



**VIA EMAIL TO: SUBMISSIONS@CFTC.GOV**

November 5, 2013

Ms. Melissa Jurgens  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street NW  
Three Lafayette Centre  
Washington DC 20581

Dear Ms. Jurgens:

Pursuant to CFTC regulation §40.6(a)(6), LCH.Clearnet LLC ("LCH.Clearnet"), a derivatives clearing organization registered with the Commodity Futures Trading Commission (the "CFTC"), is submitting this emergency self-certification for changes to its rulebook to extend the availability of the SwapClear Tolerance to 7pm (NY time) on each Business Day. The rulebook changes were implemented and effective November 4, 2013.<sup>1</sup>

Please find attached as appendices the Submission Cover Sheet and the relevant changes to the LCH.Clearnet rulebook.

### **Part I: Explanation and Analysis**

As part of its straight through processing of trades, LCH.Clearnet employs a process whereby the incremental risk and estimated margin requirement of each new transaction is assessed in order to make a decision to accept or reject a transaction. The decision to accept or reject a trade for clearing by SwapClear US is based on the incremental risk represented by the trade and availability of sufficient cover and SwapClear Tolerance for each participant to the trade. Within the SwapClear US service, LCH.Clearnet utilizes a process to establish individual SwapClear Tolerance for each member on a risk assessed basis. The SwapClear Tolerance of a member is subject to change based on the member's internal credit rating and is monitored against several warning thresholds.

Since June 10, 2013, LCH.Clearnet has set the SwapClear Tolerance for all Clearing Members to zero (0) after the final Initial Margin call on every Friday and on any day that precedes a holiday. The changes submitted herein remove this provision from the rulebook thereby allowing the availability of SwapClear Tolerance to be extended to 7pm (NY time) on each Business Day.

This emergency self-certification is submitted in accordance with CFTC regulation 40.6(a)(6) and 40.1(h)(5); and in response to the Division of Clearing and Risk's recent no-action letter that states that any trade executed on a SEF that is rejected because a customer breaches its credit limit at a clearing

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<sup>1</sup> LCH.Clearnet will also publish a circular describing the attached changes, and a draft can be found at Appendix II.

member or a clearing member breaches its credit limit at a DCO is void *ab initio*.<sup>2</sup> LCH.Clearnet views that an emergency submission is necessary to minimize market disruption and respond to a series of emergency rule change submitted by swaps execution facilities also transitioning to this new regulatory regime.

## **Part II: Description of Rule Changes**

The implementation of these changes requires amendments to section 2A.3.3 of the Clearing House Procedures. The relevant pages of the rulebook are attached at Appendix II.

## **Part III: Core Principle Compliance**

The rule changes described above relate primarily to LCH.Clearnet's compliance with Core Principle B (Financial Resources) and D (Risk Management), and are designed to ensure compliance given the Division of Clearing and Risk's recent guidance on straight through processing. LCH.Clearnet will continue to comply with all Core Principles following the introduction of these changes and has concluded that its compliance with the Core Principles would not be adversely affected by these changes.

## **Part IV: Public Information**

LCH.Clearnet has posted a notice of pending certification with the CFTC and a copy of the submission on LCH.Clearnet's website at: [http://www.lchclearnet.com/rules\\_and\\_regulations/lc/default.asp](http://www.lchclearnet.com/rules_and_regulations/lc/default.asp).

## **Part V: Opposing Views**

There were no opposing views expressed to LCH.Clearnet by governing board or committee members, members of LCH.Clearnet or market participants that were not incorporated into the rule. If any such views are expressed during the CFTC review period, those views will be shared with Commission staff.

## **Certification**

LCH.Clearnet LLC hereby certifies to the Commodity Futures Trading Commission, pursuant to the procedures set forth in the Commission regulation § 40.6, that attached rule submission complies with the Commodity Exchange Act, as amended, and the regulations promulgated there under.

Should you have any questions please contact me at [laurian.cristea@lchclearnet.com](mailto:laurian.cristea@lchclearnet.com).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Laurian Cristea', enclosed within a blue oval scribble.

Laurian Cristea  
Senior Vice President, Compliance & Regulation  
US Contact: +1 212.513.5610

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<sup>2</sup> See CFTC Letter No. 13-66.



**Appendix I**  
**Submission Cover Sheet**

# SUBMISSION COVER SHEET

Registered Entity Identifier Code (optional) LCHLLC Date: 5 Nov 13

**IMPORTANT: CHECK BOX IF CONFIDENTIAL TREATMENT IS REQUESTED.**

**ORGANIZATION** LCH.Clearnet LLC

**FILING AS A:**  DCM  SEF  DCO  SDR  ECM/SPDC

## TYPE OF FILING

### • Rules and Rule Amendments

- Certification under § 40.6 (a) or § 41.24 (a)
- “Non-Material Agricultural Rule Change” under § 40.4 (b)(5)
- Notification under § 40.6 (d)
- Request for Approval under § 40.4 (a) or § 40.5 (a)
- Advance Notice of SIDCO Rule Change under § 40.10 (a)

### • Products

- Certification under § 39.5(b), § 40.2 (a), or § 41.23 (a)
- Swap Class Certification under § 40.2 (d)
- Request for Approval under § 40.3 (a)
- Novel Derivative Product Notification under § 40.12 (a)

## RULE NUMBERS

Clearing House Procedures section 2A.3.3

## DESCRIPTION

### EMERGENCY RULE CERTIFICATION

LCH.Clearnet LLC's SwapClear US service is issuing a circular and amending its rules to extend the availability of SwapClear Tolerance until 7:00 pm (NY time) on each Business Day.



**Appendix II**  
**LCH.Clearnet LLC Rulebook and Draft Circular**

In circumstances where the registration of a SwapClear Transaction is conditional upon one or more Necessary Consent(s) being notified to the applicable Clearing Member(s), the relevant SwapClear Transaction shall be deemed to have been “submitted” to the Clearing House by each such Clearing Member at the time when it notifies the Clearing House of its Necessary Consent. In all other circumstances, a SwapClear Transaction shall be “submitted” to the Clearing House by the applicable Clearing Member upon being presented to the Clearing House for clearing by such Clearing Member (or its branch) or by a SwapClear Dealer (acting in such capacity with respect to the relevant SwapClear Transaction) approved to clear SwapClear Transactions through the relevant Clearing Member.

In accordance with Section 2A.3.4 of these Procedures, it is a condition for registration of a SwapClear Contract that the applicable Clearing Member has complied with all requirements to furnish sufficient Margin (taking into account SwapClear Tolerance, if any) to the Clearing House as of the time of “submission” or “deemed submission” of the SwapClear Transaction to which the SwapClear Contract relates. For the avoidance of doubt, in respect of the registration of a SwapClear Transaction, both Clearing Members must have complied with all requirements to furnish sufficient Margin (taking into account SwapClear Tolerance, if any) at the time when both SwapClear Contracts relating to the relevant SwapClear Transaction have been submitted or deemed to be submitted (as applicable).

### 2A.3.3 **Trade Registration Facilitation: SwapClear Tolerance and Minimum Excess Requirement (“MER”)**

In order to facilitate the registration of new SwapClear Transactions by Clearing Members, the Clearing House may require the furnishing of additional Margin from those Clearing Members participating in the MER Arrangements (as defined below) at the relevant time and may offer SwapClear Tolerance on a daily basis, as further described below.

The Clearing House will set MER requirements (where applicable) and SwapClear Tolerance Limits (as defined below) based on a number of factors, including a Clearing Member’s credit rating and risk profile, an analysis of the incremental risk registered by a Clearing Member during an historic look-back period and, in the case of the overall value of the SwapClear Tolerance which may be made available to a Clearing Member, whether the Clearing Member is a participant in the MER Arrangements at the relevant time. However, the Clearing House sets MER requirements and SwapClear Tolerance Limits in its sole discretion, and may modify its methodologies at any time or may vary it across different Clearing Members.

#### ***SwapClear Tolerance:***

If a Clearing Member has not furnished sufficient Margin to enable the registration of a SwapClear Contract, then the Clearing House may provide such Clearing Member with temporary “tolerance” in the form of Initial Margin forbearance (“**SwapClear Tolerance**”) to enable such registration. A Clearing Member may utilize SwapClear Tolerance in between margin runs on a one-to-one basis to the value of the Initial Margin that would have been required to cover that Clearing Member’s Initial Margin requirements for newly registered SwapClear Contracts

registered in between margin runs. For the avoidance of doubt, SwapClear Tolerance is provided in the form of temporary Initial Margin forbearance and a Clearing Member's utilization of SwapClear Tolerance does not give rise to any payment or transfer of collateral by the Clearing House or result in any use of Default Fund resources (except following a Default). For the purposes of determining Tolerance Utilization in respect of each Clearing Member, the Clearing House shall apply such determination of SwapClear Tolerance as it deems appropriate in its discretion (which determination of SwapClear Tolerance may not be the same for purposes other than the calculation of Tolerance Utilization). In this regard, any report sent to a Clearing Member relating to SwapClear Tolerance shall not be determinative of the Clearing House's determination thereof for the purposes of calculating the Tolerance Utilization in respect of such Clearing Member, and the Clearing House may amongst other things apply a buffer below which a Clearing Member will not be deemed to have a Tolerance Utilization regardless of the SwapClear Tolerance provided by the Clearing House.

The Clearing House will determine, in its sole discretion, the maximum value of the SwapClear Tolerance (which may be zero) (the "**SwapClear Tolerance Limit**") which it will make available to a Clearing Member at any particular time. SwapClear Tolerance is made available by the Clearing House to a Clearing Member at the Clearing House's sole discretion. The Clearing House may adjust the value of a Clearing Member's SwapClear Tolerance Limit, and/or require a Clearing Member to provide Initial Margin in respect of any utilized SwapClear Tolerance, at any time and without prior notice to the relevant Clearing Member. The Clearing House will provide each Clearing Member with information regarding its SwapClear Tolerance Limit and will, as promptly as reasonably practicable, notify it following any adjustment to the amount of its SwapClear Tolerance Limit. Subject to the above, a Clearing Member will typically be required to deliver Initial Margin in respect of any SwapClear Tolerance utilized by it in the margin run immediately following the time of the relevant registration of a SwapClear Contract where SwapClear Tolerance was utilized.

~~The Clearing House will not make SwapClear Tolerance available after its final Initial Margin call on any Business Day which precedes a day which is not a Business Day.~~

Any failure of a Clearing Member to satisfy an Initial Margin call relating to utilized SwapClear Tolerance may give rise to a Default by such Clearing Member — just as any failure by a Clearing Member to satisfy any other type of Initial Margin call may give rise to a Default.

#### ***Minimum Excess Requirement ("MER"):***

The Clearing House has put in place arrangements (the "**MER Arrangements**") (which will be optional for Clearing Members) under which it will be able to call from each relevant Clearing Member an amount of Margin (the "**MER Margin**"), in respect of that Clearing Member's potential Margin requirements (with respect to the registration of SwapClear Contracts) for the following day.

The Clearing House will calculate MER for each participating Clearing Member using the same methodology and will publish such methodology to Clearing

# DRAFT

Company Circular No.: LCH.Clearnet LLC Circular No. 16  
Service Circular No: LCH SwapClear US No. 105  
Date: [xx] November 2013  
To: All LCH SwapClear US Members

As part of its implementation of straight through processing, LCH.Clearnet LLC established individual SwapClear Tolerance for each member as described in section 2A.3 of the Clearing House Procedures.

LCH.Clearnet LLC currently does not make SwapClear Tolerance available after its final Initial Margin call on any Business Day which precedes a day which is not a Business Day. With effect from 8 November 2013, LCH.Clearnet LLC will make SwapClear Tolerance available up to 7:00 p.m. (New York time) on each Business Day. LCH.Clearnet LLC will commence extending SwapClear Tolerance again at 7:30 am (New York time) at the start of each following Business Day.

LCH.Clearnet LLC has submitted a self-certification to the CFTC to amend the Clearing House Procedures to remove the provision setting the SwapClear Tolerance for all Clearing Members to zero (0) after the final Initial Margin run on any Business Day which precedes a day which is not a Business Day.

The self-certification can be accessed through the following link: [xx]

This circular supersedes all prior circulars relating to the subject matter above.

For queries please contact:

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