

**SECTION 12**

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12.1            **INTRODUCTION**

These Procedures describe how a person (“the Complainant”) who:

12.1.1           has a complaint about the conduct or behaviour or other actions of a Member with regard to that Member’s clearing activities with LCH; or

12.1.2           has a complaint arising in connection with the performance of, or failure to perform, any of the Clearing House’s regulatory functions

may make a formal complaint, and how that complaint will be investigated and resolved.

12.2 **HOW TO MAKE A COMPLAINT**

12.2.1 A complaint with regard to the conduct or behaviour or other actions of a Member in that Member's clearing activities conducted through the Clearing House or a complaint regarding the performance of the Clearing House or its failure to perform any of its regulatory functions:-

12.2.1.1 must be made in writing, dated and addressed to the Company Secretary LCH.Clearnet Limited at Aldgate House, 33 Aldgate High Street, London EC3N 1EA, U.K.;

12.2.1.2 should set out, as far as possible, details of the conduct, behaviour or other actions complained of, date/s and place/s it occurred, names of person involved, outcome sought, and any other relevant details;

12.2.1.3 must be made no later than 3 months after the conduct, behaviour or other actions complained of, or, if the conduct, behaviour or other actions complained of consists of a series of events, no later than 3 months after the end of the last such event;

12.2.1.4 must contain the full name and address of the complainant and, wherever possible details of a contact telephone number and email address.

12. 2.2. In submitting a complaint in accordance with these procedures the Complainant may submit such further and other documentation and material which he/she believes may be relevant.

12.2.3 Upon receipt of a written complaint pursuant to these Procedures, the Company Secretary shall acknowledge in writing to the address shown in the letter of complaint, receipt of the complaint. Such acknowledgment shall be made within 14 days of receipt of the letter of complaint. After receipt of a complaint in accordance with the procedure set out in this section, the Clearing House shall conduct an internal investigation and review of such complaint in accordance with the procedures set out in section 12.3 below.

- 12.3 **INTERNAL INVESTIGATION AND REVIEW BY THE CLEARING HOUSE**
- 12.3.1 No later than 14 days from receipt of a complaint of the type referred to in section 12.1.1 or 12.1.2 above, the Company Secretary shall refer the complaint, together with any supporting material provided by the Complainant, to an Investigation Committee.
- 12.3.2 An Investigation Committee shall consist of any 3 of the following persons:
- The Deputy Chief Executive of LCH.Clearnet Limited  
The Managing Director, Operations  
The Managing Director, Finance  
The Managing Director, Business Development  
Any person holding the position of Director at the Clearing House
- providing always that an Investigation Committee shall have at least one Managing Director or the Deputy Chief Executive among its number.
- 12.3.3 The Investigation Committee established pursuant to this Section 12 shall conduct an investigation into the subject matter of the complaint and shall deliver its report to the Complainant and to the Chief Executive of LCH.Clearnet Limited within a period of 12 weeks from the referral to it of the complaint. The committee may make such recommendations as it deems fit for resolving the subject matter of the complaint. The committee may, if it so decides, make no recommendations if it considers such course of action to be appropriate in the circumstances. The report shall contain reasons for the committee's decision.
- 12.3.4 The costs of the internal investigation and review shall be borne by LCH.
- 12.3.5 Where the Company Secretary receives a written complaint which is not a complaint regarding the conduct, behaviour or other actions of a Member in respect of its clearing activities with the Clearing House or is not a complaint arising in connection with the performance of, or failure to perform, any of the Clearing House's regulatory functions but is nevertheless a complaint regarding a Member or regarding the conduct, behaviour or actions of an officer or employee or other staff member of the Clearing House, then such complaint shall be referred to the Chief Executive of LCH.Clearnet Limited to be dealt with in accordance with the REQUESTS FOR REVIEW procedure set out in Section 11.6 (Appeals Procedures) of these Procedures.

- 12.4 **REFERRAL TO AN INDEPENDENT INVESTIGATOR**
- 12.4.1 In the event that the Complainant is dissatisfied with the outcome of the Internal Investigation and Review procedure set out in section 12.3 above, or in the event that the Complainant does not receive the report of the Investigation Committee within 14 weeks of the submission of a complaint of the kind described in section 12.1.1 and 12.1.2 above, (and providing that the subject matter of the complaint (or substantially the same matters) shall not have already been referred to an independent investigator as a result of a complaint from that same Complainant) the Complainant may ask for the complaint to be referred to an Independent Investigator nominated in accordance with the procedure set out in section 12.5 below.
- 12.4.2 A request for referral to an Independent Investigator shall be made in writing to the Company Secretary and shall be made no later than 2 weeks following notification to the Complainant of the report of the Investigation Committee or 16 weeks from the submission of the original complaint to the Clearing House in accordance with section 12.2.
- 12.4.3 Within 14 days of receipt of a written request, in accordance with section 12.4.2 above, the Company Secretary shall refer the complaint to an Independent Investigator.
- 12.4.4 An Independent Investigator shall be nominated for this purpose by The Centre for Dispute Resolution (CEDR), London. Such investigator shall be a person:
- 12.4.4.1 independent of LCH.Clearnet Limited (for these purposes "independent" shall mean that such person is not and has not been an officer, director or employee of LCH.Clearnet Limited); and
- 12.4.4.2 with appropriate knowledge of how clearing is carried out by the Clearing House and of the Regulations (including the Procedures), and other relevant documentation, regulation and applicable law;
- 12.4.4.3 with appropriate experience of the market activities in respect of which the complaint is focused.
- 12.4.5 The Clearing House shall be responsible for the payment of the fees and expenses of the Independent Investigator although this shall not give rise to any employment or other relationship between the Independent Investigator and the Clearing House, and shall not give rise to any duty between the Independent Investigator and the Clearing House other than that the Independent Investigator shall act as an independent complaints investigator in accordance with the terms of these Procedures.
- 12.4.6 In the event, that for reasons beyond the reasonable control of the Clearing House, referral to an Independent Investigator is not made within the 2 week day period referred to in 12.4.3 above, then the Company Secretary shall notify the complainant in writing of the reasons for the delay.

12.5            **PROCEDURE FOR DEALING WITH THE COMPLAINT**

12.5.1            Upon appointment, an Independent Investigator nominated in accordance with these Procedures, shall forthwith notify the Complainant and the Clearing House in writing of his appointment and shall invite the Complainant and the Clearing House to make such submissions and submit such documentation as each may wish within such timescale as the Independent Investigator may determine.

12.5.2            The Independent Investigator shall determine his own procedure for considering the complaint referred to him, shall be guided by the requirements of fairness and, and may do, inter alia, any one or more of the following:

12.5.2.1            interview the Complainant;

12.5.2.2            interview a representative of the Clearing House;

12.5.2.3            seek further or other information from the Clearing House and/or the Complainant;

12.5.2.4            make such further or other reasonable inquiries as he/she deems fit in order properly and fully to investigate the Complaint.

12.6 **OUTCOMES**

- 12.6.1 The Independent Investigator shall, wherever reasonably possible, conclude his investigation of a complaint referred to him under these Procedures, within a period of 2 months from the date of his nomination. Where it is not reasonably possible so to do on account of the nature or complexity of the matter referred to him or other good reason, then he shall notify the Complainant and the Clearing House in writing of this fact and provide a further date for the completion of the investigation.
- 12.6.2 The Independent Investigator shall, at the end of his investigation produce a written report setting out his findings, conclusions, and reasons for his conclusions. Such report shall be provided both to the Complainant and to the Clearing House but it shall not be made public unless the complaint is upheld in whole or in part and the Complainant so requests. In the event of such request, the report shall be made public by being published on the LCH.Clearnet Limited public website. Where only part of the complaint is upheld then only that part of the report relating to that part of the complaint shall be so published.
- 12.6.3 In his written report the Independent Investigator may:
- 12.6.3.1 dismiss the complaint; or
  - 12.6.3.2 uphold the complaint in its totality; or
  - 12.6.3.3 uphold part of the complaint and dismiss part of the complaint;
  - 12.6.3.4 make such recommendations as he/she deems fit in the circumstances including a recommendation that the Clearing House make a compensatory payment and/or takes such action as may be reasonably practicable to remedy the cause of the complaint.