

	N°	Title
	III.4-10a	<b>PROCEDURES FOR SETTLING NET FAILS ON DEBT SECURITIES EXECUTED ON OR REPORTED BY A TRADING AND MATCHING PLATFORM AND MTS ITALY</b>

In the following, the reference day D designates the intended Settlement Date agreed on the day of Transaction's conclusion or the early termination date resulting from a deliver-out repurchase agreement (Repo) with an "open" termination feature.

## **CHAPITRE 1 MANAGEMENT OF NET FAILS ON FRENCH, BELGIAN, GERMAN, SPANISH, DUTCH, AUSTRIAN, PORTUGUESE, FINNISH, IRISH, SLOVAKIAN, SLOVENIAN, AND SUPRANATIONAL DEBT SECURITIES**

### **Section 1.1 Buy-in**

#### **Article 1**

In case of Net Fail on Securities the affected Clearing Members can be identified at the end of day D's Securities settlement system or central Securities depository process, in accordance with its terms and conditions.

#### **Article 2**

Initial Margins (other than in the case of Special Clearing Members) and Variation Margins continue to be calculated and called on Net Fail. Moreover, additional Margins are called from the failing Clearing Member beginning from the next Clearing Day, D+1. Such Margins shall be increased at intervals throughout the period in which the Net Fail is outstanding.

#### **Article 3**

Between D+1 and D+30 Clearing Days, the failing selling Clearing Member can deliver Securities at the delivery price. The failing selling Clearing Member can assert no claim to interest for the late receipt of cash.

#### **Article 4**

On the evening of D+29 Clearing Days, the failing selling Clearing Member receives a notification from LCH SA by email or by any other electronic means.

Such notification requires the failing Clearing Member to settle the relevant Open Position by making sufficient provision on its central Securities depository or Securities settlement system account to allow the Net Fail to be settled in the normal daily settlement process at the latest on the evening of the D+30 Clearing Days otherwise LCH SA initiates the buy-in procedure for the quantity of Securities necessary to settle the Net Fails.

#### **Article 5**

On D+31 Clearing Days LCH SA seeks to buy-in the corresponding Securities at a tender price to fulfil its obligations to the buying Clearing Member. The tender price is deemed to be a maximum amount above which no offer of buy-in will be made. The tender price is defined as 108% of the closing price at the evening of D+30 Clearing Days. The Securities buy-in is renewed until D+35 Clearing Days. The failing selling Clearing Member must make daily payments of costs incurred.

#### **Article 6**

LCH SA determines the conditions under which the buy-in can be executed, under the two following principles:

- If the failing selling Clearing Member executes wholly or partially its obligation to deliver the Securities then LCH SA gives priority to its full or partial delivery upon any other Security provider offer. In this case, Net Fails are settled on the basis of the delivery price as referred to in Article 3.
- If the failing Clearing Member does not deliver at all the Securities or delivers partially, LCH SA chooses for the whole or remaining quantity the cheapest provider and if there is more than one Securities provider with the same price and quantity, LCH SA will choose the first one presented.

#### **Article 7**

If LCH SA is able to buy-in the Net Fail, it charges the failing selling Clearing Member for the difference between the purchase cost and the cash amount credited by the buying Clearing Member.

#### **Article 8**

The buying Clearing Member can assert no claim to compensation for the late receipt of Securities.

#### **Article 9**

Open Positions, for which Securities remain undelivered after the performance of buy-in the evening of the D+35 Clearing Days, are settled by cash compensation. The failing Clearing Member pays the cash compensation to LCH SA, on D+36 Clearing Days, which passes it on to the Clearing Member(s) suffering from the Net Fail(s).

The cash compensation equals to 10% of the undelivered Open Position evaluated on the basis of the last Settlement Price available at the evening of D+35 Clearing Day.

### **Section 1.2 Sell out**

#### **Article 10**

Provisions of this Section 1.2 do not apply to Special Clearing Members. Instead, the provisions of Instruction III.4-10 b shall apply in case of Net Fail on cash.

#### **Article 11**

For Net Fails for which Securities have been received from the selling Clearing Member but have not been delivered to the buying Clearing Member, due to a lack of payment or the inability of the Clearing Member to take delivery of the Securities, LCH SA can sell out the Securities corresponding to any buying net Open Position as set out below.

#### **Article 12**

On the Clearing Day on which a Net Fail on cash occurs, the failing buying Clearing Member receives a notification from LCH SA by email or by any other electronic means.

Such notification requires the failing buying Clearing Member to settle the relevant Open Position by crediting its central or commercial bank cash account or to take delivery of the Securities, to allow the Net Fail to be settled in the normal daily settlement process at the latest at 10.00 a.m. CET on the following Clearing Day otherwise LCH SA may initiate the sell-out procedure and sell the quantity of Securities necessary to settle the Net Fails.

#### **Article 13**

LCH SA can change the timeframe for a sell-out, at its discretion, if it deems that excessive risk would be incurred otherwise.

### **Section 1.3 Pairing off**

#### **Article 14**

Clearing Members have the possibility to ask for a “pair-off”, whereby multiple Net Fails relating to the same ISIN, the same currency and the same Delivery Account pointing towards the same settlement solution, but with different Intended Settlement Dates and opposite directions (buy/sell) are netted.

Pair-off requests and processing shall be made in accordance with the conditions set out in a Notice. LCH SA shall only process pair-off requests on a best effort basis.

## **CHAPITRE 2 MANAGEMENT OF NET FAILS ON ITALIAN DEBT SECURITIES**

### **Section 2.1 Buy-in**

#### **Article 15**

In case of Net Fail on Securities the affected Clearing Members can be identified at the closing of D's Securities settlement system or central Securities depository process in accordance with its terms and conditions.

#### **Article 16**

Variation Margins and Initial Margins continue to be calculated and called on Net Fail. Moreover, additional Margins are called from the defaulting Clearing Member beginning from D+1 Clearing Day. Such Margins shall be increased at intervals throughout the period in which the Net Fail is outstanding.

Notwithstanding anything to the contrary in this Instruction, no Initial Margins nor additional Margins are called from the failing Special Clearing Member.

#### **Article 17**

Between D+1 Clearing Day and D+ 10 Clearing Days, the failing selling Clearing Member can deliver Securities at the delivery price. The selling Clearing Member can assert no claim to interest for the late receipt of cash.

#### **Article 18**

On the evening of D+7 Clearing Days, the failing selling Clearing Member receives a notification from LCH SA by email or by any other electronic means.

Such notification requires the failing Clearing Member to settle the relevant Open Position by making sufficient provision on its central Securities depository or Securities settlement system account to allow the Net Fail to be settled in the normal daily settlement process at the latest on the evening of D+10 Clearing Days otherwise LCH SA initiates the buy-in procedure for the quantity of Securities necessary to settle the Net Fails.

#### **Article 19**

On D+11 Clearing Days, LCH SA seeks to buy-in the corresponding Securities at a tender price to fulfil its obligations to the buying Clearing Member. The tender price is deemed to be a maximum amount above which no offer of buy-in will be made. The tender price is defined as 108% of the closing price at the evening of D+10 Clearing Days. The Securities buy-in is renewed until D+13 Clearing Days evening. The selling Clearing Member must make daily payments of costs incurred.

#### **Article 20**

LCH SA determines the conditions under which the buy-in can be executed, under the two following principles:

- If the failing selling Clearing Member executes wholly or partially its obligation to deliver the Securities then LCH SA gives priority to its full or partial delivery upon any other Security provider offer. In this case, Net Fails are settled on the basis of the delivery price as referred to in Article 22.

- If the failing Clearing Member does not deliver at all the Securities or delivers partially, LCH SA chooses for the whole or remaining quantity the cheapest provider and if there is more than one Securities provider with the same price and quantity, LCH SA will choose the first one presented.

#### **Article 21**

If LCH SA is able to buy-in the Net Fail, it charges the failing selling Clearing Member for the difference between the purchase cost and the cash amount credited by the buying Clearing Member.

#### **Article 22**

Open Positions, for which Securities remain undelivered after the performance of buy-in in the evening of D+13 Clearing Days, are settled by cash compensation. The failing Clearing Member pays the cash compensation to LCH SA, which passes it on to the Clearing Member(s) suffering from the Net Fail(s).

The cash compensation equals to 10% of the undelivered Open Position evaluated on the basis of the last Settlement Price available at the evening of D+13 Clearing Days.

#### **Article 23**

The buying Clearing Member can assert no claim to compensation for the late receipt of Securities.

### **Section 2.2    Sell out**

#### **Article 24**

Provisions of this Section 2.2 do not apply to Special Clearing Members. Instead, the provisions of Instruction III.4-10 b shall apply in case of Net fail on cash.

#### **Article 25**

For Net Fails for which Securities have been received from the selling Clearing Member but have not been delivered to the buying Clearing Member, due to a lack of payment or the inability of the Clearing Member to take delivery of the Securities, LCH SA can sell out the Securities corresponding to any buying net Open Position as set out below.

#### **Article 26**

On the Clearing Day on which the Net Fail occurs, the failing buying Clearing Member receives a notification from LCH SA by email or by any other electronic means.

Such notification requires the failing Clearing Member to settle the relevant Open Position by crediting its central or commercial bank cash account or to take delivery of the Securities to allow the Net Fail to be settled in the normal daily settlement process at the latest at 10.00 a.m. on the following Clearing Day otherwise LCH SA may initiate the sell-out procedure and sell the quantity of Securities necessary to settle the Net Fails.

#### **Article 27**

LCH SA can change the timeframe for a sell-out, at its discretion, if it deems that excessive risk would be incurred otherwise.

## **CHAPTER 3    PENALTIES ON NET FAILS**

### **Section 3.1    General Provisions**

#### **Article 28**

The Net Fails are related to a lack of payment and or a lack of delivery from the failing Clearing Member. All Net Fails are subject to penalties due by the failing Clearing Member to LCH SA, when the latter is acting in its capacity as CCP ("**CCP Penalty**"), and/or acting on behalf of the relevant CSD of Reference or ICSD in accordance with CSDR ("**CSDR Penalty**").

#### **Article 29**

For each Net Fail, LCH SA calculates the CCP Penalty owed by the failing Clearing Member based on a fee as published in the fee grid. At the end of each month an invoice is sent to the Clearing Member and the corresponding amount is debited on its account. For the avoidance of doubt, the CCP Penalty does not apply in respect of Special Clearing Members. Instead, the provisions of Instruction III.4-10 b shall apply in case of a Net Fail on cash.

The amount of this CCP Penalty on Net Fail will be increased, as the case may be, by any cost, including any CSDR Penalty amount, charged by LCH SA on behalf of the relevant CSD of Reference, ICSD or Securities settlement system in relation to the said Net Fail. The CSDR Penalty amount shall be calculated by each relevant CSD of Reference or ICSD, and charged by LCH SA on the strict basis of such calculation, as described in this Instruction.

### **Section 3.2 CSDR Penalties**

#### **Article 30**

In addition to any CCP Penalties that may be imposed by LCH SA, each relevant CSD of Reference or ICSD calculates daily CSDR Penalties on Net Fails in accordance with CSDR and reports these penalties to their participants. For cleared Transactions, LCH SA shall collect and distribute such CSDR Penalties from and to its relevant Clearing Members (including Special Clearing Members), following the instructions of each such CSD of reference/ ICSD.

#### **Article 31 - Daily process**

LCH SA shall, on a daily basis, match and reconcile each CSDR Penalty calculation against its record of Net Fails. At the end of each day, LCH SA provides each Clearing Member with a report giving all the CSDR penalty calculation records for all relevant CSDs of Reference/ ICSDs.

Clearing Members shall raise queries in relation to the calculated CSDR Penalties, including any request for deletion or correction, directly with the appropriate CSD of Reference, ICSD or Settlement Agent as applicable, and follow the process described in their own applicable rules.

LCH SA, acting strictly on behalf of each relevant CSD of Reference/ ICSD and upon its instructions, shall not be responsible for the accuracy and completeness of the calculations of CSDR Penalties by such CSDs.

#### **Article 32 - Monthly process**

Following the month end penalty processing timetable of each relevant CSD of Reference/ ICSD, LCH SA shall provide each Clearing Member with a report including all the final corrected records for all relevant CSDs for the previous month.

Where LCH SA is not able to collect the full amount of CSDR Penalties it is required to distribute, it will only redistribute the amount collected to failed-to Clearing Members, applying a haircut calculation methodology.

Penalty collection and distribution will be processed through Target 2 payments for EUR currency, with a value date following each relevant CSD of Reference/ ICSD calendar for CSDR Penalty regime.