



## **VIA CFTC PORTAL**

16 February 2015

Mr Christopher Kirkpatrick  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street NW  
Three Lafayette Centre  
Washington DC 20581

Dear Mr Kirkpatrick:

Pursuant to CFTC regulation §40.6(a), LCH.Clearnet Limited ("LCH.Clearnet"), a derivatives clearing organization registered with the Commodity Futures Trading Commission (the "CFTC"), is submitting for self-certification a correction to its rules with respect to the transfer of cleared contracts by SwapClear Clearing Members ("SCMs") and Futures Commission Merchants ("FCMs").

LCH.Clearnet intends to implement these rule changes on March 3, 2015.

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

The changes to the General Regulations are being made to correct cross referencing errors between existing transfer provisions. The current cross referencing disallows partial transfers of positions between SwapClear Clearing Member accounts in respect of SwapClear Client Clearing Business whilst allowing full transfers. This restriction was not intended in the original drafting.

Further clarifications have been added to both the General Regulations and FCM Regulations to correct provisions which would void transfers not carried out in accordance with a too limited set of provisions in the General Regulations and FCM Regulations. The correction removes an unintended restriction which could potentially void a valid transfer.

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

General Regulation 60(e) has been corrected to remove cross referencing to paragraph (b) of the same Regulation.

General Regulation 60(g) and FCM Regulation 13(g) include wording which could void a transfer not carried out in accordance with named parts of the LCH.Clearnet Rulebook, further provisions of the Rulebook have been added to this list.

The changes to the General Regulations are included at Appendix I and changes to the FCM Regulations are included as Appendix II.

LCH.Clearnet Limited **Aldgate House, 33 Aldgate High Street, London EC3N 1EA**  
**Tel: +44 (0)20 7426 7000 Fax: +44 (0)20 7426 7001 [www.lchclearnet.com](http://www.lchclearnet.com)**  
LCH.Clearnet Group Limited | LCH.Clearnet Limited | LCH.Clearnet SA | LCH.Clearnet LLC



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

LCH.Clearnet has concluded that compliance with the Core Principles will not be adversely affected by this change.

### **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-regulations/proposed-rules-changes>

### **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.

### **Certification**

LCH.Clearnet Limited 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 [julian.oliver@lchclearnet.com](mailto:julian.oliver@lchclearnet.com).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Julian Oliver', written over a light blue horizontal line.

**Julian Oliver**  
Chief Compliance Officer  
LCH.Clearnet Limited



**Appendix I**  
**General Regulations**



**GENERAL REGULATIONS OF  
LCH.CLEARNET LIMITED**

result from the proposed transfer, where, with respect to obligations owed to Affiliates of the Carrying Clearing Member by a SwapClear Clearing Client, "**obligations**" shall consist only of those obligations that arise as a result of cross-margining, cross-netting or other similar arrangements with respect to the Relevant SwapClear Contracts of that SwapClear Clearing Client that are being transferred or that SwapClear Clearing Client's related collateral, (b) the transfer of the Relevant SwapClear Contracts of that SwapClear Clearing Client would result in the SwapClear Clearing Client breaching exposure limits with, and/or other risk parameters set by, the Carrying Clearing Member and/or its Affiliates, or (c) such rejection is in accordance with terms agreed as between the Carrying Clearing Member and the relevant SwapClear Clearing Client.

- (d) For the purposes of a transfer pursuant to paragraph (b) above that includes the transfer of the corresponding Associated Collateral Balance(s), the Carrying Clearing Member shall notify the Clearing House of the specific collateral which should comprise such Associated Collateral Balance(s). In the event that the Carrying Clearing Member fails to notify the Clearing House of the specific collateral which should comprise the Associated Collateral Balance(s), the Clearing House shall identify and select (in the manner set out in the Procedures) the Collateral it deems appropriate to comprise the Associated Collateral Balance(s) attributable to the Relevant SwapClear Contracts entered into by the Carrying Clearing Member on behalf of the relevant SwapClear Clearing Client(s) in its sole discretion and, along with the Receiving Clearing Member, shall take such actions and provide such information in connection with the transfer as may be required under the Procedures. Once the Associated Collateral Balance(s) which are the subject of the relevant transfer have been notified by the Clearing House to the Receiving Clearing Member, the Receiving Clearing Member may elect to reject the transfer of some or all of such Associated Collateral Balance(s). Any such election will not, of itself, prevent the transfer of the Relevant SwapClear Contracts of the relevant SwapClear Clearing Client(s) and any Associated Collateral Balance which has been accepted by the Receiving Clearing Member, **provided that** the conditions set out in sub-paragraphs (i) to (viii) of paragraph (b) above are satisfied in relation to such transfer. The Clearing House shall transfer the Associated Collateral Balance that has been identified and consented to by the Receiving Clearing Member. In the event that, for whatever reason, the Clearing House is unable to transfer such Associated Collateral Balance, the Clearing House will not proceed with the transfer of the Relevant SwapClear Contracts.
- (e) Further to the satisfaction of the conditions set out in paragraphs (b) and (c) above, and **provided that** the Clearing House does not determine, in its sole discretion, that (x) the transfer cannot be effected under these Regulations, the Procedures or otherwise under applicable laws or regulations and/or (y) where the transfer is as described in paragraph (ii) of the definition of "Receiving Clearing Member", additional conditions as set out in Regulation 13 of the FCM Regulations need to be and have not been complied with, the Clearing House shall transfer the Relevant SwapClear Contract(s) into the name of the Receiving Clearing Member as follows:
- (A) in the case of a transfer ~~effected in accordance with paragraph (b) above~~, where the Receiving Clearing Member is the same entity as the relevant SwapClear Clearing Client, the Relevant SwapClear Contracts (and, if applicable, the Associated Collateral Balance) shall be transferred to the Proprietary Account of the Receiving

Clearing Member; (B) in a case of a transfer ~~(i) not covered by (A) of this paragraph (e) and (ii)~~ where the Receiving Clearing Member is an FCM Clearing Member, the Relevant SwapClear Contracts (and, if applicable, the Associated Collateral Balance) shall be transferred to the relevant FCM Client Sub-Account of the relevant Receiving Clearing Member and all of the SwapClear Contracts to be transferred (which are subject to the Rulebook) shall, upon transfer, be converted to FCM ~~SwapClear~~ SwapClear Contracts subject to the FCM Regulations and the FCM Procedures but shall otherwise remain on the same contract terms; and (C) in all other cases, the Relevant SwapClear Contracts (and, if applicable, the Associated Collateral Balance(s)) shall be transferred to the relevant Individual Segregated Account or Omnibus Segregated Account of the Receiving Clearing Member. The transfer of the Relevant SwapClear Contracts shall occur by novation of all of the Carrying Clearing Member's rights and obligations in respect of such Relevant SwapClear Contracts to the Receiving Clearing Member.

- (f) In the case where a transfer of Relevant SwapClear Contracts pursuant to paragraph (b) above will include the transfer of the Associated Collateral Balance(s):
- (i) In respect of an Associated Collateral Balance that is subject to a Deed of Charge entered into between the Carrying Clearing Member and the Clearing House, such transfer shall be effected as follows:
    - (A) the Carrying Clearing Member shall relinquish all rights to such Associated Collateral Balance (including, for the avoidance of doubt, any beneficial interest and/or equity of redemption in respect thereof);
    - (B) such Associated Collateral Balance shall immediately upon such relinquishment be held by the Clearing House on behalf of the Receiving Clearing Member;
    - (C) where the Receiving Clearing Member is not an FCM Clearing Member, its rights to such Associated Collateral Balance arising as described in sub-paragraph (B) above shall become, in respect of the Relevant SwapClear Contracts, subject to the Deed of Charge entered into between the Receiving Clearing Member and the Clearing House (such rights thereby becoming Charged Property within the meaning of that Deed of Charge); and
    - (D) where the Receiving Clearing Member is an FCM Clearing Member, the Associated Collateral Balance shall be deemed to have been delivered by the Receiving Clearing Member to the Clearing House by way of a first-priority security interest granted by the Receiving Clearing Member to the Clearing House under the FCM Regulations and the FCM Clearing Membership Agreement between the Receiving Clearing Member and the Clearing House.
  - (ii) In respect of any part of an Associated Collateral Balance that is not subject to the Deed of Charge entered into between the Carrying Clearing Member and the Clearing House, such transfer shall be by novation of the Carrying Clearing Member's rights and obligations in respect of such part of the Associated Collateral Balance to the Receiving Clearing Member.

- (iii) For the avoidance of doubt, the Carrying Clearing Member shall have no right or entitlement to assert any claim over, or right with respect to, the Associated Collateral Balance transferred.
- (iv) The transfer of the Relevant SwapClear Contracts and Associated Collateral Balance shall be deemed to occur simultaneously, and the transfer of the Relevant SwapClear Contracts shall be conditioned on the transfer of the Associated Collateral Balance, and vice versa.
- (v) If the transfer of the Relevant SwapClear Contracts and Associated Collateral Balance is not completed for any reason, then any actual transfer of any part of the Associated Collateral Balance or Relevant SwapClear Contracts that has occurred, as the case may be, shall be deemed not to have occurred, and any actual transfer of any part of the Associated Collateral Balance or Relevant SwapClear Contracts that has occurred shall be immediately unwound.
- (vi) (i) That portion (if any) of the Clearing House Current Collateral Balance in respect of the Carrying Clearing Member which is attributable to the Relevant SwapClear Contracts (the "**Relevant Portion**") shall be reduced to zero; and (ii) the Clearing House Current Collateral Balance in respect of the Receiving Clearing Member shall be increased by an amount equal to the value of the Relevant Portion immediately prior to the reduction referred to in (i) immediately above.
- (g) ~~Rights under a SwapClear Contract entered into by a~~ SwapClear Clearing Member may only assign the rights under, or transfer, a SwapClear Contract entered into by such SwapClear Clearing Member in respect of SwapClear Client Clearing Business, in accordance with the Rulebook or with the prior written consent of the Clearing House shall not be capable of assignment by a SwapClear Clearing Member. Any ~~such purported assignment, by a SwapClear Clearing Member,~~ or any purported transfer, of a SwapClear Contract entered into by a SwapClear Clearing Member in respect of SwapClear Client Clearing Business that is not in compliance with this Regulation 60 ~~(g) or the Procedures~~ shall be void.
- (h) If a SwapClear Clearing Member is a Defaulter, the Clearing House shall take such actions, subject to and in accordance with the Default Rules in relation to SwapClear Contracts carried by such SwapClear Clearing Member on behalf of SwapClear Clearing Clients, **provided always that** the Clearing House shall take such actions as are required to meet the Clearing House's continuing regulatory obligations including those applicable to it as a Recognised Clearing House and a Derivatives Clearing Organization.
- (i) Subject to paragraph (j) below, but otherwise notwithstanding anything to the contrary in these Regulations, in making any transfer of Relevant SwapClear Contracts and (if applicable) an Associated Collateral Balance pursuant to this Regulation 60, the Clearing House shall be authorised and entitled to rely conclusively on the instructions of, and information provided by, the relevant SwapClear Clearing Member(s), which shall be solely responsible for all such instructions and information, including for the purposes of ensuring that (i) the transfer is properly authorised or rejected (as the case may be); (ii) the appropriate Client Account of the Carrying Clearing Member (from which the transfer is to be made) has been identified



**Appendix II**  
**FCM Regulations**



**FCM REGULATIONS OF  
THE CLEARING HOUSE  
LCH.CLEARNET LIMITED**

House shall be authorized and entitled to rely conclusively on the instructions of and information provided by the relevant FCM Clearing Member(s), which shall be solely responsible for all such instructions and information, including (A) ensuring that the transfer is properly authorized or rejected (as the case may be) and (B) the transfer is being made from the appropriate FCM Client Sub-Account or FCM Omnibus Futures Client Account with LCH, and that the appropriate account, FCM Contracts and Collateral has been identified, the Clearing House shall have no responsibility or liability therefor.

- (ii) The Clearing House shall verify that the Porting Contracts identified to it by the applicable FCM Clearing Member as being the subject of such a transfer correspond to FCM Contracts which, according to its records, are registered in the name of the Carrying Clearing Member on behalf of the relevant FCM Client. In the event that the Clearing House identifies a discrepancy, it will notify the relevant FCM Clearing Member(s) and no transfer will occur pursuant to this FCM Regulation 13 until such time as the Porting Contracts identified to the Clearing House by the relevant FCM Clearing Member(s) can be verified by the Clearing House.
- (g) **Limitation on Assignment of Rights under an FCM Contract and Transfer of an FCM Contract.** Except as may be permitted by paragraph (d) above, expressly permitted by other parts of the FCM Rulebook or as may otherwise be expressly permitted by the Clearing House in writing, rights under an FCM Contract shall not be capable of assignment by an FCM Clearing Member. Any such purported assignment by an FCM Clearing Member, or any purported transfer that is not in compliance with ~~this the FCM Rulebook FCM Regulation 13 and the FCM Procedures~~, shall be void. The FCM Procedures shall specify the Products that can be transferred in accordance with this FCM Regulation 13 and the applicable forms or other requirements of the Clearing House in connection with such a transfer.
- (h) **Indemnity.** The Carrying Clearing Member agrees to indemnify the Clearing House in respect of all liabilities, costs, loss, fees, damages or expenses suffered or incurred by the Clearing House (howsoever arising or occurring) by reason of a proposed transfer being rejected by the Carrying Clearing Member other than pursuant to the grounds set out in the final paragraph of FCM Regulation 13(a).
- (i) **Transfer/Novation.** Transfers of Open Contracts made pursuant to this FCM Regulation 13 shall occur by transfer/novation of such Open Contracts rather than by closeout and rebooking of new FCM Contracts.
- (j) **Futures Products.** Transfers of FCM Contracts that are Futures Products made pursuant to FCM Regulation 13(d)(ii) shall only be permitted where: (i) the transferred FCM Contracts will be owned or beneficially owned by the same FCM Client following the transfer; or (ii) an error has been made in the registration of an FCM Contract and the error is discovered and the transfer is completed within three Business Days (or any such longer period that the Clearing House may agree to in its sole discretion) after the submission of the corresponding FCM Transaction for registration, **provided**, that the Exchange cooperates in effecting such transfer.