



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

9 December 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), LCH.Clearnet Limited ("LCH.Clearnet"), a derivatives clearing organization registered with the Commodity Futures Trading Commission (the "CFTC"), is submitting for self-certification changes to the Clearing House Rulebook to implement changes required to comply with Commission regulations, and other changes described in full below. The Rulebook changes will be effective and implemented on or shortly after 30 December 2013.

The submission cover sheet, and the black-lined Clearing House Default Rules are attached hereto as appendices.

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

### **1.1 Introduction and Rationale for the Rule Amendments**

Following changes made to LCH Clearnet's FCM Rulebook in September 2013 in advance of Nodal Exchange's designation as a Designated Contract Market ("DCM"), some further conforming changes are required to the Default Rules as a result of the introduction of clearing of CFTC regulated futures. There are three broad categories of rulebook changes: the Introduction of Defined Terms; Reference to the FCM Omnibus Futures Client Account; and clarification on the payment of Variation Margin. These areas are further explained in Part II.

## **Part II: Description of rule changes**

### **1. Introduction of Defined Terms**

The terms Delivery Notice, FCM Exchange Contract and Physically Settled Exchange Contract have been introduced.

### **2. Reference to FCM Omnibus Futures Client Account**

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LCH.Clearnet Group Limited | LCH.Clearnet Limited | LCH.Clearnet SA | LCH.Clearnet LLC



In determining a net sum following an FCM Clearing Member default, the Clearing House will calculate a net sum with respect to the entire client omnibus account (rather than under the Cleared Swaps model where it is calculated at the sub-account level).

### 3. Payment of Variation Margin

With respect to Cleared Swaps Customer Sub-Accounts and following a default, the Clearing House will credit variation margin on a gross basis. This is not the case for the futures omnibus account so changes to clarify this have been included.

Black-lined Clearing House Default Rules are attached at Appendix II.

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

The rule amendments described above relate primarily to LCH.Clearnet's compliance with Core Principles F (Treatment of Funds) and G (Default Rules and Procedures). LCH.Clearnet has concluded that its compliance with the Core Principles would not be adversely affected by these changes and that the changes reflected herein will ensure continued compliance with the Core Principles.

### **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/ltd/proposed\\_rules.asp](http://www.lchclearnet.com/rules_and_regulations/ltd/proposed_rules.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.

### **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 [jay.iver@lchclearnet.com](mailto:jay.iver@lchclearnet.com) or Vikesh Patel at [vikesh.patel@lchclearnet.com](mailto:vikesh.patel@lchclearnet.com).

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jay Iyer", written over a horizontal line.

Jay Iyer  
Chief Compliance Officer  
LCH.Clearnet Ltd



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

# SUBMISSION COVER SHEET

Registered Entity Identifier Code (optional) LCH

Date: 9 December 2013

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

## ORGANIZATION

LCH.Clearnet Limited

## 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

Default Rules: 5(g); 6(f)(i)(j)(k)(m); 7(a); 8(a)(ii); 8(d); 8(e)(i)(ii); 8(f); 8(g); 8(h); 9(a)(b)(c)(i)(ii); 9(d); 10((a)(i)(ii)); 10((b)(iii)(iv)(vi))

## DESCRIPTION

### 1.1 Introduction and Rationale for the Rule Amendments

Three broad categories of conforming changes to Default Rule are being proposed for the clearing of CFTC regulated futures. The Introduction of Defined Terms, introducing reference to the FCM Omnibus Futures Client Account and clarification on the payment of Variation Margin.



**Appendix II**

**Blacklined LCH.Clearnet FCM Rulebook**

step being taken or notice of the occurrence of an Automatic Early Termination Event (a "**Default Notice**"), and shall publish a copy of the Default Notice; and (b) in relation to a defaulter who is a SwapClear Clearing Member, copies of any written notices received from the Individual Segregated Account Clearing Client(s) and/or any of the Omnibus Net Segregated Clearing Client(s) of that defaulter confirming their instructions for the Clearing House to arrange for a transfer or termination, close-out and re-establishment of their open SwapClear Contracts to/with the relevant Back-up SwapClear Clearing Member(s), provided, however, that the Clearing House shall have no liability for any failure to deliver such notices.

4. A Clearing Member (i) in respect of whom the Clearing House has issued a Default Notice under Rule 3; or (ii) in respect of whom an Automatic Early Termination Event has occurred is in these Rules called a "defaulter".
5. Without prejudice to the generality of Rule 3, the Clearing House may take any or all of the events under paragraphs 5(a) to (q) below to show that a Clearing Member is or is likely to become unable to meet its obligations in respect of one or more Contracts. Also, the Clearing House may from time to time by publication in a circular to Clearing Members specify criteria (including but not limited to the jurisdiction of incorporation of a Clearing Member) according to which an event under paragraphs 5(i) to (p) below will constitute an Automatic Early Termination Event:
  - (a) the Clearing Member fails duly to perform or is in breach of the Regulations, the FCM Regulations, the Procedures, or any of the terms of any agreement, understanding or arrangement with the Clearing House or the right of the Clearing Member to receive a transfer or termination, close-out and re-establishment of contracts pursuant to a Link has been suspended under Participating Exchange Rules, or a Clearing Member is a Defaulter (as defined in a Member Link Agreement to which the Clearing Member is a party);
  - (b) the Clearing Member is in breach of the terms of membership of, or is declared to be in default by, or is suspended or expelled from membership of, an Exchange, a Participating Exchange or any other recognised, designated or overseas investment exchange or clearing house;
  - (c) the Clearing Member is in breach of any Exchange Rules, Participating Exchange Rules or the rules of any recognised, designated or overseas investment exchange or clearing house;
  - (d) the Clearing Member is in breach of the terms of membership of, or is refused an application for or is suspended or expelled from membership of, a Regulatory Body or is in breach of the rules of a Regulatory Body to which it is subject or its authorisation by a Regulatory Body is suspended or withdrawn;
  - (e) a Regulatory Body takes or threatens to take action against or in respect of the Clearing Member under any statutory provision or process of law;
  - (f) the Clearing Member is in default in the payment of any sum whatsoever due and payable to the Clearing House;
  - (g) the Clearing Member is in default in making or accepting a tender (or Delivery Notice) pursuant to Regulation 19 or in performing an open contract subject to

tender (or FCM Exchange Contract Subject to Delivery Notice) or a delivery contract; (or Physically-Settled FCM Exchange Contract);

- (h) the Clearing Member fails to pay any sum due and payable, or is otherwise in default under the terms of any agreement or threatens to suspend payment or to default under the terms of any agreement;
  - (i) in respect of the Clearing Member, a bankruptcy petition is presented or bankruptcy order made or a voluntary arrangement is approved;
  - (j) in respect of the Clearing Member, a receiver, manager or administrative receiver is appointed or a composition or scheme of arrangement is approved by the court;
  - (k) an assignment or composition is made by the Clearing Member for the benefit of creditors or any of them;
  - (l) a petition is presented for the winding up of the Clearing Member;
  - (m) an order is made for the winding up of the Clearing Member, or a resolution is passed for the winding up of the Clearing Member (save for the purpose of its amalgamation or reconstruction);
  - (n) in respect of the Clearing Member, a petition is presented or order made for the appointment of an administrator;
  - (o) the Clearing Member, being a partnership, is dissolved, or being a registered company, is dissolved or suffers its name to be struck off the register of companies;
  - (p) any step analogous to those mentioned in paragraphs (i) to (o) is taken in respect of the Clearing Member in any jurisdiction; or
  - (q) any distress, execution or other process is levied or enforced or served upon or against any property of the Clearing Member.
6. The steps which may be taken by the Clearing House under Rule 3 in respect of the defaulter or otherwise are:
- (a) to register an original contract or an FCM Transaction (as the case may be) in the name of the defaulter or to decline to register an original contract or an FCM Transaction (as the case may be) in the name of the defaulter or otherwise to exercise the Clearing House's discretion with regard to the defaulter under Regulation 9(c) or, in the case of an FCM Clearing Member, FCM Regulations 30(i) and 40(h);
  - (b) to effect a closing-out in respect of an open contract of the defaulter (whether by the entering into of a closing-out contract or otherwise) and at the option of the Clearing House to settle such contracts or to effect the transfer or termination, close-out and cash-settlement of an open contract of the defaulter by applying a price determined by the Clearing House in its discretion;
  - (c) to settle any open contract of which settlement might have been requested by the defaulter pursuant to Regulation 15(e) or 16;

- (d) to invoice a Contract, other than a SwapClear Contract, an FCM SwapClear Contract, a ForexClear Contract, an FCM ForexClear Contract, a RepoClear Contract or a RepoClear GC Contract (a RepoClear Contract or RepoClear GC Contract being a "Fixed Income Contract"), of the defaulter back by way of compulsory settlement in accordance with Regulation 28 at a price or premium determined under paragraph (d) of that Regulation;
- (e) to sell any security deposited by the defaulter pursuant to Regulation 12 or, in the case of a defaulter who is an FCM Clearing Member, FCM Regulation 9, or any agreement made between the defaulter and the Clearing House by public or private sale for account of the defaulter without being obliged to obtain the defaulter's consent or any order of a court of law, and to appoint any person to execute any document for such purpose in the name and on behalf of the defaulter;
- (f) subject to the Procedures or FCM Procedures, as applicable, to exercise an option of the defaulter on its behalf notwithstanding that such exercise may take place on a day which is not a day prescribed for such exercise by any relevant Exchange Rules;
- (g) to transfer an open contract of the defaulter to the account of another Clearing Member or to close-out and terminate such open contract and re-establish it with another Clearing Member, being a Clearing Member entitled and willing to have such open contract registered in its name or to transfer an open contract from the account of another Clearing Member to the account of the defaulter for the purposes of closing out an open contract registered in an account of the defaulter or for any other reason which the Clearing House considers appropriate in the circumstances without requiring the consent of any relevant Exchange;
- (h) to take such steps as may be desirable, including crediting or debiting of accounts (including margin accounts), entry into new contracts, transfer of existing contracts, reversal of contracts, or termination, close-out and re-establishment of contracts, or any other step, to preserve as far as possible the position of any client of the Clearing Member. Where an open contract is transferred or closed-out, terminated, and re-established under paragraph (g), without requiring the consent of the relevant Exchange, to transfer (whether by way of transfer or by way of termination, close-out and re-establishment of positions) to the Clearing Member to whom the open contract is transferred (or with whom the replacement open contract is re-established) such cover held as security for the defaulter's obligations to the Clearing House on that account as the Clearing House may deem appropriate;
- (i) tender (or Delivery Notice) or receive a tender (or Delivery Notice) in the defaulter's name;
- (j) to perform on an open contract subject to tender (or an FCM Exchange Contract Subject to Delivery Notice) or a delivery contract (or Physically-Settled FCM Exchange Contract) by either delivery of or accepting delivery of the commodity the subject of such contract to or from, as the case may be, the defaulter, its agent or a third party in any manner permitted by the terms of the Contract and the Exchange Rules (if any);
- (k) where the defaulter is party to an open contract subject to tender, (or an FCM Exchange Contract Subject to Delivery Notice), to declare the defaulter's



rights and liabilities in respect of performance thereof discharged, whereupon the provisions of Rule 7 shall apply to the defaulter in respect of the open contract;

- (l) to make or procure the making of one or more contracts, including (without limitation) original contracts for the purpose of hedging market risk to which the defaulter is exposed, and to register the same in the defaulter's name under the Regulations or the FCM Regulations (as the case may be);
- (m) to make or procure the making of one or more contracts, whether or not in the terms of exchange contracts, (or FCM Exchange Transactions), for the sale, purchase or other disposition of a commodity, and to register the same in the defaulter's name under the Regulations;
- (n) to designate a currency as a currency of account, and at the defaulter's expense to convert any sum payable by or to the defaulter in another currency into the currency of account;
- (o) to take any step which in the circumstances is open to the Clearing House under any applicable Exchange Rules including, without limitation, to transfer (whether by way of transfer or by way of termination, close-out and re-establishment) an open contract of the defaulter to a Participating Exchange to be registered at the Participating Exchange in accordance with its rules;
- (p) without prejudice to any other right of the Clearing House under the Regulations, to take such action as the Clearing House may deem necessary for its protection in the name and at the expense of the defaulter with regard to any open contract standing in its name;
- (q) in respect of Contracts standing in the defaulter's name, to charge to its account the amount (or, if the amount is not finally known, the estimated amount) of any expenses incurred by the Clearing House with regard to or in consequence of the circumstances mentioned in Rule 3 or the steps which are or may be taken under this Rule, the Regulations or the FCM Regulations (as the case may be) and any expenses incurred with regard thereto under Rule 11 and the amount of any losses, costs or expenses incurred or suffered by the Clearing House referred to in paragraph (g) of Regulation 42 and any other amounts referred to in such paragraph;
- (r) any other step calculated by the Clearing House to complete the process set out in Rule 8; and
- (s) to obtain such advice or assistance, whether legal advice or otherwise, as the Clearing House may deem necessary and at the expense of the defaulter for any matter arising out of or in connection with the default,

PROVIDED that:

- (i) in the case of SwapClear Contracts, certain steps which shall be taken by the Clearing House shall be set out in the SwapClear DMP Annex to these Default Rules,
- (ii) in the case of ForexClear Contracts, certain steps which shall be taken by the Clearing House shall be set out in the ForexClear DMP Annex to these Default Rules; and

- (iii) in the case of Fixed Income Contracts, the steps which shall be taken by the Clearing House shall be set out in the RepoClear DMP Annex to these Default Rules.
  - 7. (a) Where the Clearing House declares the defaulter's rights and liabilities under an open contract subject to tender (or FCM Exchange Contracts subject to Delivery Notice) discharged under Rule 6(k):
    - (i) those rights and liabilities and the rights and liabilities of the Clearing House under the open contract shall be discharged, and,
    - (ii) there shall arise between the defaulter and the Clearing House in respect of the open contract an obligation to account, as directed by the Clearing House, for a settlement amount determined by the relevant Board under this Rule.
  - (b) The settlement amount referred to in paragraph (a) shall be an amount which, at the request of the Clearing House, the relevant Board determines to represent adequate compensation (in the circumstances known to the Board) for the discharge of the mutual rights and liabilities of the defaulter and the Clearing House under the open contract. The Board's determination shall be conclusive. The Clearing House shall direct how the settlement amount is to be accounted for between the defaulter and itself.
  - (c) Neither the Clearing House nor any relevant Board or Exchange shall have any liability whatsoever for anything done or omitted in the determination of a settlement amount under this Rule.
8. Upon the discharge of the defaulter's rights and liabilities under or in respect of all Contracts to which it is party the following process shall, subject to any contrary provision in Rule 16, be completed by the Clearing House:
  - (a) there shall be brought into account all sums payable:
    - (i) by or to a defaulter in respect of Contracts (other than FCM Contracts); any other sum due under the Regulations; any sum due in respect of any breach of the Regulations; (except, if the Clearing House so determines at its discretion, any sum payable under a Contract as the price for the commodity the subject of such Contract delivered or to be delivered to the Clearing House by or on behalf of the defaulter); and/or any amount due from the defaulter to the Clearing House in respect of any Treasury Contract;
    - (ii) by or to a defaulter in respect of FCM Contracts; (and in accordance with paragraph (e) below); any other sum due under the FCM Regulations; and/or any sum due in respect of any breach of the FCM Regulations;
  - (b) the sums so payable shall be aggregated or set off so as to produce a net sum or as many net sums as required by Rule 10;
  - (c) such net sum, or each such net sum:
    - (i) if payable by the defaulter to the Clearing House, shall be set off against any cover standing to the credit of the defaulter's account so

- as to produce a further net sum, or shall be aggregated with any debit balance of the defaulter's account, or
- (ii) if payable by the Clearing House to the defaulter, shall be aggregated with any cover standing to the credit of the defaulter's account, or shall be set off against any debit balance of the defaulter's account so as to produce a further net sum;
- (d) where an amount is payable by the Clearing House to the defaulter in respect of a balance on its Proprietary Account(s), and there are amounts due to the Clearing House in respect of any client account with LCH, including any FCM Omnibus ~~Clearing Product~~ Client Account with LCH (and any FCM Client Segregated Sub-Accounts therein) operated by it, the balance on the Proprietary Account(s) may be applied to meet the shortfall on the client account(s) with LCH, including any FCM Omnibus ~~Clearing Product~~ Client Account with LCH (and any FCM Client Segregated Sub-Accounts therein) in any way in which the Clearing House may determine;
- (e) notwithstanding anything to the contrary in the foregoing, in the case where the defaulter is an FCM Clearing Member,
- ~~(e)(i)~~ with respect to an FCM Omnibus Swaps Client Account with LCH, a net sum shall be calculated in respect of each applicable FCM Client Segregated Sub-Account therein, and with regards to any amount due to the Clearing House from the defaulter in respect of net sums attributable to FCM Client Segregated Sub-Accounts where there is inadequate cover (on a sub-account by sub-account basis) to fully set off such amount payable, the Clearing House shall have sole discretion with respect to the allocation of any available FCM Buffer or the reallocation of any Applied FCM Buffer in setting off any such amounts payable to the Clearing House; and
  - (ii) with respect to an FCM Omnibus Futures Client Account with LCH, a net sum shall be calculated in respect of the FCM Omnibus Futures Client Account with LCH;
- (f) in the event that the Clearing House elects to close out and liquidate FCM SwapClear Contracts attributable to FCM Clients of the defaulter (in accordance with the SwapClear DMP Annex), the Clearing House shall allocate any costs associated with such closing out and liquidation process (including hedging costs (including the gains and losses associated with hedging transactions) and liquidation/auction costs and losses) among the FCM Clients whose positions were liquidated, by allocation to such FCM Clients' FCM Client Segregated Sub-Accounts that are held in the defaulter's FCM Omnibus SwapClear Client Account with LCH, in the manner set out in Section 2A.15.6 of the FCM Procedures and in accordance with Part 22 and Part 190 of the CFTC Regulations and any other applicable law;
- (g) in the event that the Clearing House elects to close out and liquidate FCM ForexClear Contracts attributable to FCM Clients of the defaulter (in accordance with the ForexClear DMP Annex), the Clearing House shall allocate any costs associated with such closing out and liquidation process (including hedging costs (including the gains and losses associated with hedging transactions) and liquidation/auction costs and losses) among the FCM Clients whose positions were liquidated, by allocation to such FCM

Clients' FCM Client Segregated Sub-Accounts that are held in the defaulter's FCM Omnibus ForexClear Client Account with LCH, in the manner set out in Section 2B.23.6 of the FCM Procedures and in accordance with Part 22 and Part 190 of the CFTC Regulations and any other applicable law; and

- (h) in the event that the Clearing House elects to close out and liquidate FCM EnClear Contracts attributable to FCM Clients of the defaulter, the Clearing House shall allocate any costs associated with such closing out and liquidation process (including hedging costs (including the gains and losses associated with hedging transactions) and liquidation/auction costs and losses) among the FCM Clients whose positions were liquidated, by allocation to such FCM Clients' FCM Client Segregated Sub-Accounts that are held in the defaulter's FCM Omnibus EnClear Client Account with LCH, in the manner set out in Section 2C.1.20 of the FCM Procedures and in accordance with Part 22 and Part 190 of the CFTC Regulations and any other applicable law.

For the purposes of paragraph (a) of this Rule the Clearing House may assess the sum payable by or to the defaulter in respect of any breach of the Regulations or the FCM Regulations (as the case may be) in such reasonable manner as it thinks fit; provided, that in the case of breaches of the FCM Regulations, the assessment by the Clearing House shall not be in violation of the CFTC Regulations (including Part 22 thereof).

With respect to any Unallocated Excess deposited in the Unallocated Excess Sub-Account of the defaulter, the Clearing House shall not be permitted to apply any such Unallocated Excess to the obligations of the defaulter to the Clearing House (on behalf of the defaulter's FCM Clients or otherwise) or take any such Unallocated Excess into account for purposes of determining net sums under this Rule 8, except to the extent required by applicable law or directed by the applicable bankruptcy trustee or Regulatory Body in accordance with applicable law.

9. The sum, or each sum, finally payable by the defaulter to the Clearing House or by the Clearing House to the defaulter (including any sums payable to the defaulter for the benefit of one or more of its FCM Clients), or the fact that no sum is finally payable by either such party to the other, as the case may be upon completion of the process set out in Rule 8, shall be forthwith certified by the Clearing House. The certificate of the Clearing House under this Rule shall be conclusive as to the discharge of the defaulter's rights and liabilities in respect of the Contracts to which it relates. The Clearing House shall, as soon as practicable after issuing a Default Notice in respect of a Clearing Member, appoint a day on which any net sums certified under this Rule to be due to the defaulter are to be paid by the Clearing House. The day so appointed may fall before or after the effective date of termination of the defaulter's Clearing Membership Agreement but shall not fall on a day before the process specified in Rule 8 can be completed.

- 9A ~~This Rule 9A pertains to certain treatment of Variation Margin in connection with FCM Contracts attributable to FCM Clients of a defaulter (which is Following a Default by an FCM Clearing Member).~~

- ~~(a) Where, with respect to an FCM Contract held on behalf of an FCM Omnibus Swaps Client is transferred to a transferee FCM Clearing Member (in accordance with FCM Regulation 8(f) and these Default Rules) for such FCM Client Account with LCH, the Clearing House shall, subject to the limitations of Rule 9A(c) below, ensure that an amount equal to the net Variation Margin~~

~~that has accrued in favor of the FCM Client under such FCM Contract (including before and after the relevant default) through the time such FCM Contract is transferred, but which has not yet been paid by the Clearing House, is credited (but not yet paid or transferred to the defaulter, the FCM Client or any other person) by the Clearing House on its books for the benefit of the relevant FCM Client. Upon the transfer of all relevant FCM Contracts of an FCM Client to a transferee FCM Clearing Member, the Clearing House shall attribute any amounts (in respect of Variation Margin) so credited on the books of the Clearing House to the relevant FCM Client Segregated Sub-Account(s) of such FCM Client with the applicable transferee FCM Clearing Member; provided that the FCM Client has provided instructions, in form and substance reasonably satisfactory to the Clearing House, for payment and completed or supplied any agreement, form, representation or other information that the Clearing House may reasonably require in its sole discretion.~~

~~(b) Where an FCM Contract held on behalf of an FCM Client is closed out and liquidated in accordance with the FCM Rulebook (including the Default Rules and Sections 2A.15.6, 2B.23.6 and 2C.1.20 of the FCM Procedures, as applicable), the Clearing House shall, subject to the limitations of Rule 9A(c) below, ensure that an amount equal to the net Variation Margin that has accrued in favour of the FCM Client under such FCM Contract (including before and after the relevant default) through the time the relevant FCM Contract is closed out and liquidated, but which has not yet been paid by the Clearing House, is credited (but not yet paid or transferred to the defaulter, the FCM Client or any other person) by the Clearing House on its books for the benefit of such FCM Client. Following certification pursuant to Rule 9 of the net sum payable in respect of the relevant FCM Client Segregated Sub-Account of such FCM Client in which some or all of the FCM Contracts are closed out and liquidated, where (i) such FCM Client is not in default as described in Rule 9A(c)(i) below, and (ii) the Clearing House has credited, in the aggregate (netting all payments due or payable in respect of such FCM Client's Segregated Sub-Account and any Variation Margin accrued but not paid in respect of such FCM Client), a positive value (i.e., payable by the Clearing House) of accrued but unpaid Variation Margin on its books for the benefit of the FCM Client pursuant to this Rule 9A(b), the Clearing House shall, subject to the limitations of Rule 9A(c) below, pay an amount equal to any Variation Margin so credited for the benefit of the FCM Client directly to such FCM Client; provided, that the FCM Client has provided instructions, in form and substance reasonably satisfactory to the Clearing House, for payment and completed or supplied any agreement, form, representation or other information that the Clearing House may reasonably require in its sole discretion.~~

~~(c) Certain Limitations:~~

~~(i) Where an FCM Client has defaulted with respect to its obligations to the defaulter, the Clearing House may determine, in its sole discretion, to make, or to refuse to make, any payments or credits to or on behalf of such FCM Client in respect of Variation Margin pursuant to this Rule 9A, or may retain such amounts to the extent necessary to offset any unsatisfied obligations of such FCM Client to the defaulter or of the defaulter to the Clearing House in respect of such FCM Client, or any other obligations in respect of FCM Clients of the defaulter will to the extent permitted by applicable law.~~

- (ii) ~~For the avoidance of doubt, where FCM Contracts in respect of an FCM Client are closed out and liquidated and/or are transferred to a Hedged Account, and the gains and losses (including hedging costs (including the gains and losses associated with hedging transactions) and liquidation/auction costs and losses) that are allocated to such FCM Client in connection therewith (pursuant to the FCM Rulebook, including Sections 2A.15.6, 2B.23.6 and 2C.1.20 of the FCM Procedures and including Rule 8 of the Default Rules) exceed the amount of cover deposited with the Clearing House on behalf of such FCM Client, the Clearing House shall be permitted to set off (in whole or in part, as applicable) any payments or credits in respect of Variation Margin owed by the Clearing House in respect of such FCM Client under this Rule 9A against any such excess costs.~~
- (d) ~~Notwithstanding anything to the contrary in the FCM Rulebook, (including Part 190 of the CFTC Regulations and applicable bankruptcy law), credit Variation Margin on a gross basis to each FCM Client of a defaulter is hereby expressly made a third-party beneficiary of the provisions of this Rule 9A, solely for purposes of the Clearing House's obligations to such FCM Clients under this Rule 9A. individual FCM Client Sub-Account.~~
10. (a) Where the defaulter has more than one account with the Clearing House, the defaulter's accounts shall be combined for the purpose of Rules 8 and 9 as follows:
- (i) no account which is an FCM Client Segregated Sub-Account of an FCM Client may be combined with any other account, including any FCM Client Segregated Sub-Account of another FCM Client, any FCM Omnibus ~~Clearing Product~~ Client Account with LCH or any Proprietary Account; provided, that in the event that an FCM Client were to have two FCM Client Segregated Sub-Accounts with the same defaulter, and both such accounts cleared the same Product, then such FCM Client Segregated Sub-Accounts may be combined;
  - (ii) no account which is an FCM Omnibus ~~Clearing Product~~ Client Account with LCH of the defaulter may be combined with any other account, including any other FCM Omnibus ~~Clearing Product~~ Client Account with LCH or any Proprietary Account, except as provided in paragraph (iii) below;
  - (iii) an account which is a Proprietary Account of the defaulter may be combined with any other Proprietary Accounts of the defaulter and (if the Clearing House so elects) Treasury Accounts of the defaulter (subject to Rule 8(d) and 10(d) of the Default Rules); and
  - (iv) an account which is a Treasury Account of the defaulter may only be combined with other Treasury Accounts and (if the Clearing House so elects) Proprietary Accounts of the defaulter.

Notwithstanding the foregoing, in no circumstances may an account which is an Individual Segregated Account of the defaulter or an Omnibus Net Segregated Account of the defaulter be combined with any other account of the defaulter.

- (b) For the purposes of this Rule 10, each Individual Segregated Account of the defaulter, each Omnibus Net Segregated Account of the defaulter ~~and the~~, each FCM Client Segregated Sub-Account(s) of a particular FCM Client within a particular FCM Omnibus ~~Clearing Product Swaps~~ Client Account with LCH of the defaulter, and each FCM Omnibus Futures Client Account with LCH shall constitute a separate "kind of account". Where the defaulter has more than one kind of account with the Clearing House, the process set out in Rule 8 shall be separately completed in respect of each kind of account. In the case of each kind of account of the defaulter which is not an Omnibus Net Segregated Account, the sum finally payable in respect of that kind of account following completion of the process set out in Rule 8 shall be separately certified under Rule 9. In the case of each kind of account of the defaulter which is an Omnibus Net Segregated Account, the sum finally payable in respect of that kind of account following completion of the process set out in Rule 8 will be allocated by the Clearing House (pro rata as it sees fit in its sole discretion) between the Omnibus Net Segregated Clearing Clients sharing in that Omnibus Net Segregated Account. Each sum so allocated to an Omnibus Net Segregated Clearing Client shall be separately certified under Rule 9.
- (c) In Rule 8(c) the "defaulter's account" means:
- (i) with regard to a net sum produced by reference to Contracts registered in an Individual Segregated Account of the defaulter, that Individual Segregated Account;
  - (ii) with regard to a net sum produced by reference to Contracts registered in an Omnibus Net Segregated Account of the defaulter, that Omnibus Net Segregated Account;
  - (iii) with regard to a net sum produced by reference to FCM SwapClear Contracts registered in one or more FCM Client Segregated Sub-Accounts of the defaulter held in the name of one particular FCM Client, that FCM Client Segregated Sub-Account, or (if there is more than one) all such FCM Client Segregated Sub-Accounts (containing FCM SwapClear Contracts) of a particular FCM Client combined;
  - (iv) with regard to a net sum produced by reference to FCM ForexClear Contracts registered in one or more FCM Client Segregated Sub-Accounts of the defaulter held in the name of one particular FCM Client, that FCM Client Segregated Sub-Account, or (if there is more than one) all such FCM Client Segregated Sub-Accounts (containing FCM ForexClear Contracts) of a particular FCM Client combined;
  - (v) with regard to a net sum produced by reference to FCM EnClear Contracts registered in one or more FCM Client Segregated Sub-Accounts of the defaulter held in the name of one particular FCM Client, that FCM Client Segregated Sub-Account, or (if there is more than one) all such FCM Client Segregated Sub-Accounts (containing FCM EnClear Contracts) of a particular FCM Client combined;
  - (vi) with regard to a net sum produced by reference to FCM Contracts registered in an FCM Omnibus Futures Client Account with LCH of the defaulter, that FCM Omnibus Futures Client Account with LCH, or (if

there is more than one) all such FCM Omnibus Futures Client Accounts with LCH of the defaulter combined;

~~(vi)~~(vii) with regard to a net sum produced by reference to Contracts registered in one or more Proprietary Accounts of the defaulter, that Proprietary Account or those Proprietary Accounts combined and (if the Clearing House has elected in accordance with Rule 10(a)) any Treasury Accounts of the defaulter; and

~~(vii)~~(viii) with regard to a net sum produced by reference to one or more Treasury Accounts of the defaulter, that Treasury Account or those Treasury Accounts combined, and (if the Clearing House has elected in accordance with Rule 10(a)) Proprietary Accounts.

(d) Notwithstanding any provision of the Rulebook to the contrary, any loss which relates to a Treasury Account may not be treated as a Default Loss (as defined in Rule 23(b)), whether or not cover has been applied in respect of such loss. Nothing in this Rule 10(d) requires the Clearing House to apply cover in respect of any such loss instead of any other amount referred to in Rule 8(a), except that the Clearing House may not apply cover in respect of any such loss to the extent that doing so would give rise to an Excess Loss (as defined in Rule 15).

11. Without further authorisation, permission or cooperation from the defaulter, the Clearing House may appoint any person to take or assist it in taking any step under these Rules or to complete or assist it in completing the process set out in Rule 8.
12. The Clearing House may co-operate, by the sharing of information and otherwise, with any Regulatory Body or relevant Exchange, any relevant office-holder acting in relation to the defaulter or its estate and any other authority or body having responsibility for, or any Clearing Member having an interest in, any matter arising out of or connected with the circumstances mentioned in Rule 3.
13. In addition to such copy report as it supplies under section 162(3) of the Companies Act 1989, the Clearing House shall report to the defaulter, or any relevant office-holder acting in relation to the defaulter or its estate, on steps taken in relation to the defaulter under Rule 6.