



CDSClear

LCH SA CDS Clearing Procedures

Section 8 – Disciplinary Proceedings

26 October 2020

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Capitalised terms used in this Disciplinary Proceedings Procedure and not otherwise defined herein shall have the meaning given pursuant to the remainder of the CDS Clearing Documentation, as such term is defined in the document entitled "CDS Clearing Rule Book" published by LCH SA, as amended from time to time.

8.1 SCOPE OF THIS PROCEDURE

All Clearing Members are subject to Disciplinary Proceedings pursuant to Section 8 of these Procedures (the "**Disciplinary Procedures**").

Any alleged breach by a Clearing Member of an obligation set out in the CDS Clearing Rules (the "**Alleged Breach**") is eligible to be dealt with in accordance with the provisions of these Disciplinary Procedures, provided that LCH SA shall not be permitted to invoke these Disciplinary Procedures where action has already been commenced or concluded in respect of the same Alleged Breach pursuant to the CDS Dispute Resolution Protocol.

Once these Disciplinary Proceedings have been invoked by LCH SA, LCH SA shall be prohibited from commencing concurrent action under the CDS Dispute Resolution Protocol in respect of the same Alleged Breach, subject to its rights pursuant to sub-paragraph (c) below.

These Disciplinary Procedures are without prejudice to:

- (a) any action and/or measures that may be taken by LCH SA based on any other procedure set out in the CDS Clearing Rules (including, without limitation, the right of LCH SA to suspend or terminate a Clearing Member's membership of the CDS Clearing Service pursuant to Section 2.4.1 or Section 2.4.2 of the CDS Clearing Rule Book, and the right of LCH SA to determine that an Event constitutes an Event of Default pursuant to Section 4.3.1 of the CDS Clearing Rule Book and to take any measure pursuant to Section 4.3.2 of the CDS Clearing Rule Book);
- (b) LCH SA's right to take no action where it considers it disproportionate or otherwise, in its discretion;
- (c) LCH SA's right to commence action in accordance with the CDS Dispute Resolution Protocol in respect of the Alleged Breach, subsequent to the conclusion of these Disciplinary Procedures, save that LCH SA's rights in this circumstance shall be limited to pursuing recovery of Damage, incurred by LCH SA, that has not otherwise been recovered pursuant to these Disciplinary Procedures and/or the CDS Clearing Rules and no such action shall be permitted where LCH SA decides not to take any action, or impose any sanction, against the Clearing Member; and
- (d) any provision of Applicable Law concerning enforcement by the Competent Authority or Regulatory Body.

8.2 INVESTIGATION PROCEDURE

Subject to the provisions of Paragraph 8.3, the investigation of an Alleged Breach pursuant to these Disciplinary Proceedings shall be handled in accordance with this Paragraph 8.2.

(a) Opening of the investigation procedure

When LCH SA commences proceedings to investigate an Alleged Breach:

- (i) LCH SA shall send a written notice to the Clearing Member, setting out details of the Alleged Breach, including a summary of the facts relied on in sufficient detail for a reasonable person in the Clearing Member's position to properly understand and respond to the allegations made against it;
- (ii) LCH SA shall identify a suitably senior representative of any entity of the LCH group organisation that shall lead the investigation procedure on behalf of LCH SA and shall inform the Clearing Member who this representative will be in the written notice which is sent in accordance with sub-paragraph (i) above;
- (iii) Following receipt of the written notice sent in accordance with sub-paragraph (i) above, the Clearing Member shall be permitted to raise any objections to the identity of the representative that is to lead the investigation procedure, on grounds of conflicts of interest, within 48 hours. Where an objection is raised, either the Chief Executive Officer of LCH SA or the CDSClear Chief Executive Officer shall discuss the perceived conflict of interest with the Clearing Member within 24 hours and shall make a decision on whether an alternative representative needs to be identified for the purposes of sub-paragraph (ii) above;
- (iv) the Clearing Member shall be required to provide any information, copies or records and documents that may be reasonably requested, in connection with the examination of the Alleged Breach, to LCH SA, save that the Clearing Member shall not be compelled to disclose any information which it is prohibited from disclosing by virtue of Applicable Law or regulation (if and to the extent that the Clearing Member provides LCH SA with duly documented proof of this prohibition), as a result of legal professional privilege or as a result of agreements signed with third parties;
- (v) LCH SA may send a representative (being either the representative identified as leading the investigation procedure on behalf of LCH SA or another representative) to the Clearing Member's offices at any time during normal business hours, having provided reasonable notice (being proportionate to the seriousness of the Alleged Breach) to the Clearing Member as part of the investigation procedure. The Clearing Member shall only be entitled to refuse access to such representative in the event of a substantiated conflict of interest. The Clearing Member shall make available all information, records, and documents kept by the Clearing Member, that may be reasonably required for the examination of the Alleged Breach, to LCH SA's representative;
- (vi) the Clearing Member shall exercise best endeavours to procure the attendance of any of its directors, officers, employees, agents and representatives, as may be reasonably requested, at a specified time on reasonable notice (at either the offices

of LCH SA or those of the Clearing Member) in order to answer questions or provide explanations that may be relevant for the examination of the Alleged Breach; and

- (vii) the Clearing Member shall not be permitted to commence action pursuant to the CDS Dispute Resolution Protocol in respect of the same Alleged Breach until a decision has been made by LCH SA in accordance with Paragraph 8.4 below.

(b) **Confidentiality**

LCH SA and each of its employees, officers or representatives shall hold any information obtained in the course of the investigation procedure set out in Paragraph 8.2(a) in accordance with the provisions of Section 1.2.12 of the CDS Clearing Rule Book.

(c) **Report**

Following the conclusion of the investigation procedure, LCH SA shall: (i) notify the Clearing Member; and (ii) produce a written report (the “**Report**”) in relation to the Alleged Breach and provide it to the Clearing Member, within no more than 14 days as from the notification by LCH SA of the conclusion of the investigation procedure.

The Report shall contain the findings of the investigation, reference the CDS Clearing Rule allegedly breached by the relevant Clearing Member and indicate LCH SA’s intended course of action in relation to the Alleged Breach, being either:

- (i) to proceed with Disciplinary Proceedings, in accordance with these Disciplinary Procedures, if LCH SA believes there to be prima facie evidence of the Alleged Breach having been committed;
- (ii) to discontinue these Disciplinary Proceedings and refer the matter to the Chief Executive Officer of LCH SA to take action in accordance with the provisions of the CDS Clearing Rules and/or the CDS Dispute Resolution Protocol if LCH SA believes there to be prima facie evidence of the Alleged Breach having been committed but the sanctions set out in Paragraph 8.4 of these Disciplinary Proceedings Procedures are, in LCH SA’s reasonable opinion, inadequate; or
- (iii) to take no further action.

(d) **Disciplinary Committee formation**

Where LCH SA determines that it wishes to proceed with Disciplinary Proceedings in accordance with Paragraph 8.2(c)(i) above, it will convene a “**Disciplinary Committee**” consisting of:

- (i) two of: (a) the Chief Executive Officer of LCH SA; (b) the CDSClear Chief Executive Officer (or another member of the CDS Business Unit having suitable seniority); and (c) a member of the executive committee of any entity of the LCH group organisation (the “**Comex**”) who is not one of the above listed people;
- (ii) a representative of LCH SA’s risk, membership or legal department (depending upon the character of the Alleged Breach); and

- (iii) two independent representatives (who shall not be employees or directors of LCH SA and/or the Clearing Member that is subject to the Disciplinary Proceedings or its affiliate(s)), drawn from market participants, experts, lawyers or other persons having suitable experience, appointed in LCH SA's discretion and one of these two persons being designated by LCH SA as chairman of the Disciplinary Committee (the "**Chairman**").

Details of the precise composition of the Disciplinary Committee shall be provided to the Clearing Member as part of the Report, as appropriate.

(e) **Clearing Member Response**

The Clearing Member shall respond to the Disciplinary Committee, within 14 days of receiving a Report which indicates that LCH SA intends to proceed with Disciplinary Proceedings, providing a statement of defence responding to the allegations.

If no response has been received by the Disciplinary Committee within 14 days or such extended period as has been agreed between the Clearing Member and the Disciplinary Committee, LCH SA shall be relieved of its obligations to follow the remaining steps of the investigation procedure (as set out in Paragraph 8.2(f) below) and the Disciplinary Committee may instead make a determination in respect of the Alleged Breach and issue its Recommendation to LCH SA as provided for in Paragraphs 8.2(g) and 8.2(h) below.

(f) **Exploratory meetings**

Once the Clearing Member has responded to the Report, either the Clearing Member or the Disciplinary Committee can, within 7 days, request a meeting with the other party to ask further questions and discuss the Alleged Breach (the "**Meeting**").

Unless otherwise agreed between the Clearing Member and the Disciplinary Committee, the Meeting will be held at LCH SA's offices within 14 days from the request for a Meeting.

The Disciplinary Committee and the relevant Clearing Member are each entitled to bring to the Meeting any person relevant to the Disciplinary Proceedings which includes but is not limited to the following:

- (i) relevant experts;
- (ii) legal advisors; and
- (iii) accounting advisors.

LCH SA and/or the Clearing Member shall only be entitled to object to the attendance by any of the above if there is a substantiated conflict of interest.

The Disciplinary Committee shall, in addition, invite the LCH SA representative that led the investigation procedure to attend the Meeting.

The Disciplinary Committee shall, subject to the provisions of these Disciplinary Proceedings, decide upon its own procedure for conducting the Meeting and

considering and determining the matters to be discussed in the course of the Meeting, on the basis of the Report, the Clearing Member's response to the Report, and such other information and documentation as the Disciplinary Committee considers appropriate.

The Disciplinary Committee may reasonably request further or other documentation and information from the Clearing Member, save that the Clearing Member shall not be compelled to disclose any information which it is prohibited from disclosing by virtue of Applicable Law or regulation (if and to the extent that the Clearing Member provides LCH SA with duly documented proof of this prohibition), as a result of legal professional privilege or as a result of agreements signed with third parties.

The matters discussed at the Meeting are confidential. The Disciplinary Committee and the Clearing Member must ensure that any persons attending the Meeting are subject to a confidentiality agreement. Such confidentiality agreement shall include provisions equivalent to those contained in Section 1.2.12 of the CDS Clearing Rule Book.

To ensure the efficiency of the Meeting, neither the Disciplinary Committee nor the Clearing Member shall bring more than six representatives, unless otherwise agreed.

(g) Determination

Having considered the Report, the Clearing Member's response to the Report, any other information and documentation provided to the Disciplinary Committee in accordance with Paragraph 8.2(f) above and conducted the Meeting, the Disciplinary Committee must determine whether, in its view, the Alleged Breach has been committed.

The Disciplinary Committee shall make its determination, in accordance with this Paragraph 8.2(g), by a majority of the attendees, provided that no determination shall be made without a quorum of three (3) Disciplinary Committee members being in attendance.

In the event of a tie, the Chairman shall have a casting vote.

For the avoidance of doubt, the Disciplinary Committee shall not be bound to comply with any rule of Applicable Law or court procedure in respect of the admissibility of evidence and may, in its discretion, accept, any finding of fact by:

- a Regulatory Body;
- a Governmental Authority;
- the Paris courts in connection with a Dispute; or
- the Arbitral Tribunal, where such finding was made in respect of the Clearing Member in arbitral proceedings between LCH SA and the Clearing Member in connection with a Dispute and pursuant to the CDS Dispute Resolution Protocol.

(h) **Recommendation**

Within 7 days of the later of:

- the Clearing Member's response to the Report; and
- the date of the Meeting, if applicable,

the Disciplinary Committee shall communicate its determination, made in accordance with Paragraph 8.2(g) above, to LCH SA (the "**Recommendation**").

The Disciplinary Committee shall set out in its Recommendation the grounds on which the Disciplinary Committee has determined that the Alleged Breach has or has not been committed and its proposal as to the sanctions, if any, that should be imposed by LCH SA upon the Clearing Member pursuant to Paragraph 8.4 of these Disciplinary Procedures.

This Paragraph 8.2(h) is without prejudice to the rights of the Disciplinary Committee to recommend that these Disciplinary Proceedings be discontinued and refer the matter to the Chief Executive Officer of LCH SA to take action in accordance with the provisions of the CDS Clearing Rules and/or the CDS Dispute Resolution Protocol if the Disciplinary Committee has determined that the Alleged Breach has been committed but the sanctions set out in Paragraph 8.4 of these Disciplinary Procedures are, in the Disciplinary Committee's reasonable opinion, inadequate.

(i) **Decision Notice**

Following receipt of a Recommendation, pursuant to Paragraph 8.2(h) above, LCH SA must decide whether or not to sanction the Clearing Member in accordance with Paragraph 8.4 of these Disciplinary Procedures or otherwise in accordance with the provisions of the CDS Clearing Rules.

For the avoidance of doubt, LCH SA shall not be bound by the terms of the Recommendation of the Disciplinary Committee.

A decision by LCH SA in accordance with this Paragraph 8.2(i) will be made by the Chief Executive Officer of LCH SA or another suitably senior executive of LCH SA.

Within 14 days of receiving a Recommendation, LCH SA must notify the Clearing Member of its decision by registered mail to the address notified to LCH SA in its admission application (the "**Decision Notice**").

A Decision Notice shall include details of the grounds on which LCH SA has come to its decision and the sanction(s), if any, to be imposed against the Clearing Member by LCH SA pursuant to Paragraph 8.4 below or otherwise in accordance with the provisions of the CDS Clearing Rules.

(j) **Action**

Notwithstanding any decision by LCH SA to convene a Disciplinary Committee and proceed with Disciplinary Proceedings in accordance with Paragraphs 8.2(c) to 8.2(i) above, LCH SA may at any time choose to:

- discontinue the Disciplinary Proceedings;
- determine that, in light of the relevant facts and circumstances, no sanction should be imposed upon the relevant Clearing Member pursuant to Paragraph 8.4 below or otherwise in accordance with the provisions of the CDS Clearing Rules;
- take alternative action in accordance with the provisions of the CDS Clearing Rules (including, without limitation, suspension or termination of the Clearing Member's membership of the CDS Clearing Service pursuant to Section 2.4.1 or Section 2.4.2 of the CDS Clearing Rule Book and/or declaration of an Event of Default in respect of the Clearing Member pursuant to Section 4.3.1 of the CDS Clearing Rule Book), in which case LCH SA shall be deemed to have instituted Disciplinary Proceedings in respect of the Alleged Breach for all purposes under Sections 2.4.1 or 4.3.1 of the CDS Clearing Rule Book; or
- amend the scope of matters being considered by the Disciplinary Committee by amending the Report to add, delete or alter any detail of the Alleged Breach or to add detail of an additional Alleged Breach. For the avoidance of doubt, where the Report is amended in this way, the provisions of this Paragraph 8.2 will apply (and, unless otherwise agreed between the Clearing Member and the Disciplinary Committee, any timing specified in this Paragraph 8.2 will restart) in respect of the amended Report.

8.3 IMMEDIATE MEASURE

(a) **Application**

Where LCH SA is expressly instructed to do so by a Competent Authority or Regulatory Body, the Chief Executive Officer of LCH SA or the CDSClear Chief Executive Officer shall impose a fine on the Clearing Member, without being required to follow the procedure set out in Paragraph 8.2 above.

Where the Alleged Breach comprises a failure to provide a complete price submission file on a Price Contribution Day as part of the price submission procedure set out in Section 5 of the Procedures (a "**Price Alleged Breach**"), the Chief Executive Officer of LCH SA or the CDSClear Chief Executive Officer shall be entitled, but shall be under no obligation, to:

- (i) impose a fine on the Clearing Member; or
- (ii) provided that this Price Alleged Breach is preceded by one or more Price Alleged Breaches that occurred during the month preceding the next monthly calculation of each Clearing Member's Contribution Requirement in accordance with the CDS Clearing Rule Book, increase the Clearing Member's Contribution for this next monthly calculation of each Clearing Member's Contribution Requirement by an amount equal to the aggregate amount of fines to be incurred for Price Alleged

Breaches occurring each Price Contribution Day during the month following such monthly calculation.

(b) **Fines**

Any fine imposed by LCH SA:

(i) upon the express instruction of a Competent Authority or Regulatory Body in accordance with Paragraph 8.3(a), shall be for an amount of no more than EUR 500,000 and must be proportionate and commensurate with the seriousness of the Alleged Breach; and

(ii) where the Alleged Breach is a Price Alleged Breach, shall be for an amount capped at the level set out in Schedule 3 to the CDS Admission Agreement.

(c) **Decision Notice**

Where LCH SA is instructed, or decides to, impose a fine or any other measure in accordance with this Paragraph 8.3, it must notify the Clearing Member and the fine that is to be imposed by way of a Decision Notice.

8.4 **SANCTIONS**

Following the conclusion of the Investigation Procedure in accordance with Paragraph 8.2 (and excluding, for the avoidance of doubt, where Immediate Measures have been taken in accordance with Paragraph 8.3), LCH SA shall be entitled, in its absolute discretion, to impose the following sanctions against a Clearing Member, pursuant to these Disciplinary Procedures, provided that any such sanction is proportionate and commensurate with the seriousness of the Alleged Breach:

- (a) a fine (capped at a maximum amount of EUR 500,000) to be paid in accordance with terms prescribed by LCH SA;
- (b) public censure, by way of publishing all or part of the decision taken by LCH SA pursuant to Disciplinary Proceedings on the Website;
- (c) issuance of a private warning or reprimand; and/or
- (d) any combination of the above.

8.5 **DISPUTING A DECISION**

Where a Clearing Member wishes to dispute LCH SA's decision to impose sanctions in accordance with Paragraphs 8.2 and/or 8.3 or the level of sanctions imposed pursuant to Paragraph 8.4, a Clearing Member may, within 14 days (or such longer period as the Chief Executive Officer of LCH SA may, at his discretion, direct) of receiving the Decision Notice in accordance with Paragraph 8.2(g) or 8.3(c), refer the Dispute to be resolved by arbitration in accordance with the expedited procedure set out in the CDS Dispute Resolution Protocol or by litigation, as applicable, in accordance with the CDS Dispute Resolution Protocol.

It is agreed that a Clearing Member shall not be permitted to dispute the amount of a fine imposed by LCH SA in accordance with Paragraph 8.3(b)(ii) on the grounds that the sanction is not proportionate and commensurate with the seriousness of the Alleged Breach.

8.6 **REPORTING AND PUBLICATION**

LCH SA shall:

- (a) report on its monitoring procedures in respect of the CDS Clearing Documentation, compliance and breaches of the CDS Clearing Documentation to its Competent Authorities and/or Regulatory Bodies pursuant to Applicable Law and/or on the basis of any arrangements between LCH SA and any Competent Authority or Regulatory Body;
- (b) immediately notify its Competent Authority of a decision to suspend or terminate a Clearing Member's membership rights or declare a Clearing Member to be subject to an Event of Default (in each case in accordance with the CDS Clearing Rule Book); and
- (c) prepare and publish a general report on the application of these Disciplinary Proceedings, from time to time but at least once a year, provided however that only the details of those Clearing Members who have defaulted or whose membership rights have been suspended or terminated by LCH SA shall be disclosed.

8.7 **INFRINGEMENT OF APPLICABLE LAW**

If LCH SA finds, in the course of the investigation procedure, or otherwise, serious indications of a possible infringement of Applicable Law, it shall report the matter to the relevant Competent Authority or Regulatory Body as soon as possible.