

	<b>N°</b>	<b>Title</b>
	<b>IV.5-2</b>	<b>LIQUIDATION AND TRANSFER PROCESS IN CASE OF AN EVENT OF DEFAULT OF A CLEARING MEMBER</b>

*Pursuant to Article 4.5.2.6 and 4.5.2.8 of the Clearing Rule Book*

## **SCOPE**

**This Instruction applies in its entirety to the Positions of a Defaulting Clearing Member registered in the Cash and Derivatives Clearing System, provided, however, that the provisions of Chapter 4 of this Instruction shall only apply in respect of Defaulting Clearing Members that have posted Collateral by way of a Belgian law security interest pursuant to Instruction N° IV.4-1.**

**This Instruction also applies to the Positions of a Defaulting Clearing Member relating to Transactions on Fixed Income Securities and Triparty Repos, except:**

- **Chapter 2 which does not apply to the House Positions of a Defaulting Clearing Member relating to Transactions on Fixed Income Securities or Triparty Repos, which are governed by the Fixed Income Default Management Process Instruction and,**
- **Chapter 3 in respect of the transfer of Open Positions of Indirect Clients registered in NOSA and GOSA Structures.**

### **Chapter 1 Common Provisions**

#### **Article 1 General**

The following provisions shall apply upon the occurrence of an Event of Default of a Clearing Member.

Upon the occurrence of an Event of Default of a Clearing Member, LCH SA may, at its discretion, initiate a procedure either to liquidate and/or to transfer the Open Positions registered in the name of the Defaulting Clearing Member in the conditions set out below.

#### **Article 2 Decision**

LCH SA may decide to proceed with the transfer or liquidation of the Open Positions registered in the name of the Defaulting Clearing Member in accordance with its Clearing Rules, which means that once LCH SA has decided to proceed with such transfer or liquidation, the approval of the Defaulting Clearing Member (or of any third party, authority or court, unless otherwise mentioned below) is not required.

Prior to proceeding with such liquidation, LCH SA may, at its sole discretion and for risk mitigation purposes, decide to hedge any part of such Open Positions.

#### **Article 3 Management of transfer and/or liquidation**

In case of an Event of Default of a Clearing Member, LCH SA shall manage any hedging, transfer and/or the liquidation in the best possible manner, taking into account the need to act promptly in the manner LCH SA thinks best to contain its exposure and to mitigate resulting effects over market participants.

## **Article 4 Notification**

The implementation of any transfer or liquidation of Open Positions shall be notified by LCH SA in writing to the Defaulting Clearing Member within a reasonable timeframe and once the process for such transfer or liquidation is completed.

## **Article 5 Liability**

LCH SA shall not have any liability whatsoever to any Clearing Member or to any other person (including, without limitation, any Client or Indirect Clients) in respect of any damage, loss, cost or expense of whatsoever nature suffered or incurred by a Clearing Member, Client, Indirect Client, or any other person, as the case may be, as a result of the occurrence and management of an Event of Default. In particular, LCH SA shall not have any liability for having been unable to proceed with a transfer of Open Positions or for the conditions under which Open Positions are liquidated.

## **Chapter 2 Liquidation**

### **Article 6 Purpose**

The purpose of the liquidation is to reduce the risks incurred by LCH SA in relation to the Open Positions registered in the name of the Defaulting Clearing Member through a third party which shall perform the obligations of the Defaulting Clearing Member as regards the Open Positions that are to be liquidated.

### **Article 7 Scope of liquidation**

LCH SA may opt for the liquidation of the following Open Positions:

- House Open Positions registered in the name of the Defaulting Clearing Member, including all Positions registered in a temporary Position Account, and
- all Client Open Positions registered in the name of the Defaulting Clearing Member that have not been transferred for any reason whatsoever.

### **Article 8 Methods for liquidation**

LCH SA may proceed with the liquidation of the Open Positions referred to above either via a broker and/or via a direct offer counterpart at its discretion.

- Via a broker: the broker shall execute on the relevant markets orders which are opposite to the Open Positions registered in the name of the Defaulting Clearing Member and that are to be liquidated. The broker shall act in its own name and for the account of LCH SA.
- Via a direct offer counterpart: a Clearing Member shall be substituted in the obligations vis-à-vis LCH SA relating to the Open Positions registered in the name of the Defaulting Clearing Member and that are to be liquidated.

When liquidating the Open Positions of the Defaulting Clearing Member, LCH SA acts for its own account and shall not incur any liability either for having decided to proceed with the liquidation of Open Positions or for the terms and conditions of the liquidation.

Any Collateral or proceeds from liquidation of Collateral (having applied such portion of Collateral or Collateral proceeds as is necessary to cover any losses resulting from liquidation of relevant Client Open Positions where applicable) of:

- (i) all or part of a Gross Omnibus Account Structure is/are remitted to the Client concerned, if such Client is a Known Client and is the sole holder of all Open Positions linked to the relevant Margin Account, pro rata to the Initial Margin attributable to such Margin Account within the relevant Client Account Structure, and to the Defaulting Clearing Member's judicial administrator or liquidator if any of the preceding conditions is not satisfied,
- (ii) a Net Omnibus Segregated Account Structure, is/are remitted to the Client, if such Client is the sole holder of such Client Account Structure and is a Known Client, and to the Defaulting Clearing Member's judicial administrator or liquidator if any of the preceding conditions is not satisfied , and
- (iii) an Individual Segregated Account, is remitted to the relevant Known Client.

## **Article 9      Liquidation costs**

The hedging and liquidation costs are all costs incurred by LCH SA in relation to the hedging and/or liquidation of the Open Positions registered in the name of the Defaulting Clearing Member. Hedging and liquidation costs which can be directly allocated to a Margin Account shall be attributed to such Margin Account, or shall otherwise be attributed to each relevant Margin Account pro rata to the Initial Margin of such Margin Account within the relevant Account Structure.

## **Chapter 3      Transfer**

### **Article 10   Purpose**

Transfer means that the Client Open Positions registered in the name of the Defaulting Clearing Member are transferred to a new Clearing Member. The Clients and Indirect Clients, for the account of whom the Transactions corresponding to the Client Open Positions to be transferred have been concluded will therefore have such Transactions cleared by a new Clearing Member.

### **Article 11   Conditions to transfer**

LCH SA shall transfer to an alternate Clearing Member the Client Open Positions related to Known Clients in the conditions set out below, provided it has been provided with all necessary information and documents. Otherwise, where all the relevant conditions have not been met, the Client Open Positions will be liquidated in accordance with the provisions of article 8 of this Instruction.

- For NOSA Structure relating to Clients:

The Client Open Positions registered in a Net Omnibus Segregated Account Structure shall be transferred as a whole together with any associated Collateral, or proceeds from liquidation thereof, to one single alternate Clearing Member, provided that LCH SA has received, within a timeline to be set out in a Notice, a formal request to proceed with such transfer to the same alternate Clearing Member from all the Clients within the Net Omnibus Segregated Account Structure, if they are all Known Clients, and provided such alternate Clearing Member has accepted such transfer.

- For NOSA Structure relating to Indirect Clients pursuant to article 3.2.4.3 of the Rule Book:

The Client Open Positions registered in a Net Omnibus Segregated Account Structure for Indirect Clients as mentioned in article 3.2.4.3 of the Rule Book will be transferred as a whole together with any associated Collateral, or proceeds from liquidation thereof, to one single alternate Clearing Member, provided that LCH SA has received, within a timeline set out in a Notice, a formal request to proceed with such transfer to the same alternate Clearing Member from all the Clients whose clients are represented within the Net Omnibus Segregated Account Structure, if they are all Known Clients, and provided such alternate Clearing Member has accepted such transfer.

- For GOSA Structure relating to Clients:

The Client Open Positions registered in a Gross Omnibus Segregated Account Structure shall be transferred:

(i) as a whole together with any associated Collateral, or proceeds from liquidation thereof, to one single alternate Clearing Member, if LCH SA has received, within a timeline to be set out in a Notice, a formal request to proceed with such transfer to the same alternate Clearing Member from all the Clients within the Gross Omnibus Segregated Account Structure, if they are all Known Clients, and provided such alternate Clearing Member has accepted such transfer ;

(ii) separately, per Client Margin Account, to different alternate Clearing Members (one per Known Client or one for a group of Known Clients, if LCH SA has received, within a timeline to be set out in a Notice, a formal request to proceed with such transfer to such alternate Clearing Member from such Clients, if they are all Known Clients, and provided the relevant alternate Clearing Member has accepted such transfer. In such a case, the Collateral or the proceeds from liquidation thereof associated with each Client Margin Account to be so transferred shall be determined pro rata to the Initial Margin of each Client Margin Account within the Gross Omnibus Segregated Account Structure.

- For GOSA Structure relating to Indirect Clients pursuant to article 3.2.4.3 of the Rule Book:

The Client Open Positions registered in a Gross Omnibus Segregated Account Structure for Indirect Clients, as mentioned in Article 3.2.4.3 of the Rule Book, shall be transferred as a whole together with any associated Collateral, or proceeds from liquidation thereof, to one single alternate Clearing Member, if LCH SA has received, within a timeline to be set out in a Notice, a formal request to proceed with such transfer to the same alternate Clearing Member from the Known Client, and provided that such alternate Clearing Member has accepted such transfer ;

- For ISA Structure relating to Clients:

The Client Open Positions registered in the Individual Segregated Account shall be transferred individually to one single alternate Clearing Member, provided that LCH SA has received, within a timeline to be set out in a Notice, a formal request to proceed with such transfer from the Known Client, provided the alternate Clearing Member has accepted such transfer.

## **Article 12 Relations between the new Clearing Member and the Clients**

Upon transfer, the relevant Known Client(s) shall be contractually linked to the new Clearing Member.

The relevant Known Client(s) and the new Clearing Member shall be required to comply with their obligations vis-à-vis each other as such obligations result from the Clearing Rules.

## **Article 13 Transfer costs**

The transfer costs are all costs incurred by LCH SA in relation to the transfer of the Open Positions registered in the name of the Defaulting Clearing Member.

All transfer costs shall be borne by the Defaulting Clearing Member and set-off against the House Collateral posted by the Defaulting Clearing Member.

## **Chapter 4 Provisions relating to Collateral provided by way of a Belgian law security interest**

### **Article 14 Default notification**

Upon the occurrence of an Event of Default and the issue by LCH SA of a notice of default in accordance with the Clearing Rules:

(i) LCH SA may, at its sole discretion, request the Defaulting Clearing Member to transfer the Collateral provided by way of a Belgian law security interest and recorded in its Client Pledged Account(s) (if any) to

LCH SA with full title in order to facilitate the transfer of such Collateral together with associated Client Open Positions in accordance with Chapter 3 of this Instruction and/or the payment of the amount due to or by the Clients of the Defaulting Clearing Member; and

(ii) LCH SA may enforce directly the security interest granted by the Defaulting Clearing Member under, and in accordance with, the Pledge Agreement.

#### **Article 15 Perfection and enforceability**

Subject to LCH SA providing Euroclear Bank with a copy of the notice of default issued by LCH SA in accordance with Article 14 above, LCH SA shall be able to perfect and enforce the pledge on the Collateral provided by way of a Belgian law security interest (meaning that it shall be entitled to apply such Collateral transferred by the Defaulting Clearing Member as envisaged by the Clearing Rules and in particular Article 4.5.2.7 of the Clearing Rule Book) against the Defaulting Clearing Member, any other creditors of the Defaulting Clearing Member and/or the trustee in bankruptcy, without having to notify, or secure any consent from the Defaulting Clearing Member or any other person, and without having to obtain any court approval (see article 8 of the Law of 15 December 2004 implementing the Directive 2002/47/EC on financial collateral arrangements under Belgian law as amended from time to time).

#### **Article 16 Enforcement by appropriation for the purposes of transferring Client Collateral to an alternate Clearing Member**

In the event LCH SA has requested the Defaulting Clearing Member to transfer the Collateral provided by way of a Belgian law security interest in accordance with Article 14 (i) above and the Defaulting Clearing Member fails to transfer the Collateral provided by way of a Belgian law security interest and recorded in its Client Pledged Account(s) (if any) to LCH SA within such period as LCH SA has specified in its request pursuant to Article 14 above, and it has been determined that some or all of such Collateral is to be transferred to an alternate Clearing Member in accordance with Chapter 3 of this Instruction, LCH SA shall enforce the security interest granted to it under, and in accordance with, the Pledge Agreement by appropriation of the Defaulting Clearing Member's Collateral provided by way of a Belgian law security interest and recorded in its relevant Client Pledged Account(s) (if any) in respect of Client Open Positions to be transferred to an alternate Clearing Member in accordance with Chapter 3 of this Instruction.

#### **Article 17 Transfer to an alternate Clearing Member**

Where the Collateral in respect of Client Open Positions to be transferred under Chapter 3 of this Instruction includes or is comprised of Collateral provided by way of a Belgian law security interest and recorded in its Client Pledged Account(s) (if any) and that the alternate Clearing Member wishes to have such Collateral provided to LCH SA by way of a Belgian law security interest rather than on a full title transfer basis, the transfer of such Collateral shall be conditional upon the alternate Clearing Member having:

- entered into a Pledge Agreement with LCH SA; and
- opened with LCH SA the relevant Client Pledged Account at Euroclear Bank for the purpose of holding the relevant Collateral in respect of such Client Open Positions and for the relevant Product Group(s).

#### **Article 18 Transfer to LCH SA**

In order to transfer Collateral provided by way of a Belgian law security interest and recorded in its Client Pledged Account(s) (if any) to LCH SA in order to satisfy a request made in accordance with Article 14(i) above, the Defaulting Clearing Member must provide LCH SA with its consent to the debit of such Collateral from its Client Pledged Account(s) by Euroclear Bank, pursuant to an instruction of LCH SA. The Defaulting Clearing Member must evidence its consent by submitting written confirmation by any means or form specified by LCH SA.

Following the receipt of the consent of the Defaulting Clearing Member, LCH SA will submit instructions via Euroclear Bank. When LCH SA receives the confirmation of transfer from Euroclear Bank, LCH SA shall update the relevant Client Collateral Account(s) of the Defaulting Clearing Member to reflect that such Collateral has been transferred with full title to LCH SA.

In the event LCH SA has requested the Defaulting Clearing Member to transfer the Collateral provided by way of a Belgian law security interest in accordance with Article 14 (i) above and the Defaulting Clearing Member has not sent its consent within the timeframe specified by LCH SA, LCH SA shall be entitled to enforce the security interest granted to it under, and in accordance with, the Pledge Agreement and, in accordance with the Clearing Rules, by appropriation of the Collateral provided by way of a Belgian law security interest and recorded in its Client Pledged Account(s) (if any).