

 LCH The Markets' Partner Instruction	N°	Title
	III.4-2	PROCEDURE FOR SETTLING NET FAILS ON TRANSACTIONS REGISTERED IN THE CASH AND DERIVATIVES CLEARING SYSTEM

Pursuant to Articles 3.4.3.1 to 3.4.3.3 of the Clearing Rule Book.

In this Instruction:

- *the terms “selling Clearing Member” are referring to the Clearing Member which holds the selling Open Positions ;*
- *the terms “buying Clearing Member” are referring to the Clearing Member which holds the buying Open Positions ; and*
- *the terms “Securities provider” are referring to any Clearing Member, other than the selling Clearing Member, wishing to participate to the buy-in process.*

CHAPTER 1 SETTLEMENT NETTING : TRADE DATE NETTING

Article 1

The “trade date netting” process consists, at every end of Clearing Day, of netting Trade Legs according to their Trade Date, intended Settlement Date, ISIN, settlement currency and Delivery Account they are booked in, and sending the settlement instructions to the CSD of Reference or ICSD on Registration Date.

The settlement instructions are then managed by the relevant CSD of Reference’s/ICSD’s settlement system according to the rules of such relevant CSD of Reference/ICSD.

Article 2

Buy-in or sell-out procedures are triggered by LCH SA when a Net Fail has reached the deadline mentioned in this Instruction.

Article 3

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, 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 request on a best effort basis.

CHAPTER 2 SETTLEMENT FOR NET FAILS

Section 1 – SETTLEMENT FOR NET FAILS ON SECURITIES

Article 4

LCH SA can reduce the timeframe for a buy-in mentioned below, at its discretion, if it deems that excessive risk would be incurred otherwise. An alert is made to the concerned Clearing Member by LCH SA.

Sub section 1 – Buy-in procedure

Article 5

When a selling Open Position remains wholly or partially unsettled on the evening of the third Clearing Day following the intended Settlement Date (intended Settlement Date +3), the selling Clearing Member receives an electronic alert from LCH SA, through its access solution.

Such alert requires the selling Clearing Member to settle the relevant selling 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 fourth Clearing Day following the intended Settlement Date (intended Settlement Date + 4) of the selling Open Position, otherwise LCH SA initiates the buy-in procedure for the quantity of Securities necessary to settle the Net Fails.

By exception, in respect of Exchange Traded Funds (hereafter “ETFs”) only:

When a selling Open Position remains wholly or partially unsettled on the evening of the sixth Clearing Day following the intended Settlement Date (intended Settlement Date +6), the selling Clearing Member receives an electronic alert from LCH SA, through its access solution.

Such alert requires the selling Clearing Member to settle the relevant selling 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 seventh Clearing Day following the intended Settlement Date (intended Settlement Date + 7) of the selling Open Position, otherwise LCH SA initiates the buy-in procedure for the quantity of ETFs necessary to settle the Net Fails.

Article 6

Except for Open Positions related to non-novated Transactions and to ETFs, LCH SA initiates a buy-in for any selling Open Position (which remains wholly or partially unsettled in the evening of the fourth Clearing Day following the intended Settlement Date (intended Settlement Date +4) of such selling Open Position.

In respect of ETFs, LCH SA initiates a buy-in for any selling Open Position (which remains wholly or partially unsettled on the evening of the seventh Clearing Day following the intended Settlement Date (intended Settlement Date +7) of such selling Open Position.

Article 7

In addition, on the evening of the fourth Clearing Day following the intended Settlement Date (intended Settlement Date +4), the selling Clearing Member receives, through its access solution, an electronic confirmation that the buy-in will be initiated.

By exception, in respect of ETFs, on the evening of the seventh Clearing Day following the intended Settlement Date (intended Settlement Date +7), the selling Clearing Member receives, through its access solution, an electronic confirmation that the buy-in will be initiated.

Article 8

LCH SA charges a flat fee as defined in the fee grid, pertaining to the initiation of the buy-in, to the selling Clearing Member, even if such Clearing Member actually delivers the Securities.

Article 9

Neither the alert mentioned in Article 5 nor the confirmation mentioned in Article 7, is a condition precedent to the buy-in. Failure to receive such alert or confirmation does not prevent LCH SA from performing the buy-in and charging it.

Article 10

On the morning of the fifth Clearing Day following the intended Settlement Date (intended Settlement Date +5), a buy-in attempt is launched using a tender price. By exception, in respect of ETFs, such a buy-in attempt is launched on the morning of the eighth Clearing Day following the intended Settlement Date (intended Settlement Date +8).

The tender price, together with the list of Securities to be bought in, and for each Security, the relevant quantity, are posted on LCH SA website.

For any type of Security the tender price is deemed to be a maximum amount above which no offer of buy-in will be made. It is defined in a Notice.

Article 11

Any Securities provider wishing to participate to the buy-in process shall provide LCH SA with a notification of delivery, by electronic mail, using the dedicated form available on the website, on the Clearing Day of the buy-in attempt, within the timeframe as set out in a Notice.

Article 12

If at least one Securities provider has sent an offer, LCH SA will inform the selling Clearing Member that it shall send, on the same Clearing Day and within the timeframe as set out in a Notice, a notification of delivery, if it delivers fully or partially the relevant Securities.

Such notification shall be sent by electronic mail, using exclusively LCH SA standard document which is available on the website. Failure to provide such a notification within the here above mentioned timeframe will be deemed to constitute a non-delivery statement.

If the selling Clearing Member proposes to fulfil wholly or partially its obligation to deliver the Securities, then LCH SA gives priority to its full or partial delivery upon any other Securities provider offer.

If the selling Clearing Member does not propose to deliver any Security or proposes to deliver them partially, LCH SA chooses for the whole or remaining quantity the cheapest Securities provider and if there is more than one Securities provider with the same price and quantity, LCH SA chooses the first one presented.

Article 13

If there is no offer made by a Securities provider, the selling Clearing Member which account structure is set-up in “hold” mode (as described in the relevant European Central Bank documentation) and which intends to partially deliver the relevant Securities, shall on the same Clearing Day, within the timeframe set out in a Notice, send to LCH SA a notification of delivery using exclusively LCH SA standard document which is available on the website.

For the avoidance of doubt, no notification of delivery will be required by LCH SA from:

- selling Clearing Members which account structure is set-up in “hold mode” and intend to fulfil wholly their obligation to deliver the Securities or do not intend to deliver the Securities at all;
- selling Clearing Members which account structure is set-up in “release mode” (as described in the relevant European central Bank documentation).

Article 14

The notification of delivery sent to LCH SA, by the selling Clearing Member or the Securities provider, is a unilateral promise of delivery, which constitutes an obligation to deliver the relevant Securities and quantity if LCH SA selects the offer.

In case of failure to perform fully its obligation to deliver, a penalty is applicable as defined in a Notice.

The proceeds from the fine will be passed onto the Clearing Members according to the calculation method mentioned in Chapter 4 of Instruction III.4.3.

Article 15

The selling Clearing Member’s Securities account is debited by LCH SA directly and/or the Securities provider delivers the Securities to LCH SA's dedicated buy-in account opened in the books of the relevant central Securities depository or Securities settlement system.

In both cases, the delivery of the Securities will be performed in “delivery versus payment”.

The delivery of the relevant Securities occurs on the fifth Clearing Day following the intended Settlement Date (intended Settlement Date +5). By exception, in respect of ETFs, the delivery of the relevant ETFs occurs on the eighth Clearing Day following the intended Settlement Date (intended Settlement Date +8). The timing within which the Securities provider and/or the selling Clearing Member shall deliver the Securities is mentioned in a Notice.

On the fifth Clearing Day following the intended Settlement Date (intended Settlement Date +5), pursuant to the delivery versus payment mechanism, the relevant buying Clearing Member’s account is credited of the relevant Securities, and the selling Clearing Member and/or the selected Securities provider’s account is credited of the relevant cash amount.

By exception, in respect of ETFs, on the eighth Clearing Day following the intended Settlement Date (intended Settlement Date +8), pursuant to the delivery versus payment mechanism, the relevant buying Clearing Member’s account is credited of the relevant Securities, and the selling Clearing Member and/or the selected Securities provider’s account is credited of the relevant cash amount.

Article 16

If the Securities provider does not receive the request to deliver from LCH SA before the time set out in a Notice, LCH SA shall be deemed to have rejected the proposal and therefore the obligation to deliver, mentioned in Article 14, is void.

Article 17

If the selling Clearing Member and/or the Securities’ Provider deliver(s) too many Securities, in such exceptional case, LCH SA will do its best effort to return these Securities.

Sub Section 2 – Cash compensation

Article 18

Selling Open Positions, for which Securities remain undelivered after the attempt of buy-in in the evening of the fifth Clearing Day following the intended Settlement Date (intended Settlement Date +5) are settled by cash compensation.

The selling Clearing Member pays the cash compensation to LCH SA, at the latest, on the sixth Clearing Day following the intended Settlement Date (intended Settlement Date + 6). On the same Clearing Day, LCH SA passes on the entire amount to the Clearing Member(s) suffering from the Net Fail(s).

By exception, in respect of ETFs, selling Open Positions, for which ETFs remain undelivered after the performance of a buy-in in the evening of the eighth Clearing Day following the intended Settlement Date (intended Settlement Date +8) are settled by cash compensation.

The selling Clearing Member pays the cash compensation to LCH SA, at the latest, on the ninth Clearing Day following the intended Settlement Date (intended Settlement Date + 9). On the same Clearing Day, LCH SA passes on the entire amount to the Clearing Member(s) suffering from the Net Fail(s).

Article 19

Cash compensation can be performed earlier if the relevant Securities are not listed anymore or have expired before the evening of the fifth Clearing Day following the intended Settlement Date (intended Settlement Date +5).

In case of failure to deliver warrants, or any Financial Instruments, that have expired prior to the maturity date defined by the issuer (notably, but not only, knock-out warrants), the cash compensation is performed on the Clearing Day following the intended Settlement Date (intended Settlement Date +1).

As an exception to the above principle, for warrants that were negotiated and have expired on the same Clearing Day, the cash compensation is performed on the third Clearing Day following the intended Settlement Date (intended Settlement Date +3) on request of the selling Clearing Member subject that:

- the Securities are registered in the accounts opened in the books of the relevant CSD in the name of the selling Clearing Member but the latter is prevented from delivering such Securities on intended Settlement Date due to internal technical/operational failure; and
- the relevant ICSD maintains the Securities available in their system for settlement.

Article 20

For any type of Security, the cash compensation amount is calculated as set-out in a Notice.

In order to limit the damages suffered by the buying Clearing Member, notably in case of high market volatility, the cash compensation cannot be inferior to the amount corresponding to the netted absolute value of the Open Position remaining on the evening of the fifth Clearing Day following the intended Settlement Date (Intended Settlement Date +5) and, by exception, as for ETFs, on the eighth Clearing Day following the intended Settlement Date (Intended Settlement Date +8).

Section 2 – SETTLEMENT FOR NET FAILS ON CASH: SELL-OUT PROCEDURE

Article 21

For Net Fails due to a lack of payment for which Securities have been received from the selling Clearing Member but have not been delivered to the buying Clearing Member, LCH SA sells out the Securities corresponding to any buying Open Position which remains unsettled on the morning of the first Clearing Day following the intended Settlement Date (intended Settlement Date + 1).

Article 22

On the Clearing Day when the cash failure occurs, the relevant buying Clearing Member receives an alert from LCH SA, electronically through its access solution.

Article 23

This alert requires the Clearing Member to settle the relevant Open Position by crediting its central bank or commercial bank account to allow the Net Fail to be settled in the normal daily settlement process at the latest on the following Clearing Day otherwise LCH SA initiates the sell-out procedure and sells the quantity of Securities necessary to settle the Net Fails.

Article 24

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 SETTLEMENT FOR NET FAILS ON FINANCIAL INSTRUMENTS ON WHICH OCCURS A CORPORATE EVENT

Article 25

In case of Net Fail on the Financial Instruments on which occurs a corporate event:

- should the corporate event be mandatory, LCH SA will manage it in compliance with market practices and/or the information of the relevant Market Undertaking or the relevant CSD of Reference or the Securities settlement system;
- should the corporate event be elective and subject that all the details of the corporate event are received by LCH SA from the relevant Market Undertaking or the relevant CSD of Reference or the Securities settlement system, LCH SA shall manage it pursuant to the conditions and the timeframes mentioned in a Notice.