) For the purposes of the Contracts (Rights of Third Parties) Act 1999, save as is expressly set out herein, these Regulations, Default Rules and Procedures do not create any rights in any persons who is/are not a Member/s.

(i) Without prejudice to Regulation 1 and Regulation 39(e), neither the Clearing House, nor any other member of the LCH.Clearnet Group, shall have any liability whatsoever to any Member or to any other person (including, without limitation, any client of a Member) 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 Member or any other person as the case may be, as a result of any service failure, whether complete or partial, of any payment or securities services provider, including (without limitation) any Securities System Operator, custodian, settlement agent, securities depository, securities settlement system, settlement facility or central bank.

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**Regulation 39C Solvency Threatening Treasury Default Loss**

(a) In this Regulation:

**“Calculation Period”** means, in respect of a type of Business, a period of the number of days specified in the “Combined Loss Value” calculation in relation to the Fund Amount of that type of Business and ending on the business day preceding the date on which the Clearing House determines that a Solvency Threatening Treasury Default Loss has occurred (and the terms “Business”, “Combined Loss Value” and “Fund Amount” have the meanings set out in the Default Fund Rules);

**“Margin Weight”** means:

(i) the aggregate of a Clearing Member’s total margin requirement (in respect of all of its Proprietary Accounts and all of its Client Accounts) for each type of Business undertaken by the Clearing Member averaged over the relevant Calculation Period preceding a determination of a Solvency Threatening Treasury Default Loss under Regulation 39C(b) below;

divided by

(ii) the total average margin requirement of all Clearing Members (including FCM Clearing Members) during the same period; and

**“Treasury Default”** means, in connection with the Clearing House’s treasury management activities, the default of: (A) an issuer of a debt instrument underlying a treasury management contract; and/or (B) a counterparty to a treasury management contract (including a deposit-taking institution), as determined by the Clearing House in its sole discretion.

(b) In the event of a Treasury Default, the Clearing House may determine in its sole discretion that a loss has been caused by or arises out of a Treasury Default. If the Clearing House so determines, it must determine the quantum of that loss by ascertaining the gross amount of the loss and reducing it by EUR 15 million. The result is referred to as a **“Solvency Threatening Treasury Default Loss”**.

(c) The Clearing House will, in respect of each Clearing Member, determine an amount of the Solvency Threatening Treasury Default Loss to be allocated to that Clearing Member based on that Clearing Member’s Margin Weight (an **“Allocated Loss”**). The day on which the Clearing House determines that a Solvency Threatening Treasury Default Loss has taken place shall be the determination day for the purposes of establishing the Calculation Period.

(d) The maximum Allocated Loss that each Clearing Member can be allocated is equal to: (i) the total Clearing House treasury investment portfolio immediately prior to the Solvency Threatening Treasury Default Loss, reduced by EUR 15 million; multiplied by (ii) that Clearing Member’s Margin Weight. For the purpose of the calculation of Margin Weight, the margin requirements for any Clearing Member who has become a defaulter at any point prior to the date of allocation, shall be disregarded.

(e) Each Clearing Member shall pay to the Clearing House within an hour of demand a cash amount equal to its Allocated Loss. The Clearing House shall be entitled to debit such cash amount from the PPS account associated with that Clearing Member’s Proprietary Account.

- (f) Any determination made by the Clearing House, and any action taken by the Clearing House, pursuant to this Regulation is binding on a Clearing Member and may in no circumstances be challenged or called into question.
- (g) If, after exercising its rights under this Regulation, the Clearing House makes a recovery in respect of the Treasury Default, the Clearing House will (after replenishing its own losses and expenses) distribute the net proceeds of such recovery pro rata to the amount of the Allocated Loss paid by each Clearing Member and each FCM Clearing Member in respect of that Treasury Default by crediting the relevant Clearing Member's Proprietary Account. Nothing in this Regulation 39C(g) obliges the Clearing House to pursue any litigation or take other action in order to recover the amounts contemplated hereby.