

VIA CFTC PORTAL

4 December 2019

Mr Christopher Kirkpatrick  
Commodity Futures Trading Commission  
115 21<sup>st</sup> Street NW  
Three Lafayette Centre  
Washington DC 20581

## **LCH Limited Self-Certification: FCM – Treatment of Accounts under Common Beneficial Ownership**

Dear Mr Kirkpatrick

Pursuant to CFTC regulation §40.6(a), LCH Limited (“LCH”), a derivatives clearing organization (DCO) registered with the Commodity Futures Trading Commission (the “CFTC”), is submitting for self-certification amendments to the FCM Regulations to take account of the time-limited no-action relief provided by the CFTC Staff Advisory No. 19-17 (July 10, 2019)<sup>1</sup>. This is in respect to the treatment of separate accounts by Futures Commission Merchants (FCMs).

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

Following publication of CFTC Staff Advisory No. 19-17 and the clarification regarding the processing of margin withdrawals consistent with CFTC Rule 39.13(g)(8)(iii), LCH proposes to make two changes to the FCM regulations. The proposed rule changes are two-fold:

- (i) We will clarify that LCH’s FCM Regulation 14(u), which addresses the requirements of CFTC Rule 39.13(g)(8)(iii), applies across “FCM Clients”. This means that the terms of any withdrawals from clearing members’ accounts should generally be calculated across a customer’s legal entities (i.e. those which are under common beneficial ownership).
- (ii) We will further amend FCM Regulation 14(u) to provide FCM clearing members with the ability to treat each “FCM Client” as a separate legal entity and to therefore avail themselves of the relief contained in the Advisory, provided that they comply with the conditions set out in the Advisory.

The rule changes will go live on, or after, 18 December 2019.

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

Regulation 14 (Margin and Collateral) paragraph (u) of the FCM Regulations has been updated to clarify that for the purposes of this paragraph, references to “FCM Client” shall include all FCM Clients for the same beneficial owner unless the FCM Clearing Member complies with the relevant conditions set out in CFTC Letter No. 19-17 of July 10, 2019.

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<sup>1</sup> <https://www.cftc.gov/PressRoom/PressReleases/7964-19>

The texts of the rule changes are attached hereto as:

- i. **Appendix I, FCM Regulations**

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

LCH has reviewed the changes against the requirements of the Core Principles and finds it will continue to comply with all the requirements and standards therein including Core Principle D – Risk Management.

### **Part IV: Public Information**

LCH has posted a notice of pending certification with the CFTC and a copy of the submission on LCH's website at:

<http://www.lch.com/rules-regulations/proposed-rules-changes>

### **Part V: Opposing Views**

There were no opposing views expressed to LCH by governing board or committee members, members of LCH or market participants that were not incorporated into the rule.

### **Certification**

LCH 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@lch.com](mailto:julian.oliver@lch.com).

Yours sincerely

  
Julian Oliver  
Chief Compliance Officer  
LCH Limited

**Appendix I**  
FCM Regulations



**FCM REGULATIONS OF THE CLEARING HOUSE**

**LCH LIMITED**

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## **CHAPTER V - COLLATERAL AND VALUATIONS**

### **REGULATION 14 MARGIN AND COLLATERAL**

- (a) The Clearing House may in accordance with the FCM Procedures require an FCM Clearing Member to furnish it with Margin, and to keep the Clearing House furnished with sufficient Margin at all times, in an amount determined by the Clearing House in accordance with these FCM Regulations and the FCM Procedures, as security for the performance by such FCM Clearing Member of its obligations to the Clearing House in respect of all FCM Contracts from time to time to be registered in its name as Open FCM Contracts pursuant to these FCM Regulations. The obligation upon an FCM Clearing Member to furnish Margin to the Clearing House pursuant to this paragraph shall be **in addition** to any other obligation of the FCM Clearing Member to furnish Margin or make any other payment to the Clearing House pursuant to these FCM Regulations. For the avoidance of doubt, margining requirements and policies may vary among each Business Category of FCM Contract and among each Product therein.
- (b) If insufficient monies are standing to the credit of an FCM Clearing Member's account, or if any Collateral deposited by an FCM Clearing Member as Margin is determined by the Clearing House in accordance with the FCM Procedures to be insufficient, such Margin as the Clearing House requires an FCM Clearing Member to furnish to it pursuant to paragraph (a) above or any other FCM Regulation shall be furnished by the FCM Clearing Member in such form and manner and by such time or times as may be prescribed by the FCM Procedures.
- (c) (i) The Clearing House shall be entitled to assume that all Collateral furnished by an FCM Clearing Member to the Clearing House pursuant to these FCM Regulations or under the terms of any agreement made with the FCM Clearing Member are the sole legal and beneficial property of the FCM Clearing Member or are furnished or deposited for the purposes of these FCM Regulations with the legal and beneficial owner's unconditional consent and with the authority granted to the FCM Clearing Member to repledge such property to the Clearing House. An FCM Clearing Member may not furnish Collateral to or with the Clearing House otherwise than in conformance with this paragraph. It shall be accepted by every person (including FCM Clients) subject to or dealing on the terms of these FCM Regulations that an FCM Clearing Member has such person's unconditional consent to furnish to the Clearing House any securities or other assets of such person in the FCM Clearing Member's possession as Collateral for purposes of the FCM Rulebook.
- (ii) Each FCM Clearing Member represents and warrants to the Clearing House as at each date on which such FCM Clearing Member furnishes Collateral to the Clearing House pursuant to these FCM Regulations (A) that such FCM Clearing Member is the sole legal and beneficial owner of such Collateral or, as the case may be, such Collateral is so furnished or deposited with the legal and beneficial owner's unconditional consent and with the authority granted to the FCM Clearing Member to repledge such property to the Clearing House, and (B) that the provision to the Clearing House of such Collateral pursuant to

therefrom, regardless of whether the Clearing House has exercised any rights with respect to the Collateral listed in the immediately preceding sentence.

- (r) The Clearing House will, notwithstanding Section 9-207 of the New York Uniform Commercial Code, have the right to maintain or otherwise handle Collateral held by the Clearing House on behalf of FCM Clients (including Collateral deposited in or attributable to an FCM Omnibus Client Account with LCH or any LCH Client Depository Account) in the manner provided in the FCM Rulebook, including investing such Collateral in accordance with FCM Regulations 7(n). Except to the extent otherwise provided for in the FCM Rulebook, the Clearing House shall retain any and all income, distributions, returns, profits or any other monies received with respect to any such investments or use.
- (s) Although each FCM Clearing Member and the Clearing House intend the payment of each Contribution by the FCM Clearing Member to the Clearing House to be an outright payment or transfer by the FCM Clearing Member to the Clearing House (subject to the Clearing House's obligation to repay Contributions pursuant to FCM Default Fund Agreement and/or the Default Fund Rules), in the event that any or all of a Contribution is deemed to be collateral posted to the Clearing House by the FCM Clearing Member (in which the FCM Clearing Member retains an ownership interest), then, notwithstanding clause (m) above, the FCM Clearing Member shall be deemed to have pledged to the Clearing House as security for unconditional payment and satisfaction of each and every obligation and liability of the FCM Clearing Member to the Clearing House under the FCM Rulebook, and the FCM Clearing Member shall be deemed to have granted the Clearing House a first priority security interest in, the amount of any Contribution that has been deemed to be collateral and any income thereon and other proceeds thereof, and the Clearing House shall have all of the rights of use in respect of such Contributions as referenced in FCM Regulation 14(q) and any other additional rights provided for under the FCM Rulebook.
- (t) Each FCM Clearing Member shall ensure that with respect to an FCM Transaction that results in the registration of an FCM Contract on behalf of an FCM Client that is of a "non-hedging nature" (as such term is used in Part 39 the CFTC Regulations), it shall collect or remain furnished with additional FCM Client Funds from the relevant FCM Client in respect of such non-hedging FCM Contract in an amount which shall be no less than the minimum percentage as required by the Clearing House and as notified to the relevant FCM Clearing Member from time to time, as further specified in the FCM Procedures.
- (u) Each FCM Clearing Member shall ensure that no FCM Client withdraws FCM Client Funds from an FCM Client Segregated Depository Account unless the "net liquidating value" (as such term is used in Part 39 of the CFTC Regulations) plus the FCM Client Funds attributable to such FCM Client remaining in such FCM Client Segregated Depository Account after such withdrawal is sufficient to meet the level of Required Margin, as calculated by the Clearing House in respect of all FCM Contracts entered into on behalf of that FCM Client. For the purposes of this paragraph, references to "FCM Client" shall include all FCM Clients for the same beneficial owner unless the FCM Clearing Member complies with the relevant conditions set out in CFTC Letter No. 19-17 of July 10, 2019.
- (v) **Gross and Net Margining Requirements – FCM Client Positions.**