

VIA CFTC PORTAL

22 August 2019

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

LCH Limited Self-Certification: Amendments to the Rates and ForexClear rules on antitrust law in the context of Default Management Groups

Dear Mr Kirkpatrick:

Pursuant to CFTC regulation §40.6(a), LCH Limited (“LCH”), a derivatives clearing organization registered with the Commodity Futures Trading Commission (the “CFTC”), is submitting for self-certification changes to its rules related to antitrust law in the context of Default Management Groups (DMGs). The amendments affect the ForexClear and the Rates services.

Part I: Explanation and Analysis

Each DMG provides advice to the respective ForexClear and Rates clearing services at regular intervals on, *inter alia*, market and liquidity risk and the adequacy of the required margin (including add-ons). They also provide default management advice upon the default of an LCH clearing member.

As DMGs are comprised of representatives of competing companies, LCH proposes to include in its rules certain guidelines and obligations that members of the DMG are required to acknowledge and comply with to act in accordance with antitrust law.

The rule changes will go live on, or after, 9 September 2019.

Part II: Description of Rule Changes

The Procedures Section 2C (SwapClear Clearing Service) and Procedures Section 2I (ForexClear Clearing Service) have been updated with a new section titled “Antitrust” in the respective Schedule 2 and Schedule 1, which deal with confidentiality, non-disclosure and participation in the Default Management Group.

The new section requires Clearing Members to acknowledge that the DMG is comprised of representatives of competing companies and that antitrust law prohibits the sharing of competitively sensitive information as between competitors. To this effect the section sets out specific information that must not be disclosed in discussion between DMG members. Under the proposal, the Clearing Member is also required to ensure that the individuals participating in the DMG has been made aware of the relevant obligations under antitrust laws prior to engaging with the DMG.

Further, the section includes information around the governance of the DMG, including i) the process to circulate agendas and minutes to participants and ii) the steps to be taken in case any disclosure or discussions that may be contrary to antitrust law are initiated.

Future Commission Merchants (“FCMs”) do not participate in the DMG. Nevertheless, the FCM Procedures have been updated to reflect that Schedule 2.1B and Schedule 2.2D, for ForexClear and SwapClear respectively, would be applicable in the event that the FCM did not have an affiliated non-FCM Clearing Member that has agreed to participate in the Default Management Process on its behalf.

The texts of the rule changes are attached hereto as:

- i. **Appendix I**, Procedures Section 2C
- ii. **Appendix II**, Procedures Section 2I
- iii. **Appendix III**, FCM Procedures

Part III: Core Principle Compliance

LCH reviewed the changes against the requirements of the Core Principles and found it will continue to comply with all the requirements and standards therein.

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 changes.

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.

Yours sincerely



Julian Oliver
Chief Compliance Officer
LCH Limited

Appendix I
Procedures Section 2C



LCH LIMITED

PROCEDURES SECTION 2C

SWAPCLEAR CLEARING SERVICE

SCHEDULE 2
CONFIDENTIALITY, NON-DISCLOSURE AND PARTICIPATION IN THE
DEFAULT MANAGEMENT GROUP

1. Definitions

- 1.1 **"Confidential Material"** means data (including but not limited to portfolio data) and documents, which are not in the public domain and which are disclosed to the SCM, its associated companies and advisers, or to which the SCM, its associated companies and advisers obtains or otherwise has access as a result of participation in the Rates Service DMP, (which, for the avoidance of doubt, does not include any information, data or documents provided to the Clearing House by the SCM).
- 1.2 **"DMG Member"** means an individual appointed by a Nominating SCM.
- 1.3 **"Nominating SCM"** means a SwapClear Member who, through their obligations under the Rates Service DMP, makes available a representative to serve on the DMG.
- 1.4 **"Permitted Purpose"** means proper fulfilment by the SCM of its duties under the Rates Service DMP and includes, after the completion of the Auction, the use by the SCM, its associated companies and advisers (to be determined by it at its discretion) of any data or documents related to portfolios successfully won through the Auction for the purposes of its own ongoing portfolio management and to enable it to comply with ongoing legal or regulatory requirements.
- 1.5 References denoting the masculine (including "his" and "he") shall be construed as the feminine if the DMG Member is female.
- 1.6 All other terms have the meaning ascribed to them in the Default Rules (including the Rates Service DMP Annex).

Confidentiality and Non-Disclosure: General Obligations of the SCM

2. Confidentiality

- 2.1 The SCM agrees that, in consideration of being given Confidential Material, it will keep all such Confidential Material in the strictest confidence, adhere to the provisions of this Agreement in respect thereof and, subject to Section 2.3, will not disclose it to any person without the prior written permission of the Managing Director, Risk of the Clearing House or a Director of Risk Management of the Clearing House, providing always that the SCM shall be relieved of such an obligation of confidentiality in respect of any Confidential Material if:
- 2.1.1 it comes into the public domain other than through a breach by the SCM of this Agreement; or
- 2.1.2 the SCM is expressly obliged to do so by order of a court of competent jurisdiction upon the application of a third party, or as a result of any request to disclose such part or parts of the Confidential Material in connection with any inquiry or other request by a regulatory authority or self-regulatory authority asserting jurisdiction over the SCM.

- 2.2 The SCM further agrees that it will not use any Confidential Material for any purpose other than the Permitted Purpose. In this regard the SCM expressly acknowledges and agrees that the Confidential Material may contain commercially sensitive information which if used inappropriately or otherwise than in accordance with this Agreement might result in the gaining of an unfair commercial advantage by the SCM over other members of the Clearing House SwapClear Service.
- 2.3 Subject to paragraph 2.4, the SCM may disclose any Confidential Material to any of its employees, representatives, associated companies and advisers on a "strictly need to know" basis, in the event that any such person needs that Confidential Material for the Permitted Purpose (and to that extent only).
- 2.4 The SCM agrees to establish and adhere to adequate procedures (including, without limitation, the establishment of appropriate Chinese walls) to ensure that any employee or representative to whom any Confidential Material is disclosed shall not use any part or all of that Confidential Material for any proprietary purpose outside the scope of the Permitted Purpose.
- 2.5 This paragraph and the duties hereunder shall survive the termination of this Agreement and, in relation to any Confidential Material, shall expire on the second anniversary of the date the Confidential Material was first provided to the SCM.

3. **Secrecy**

- 3.1 Except in accordance with the terms of this Schedule, the SCM agrees that it shall treat as strictly confidential and shall not disclose or allow to be divulged to any person:
- 3.1.1 Confidential Material;
 - 3.1.2 the fact that it has received any Confidential Material;
 - 3.1.3 the existence of any discussions or negotiations between the parties in this matter;
 - 3.1.4 details of the Permitted Purpose and any of the proposals, terms, conditions, facts or other matters relating to any of the forgoing. Subject only to the SCM being relieved of such an obligation because of the circumstances covered in paragraphs 2.1.1 and 2.1.2.

4. **Property**

The parties acknowledge that the property in the Confidential Material (or any part of it) shall not pass to the SCM or any SCM, and the property in the media on which it is conveyed to the receiving party shall not pass to the SCM or any SCM unless expressly so agreed by the Clearing House in writing.

5. **Return of Confidential Material**

Upon request by the Clearing House, and in any event upon fulfilment of the Permitted Purpose, the SCM shall promptly return to the Clearing House by a secure method of transportation all or any part of the Confidential Material and all copies

thereof in its possession or control or that of its employees or representatives, including all other papers, programs and records incorporating any of that Confidential Material, or shall destroy such information and shall certify to the Clearing House in writing that it has done so **provided that** the SCM is permitted to retain copies of any Confidential Material which it requires as part of its portfolio management or otherwise for legal or regulatory reasons.

6. **No Representations or Warranties; No Conflict of Interest**

6.1 Subject to references made in paragraph 7, the Confidential Material is disclosed by the Clearing House without any representation or warranty whatsoever as to its accuracy or completeness or otherwise.

6.2 The Clearing House acknowledges and agrees that, subject to compliance with the terms of this Schedule by the SCM and any of its employees or representatives to whom Confidential Material is provided in accordance with this Schedule, the SCM's participation in the Rates Service DMP shall not prevent the SCM from carrying out any transaction, or otherwise providing investment services in respect of, investments that the SCM may subsequently learn are the subject of Confidential Material and, furthermore, the Clearing House agrees that it shall not be able to assert that the SCM has a conflict of interest in doing so nor shall the Clearing House have a claim or action in respect of the foregoing against the SCM or any of its directors, employees or other representatives.

7. **Liability**

7.1 Subject to Regulation 52 (*Exclusion of Liability*), the parties agree and acknowledge that neither the Clearing House nor any of its employees or representatives shall have any liability whatsoever to the SCM or any of employees or representatives, for any loss or damage of whatsoever kind howsoever arising directly or indirectly out of or in connection with the disclosed Confidential Material or its use.

7.2 The Clearing House accepts liability for any personal injury or death caused by the negligence of the Clearing House and any fraud or wilful default on the part of the Clearing House, for any actions that it may take on the basis of advice given to it by the DMG, and for the accuracy of the information (confidential material as defined in the Schedule to this Agreement) that it distributes to the SCM in connection with the Rates Service DMP.

7.3 Under no circumstances shall the Clearing House have any liability to the SCM for (a) any consequential loss or other indirect loss of whatsoever kind or (b) loss of anticipated profit (whether direct or indirect).

8. **Remedies**

Without affecting any other rights or remedies that the Clearing House may have, the SCM acknowledges that the Clearing House may be irreparably harmed by any breach of the terms of this Agreement and that damages alone may not necessarily be an adequate remedy. Accordingly, the Clearing House will be entitled to the remedies of injunction, specific performance and other equitable relief, or any combination of

these remedies, for any threatened or actual breach of its terms, and not proof of special damages will be necessary to enforce this Agreement.

9. Conflict of Interest

The SCM shall procure that, in the event that a DMG Member takes the view that a possible conflict of interest may arise with regard to any matter forming part of the business of the DMG, he shall promptly report his view to the Chairman of the DMG, who shall act accordingly, taking the advice of other DMG Members as appropriate.

10. Confidentiality

- 10.1 Subject to paragraph 10.3 below, the SCM shall procure that the DMG Member shall keep all Confidential Material strictly confidential to himself and will not disclose it to any person who is not a DMG Member (including, for the avoidance of doubt, the SCM who recommended his appointment to the DMG ("**the Nominating SCM**") or his employer (if different) or any other employee, adviser, officer or fellow worker of that SCM or his employer) without the prior written permission of the Managing Director, Risk of the Clearing House or his properly authorised delegate, providing always that the DMG Member shall be relieved of such an obligation of confidentiality in respect of any Confidential Material if it comes into the public domain in the circumstances covered in paragraphs 2.1.1 and 2.1.2.
- 10.2 Subject to paragraph 10.3 below, the SCM shall procure that the DMG Member shall not use any Confidential Material for any purpose other than the proper fulfilment of his duties as a DMG Member.
- 10.3 The parties acknowledge that, in the event that a Default Notice is issued by the Clearing House in respect of any SwapClear Clearing Member, the DMG Member may be required by the Nominating SCM and/or his employer (if different) to provide certain services to the Clearing House in the management of the default. In such event, and only in such event, the parties acknowledge that the DMG Member shall be entitled to disclose any part or parts of the Confidential Material as may be agreed by the Clearing House, in such manner and form and in accordance with such procedures as may be prescribed by the Clearing House and/or the DMG with regard to the management of that default.
- 10.4 Upon request by the Clearing House, and in any event upon termination of the membership of the DMG Member of the DMG, the SCM shall procure that the DMG Member shall promptly return to the Clearing House by a secure method of transportation all or any part of the Confidential Material and all copies thereof in his possession or control, including all abstracts, notes, drawings and other papers, programs and records incorporating any of that Confidential Material, or shall destroy such information and shall certify to the Clearing House in writing that it has done so, **provided that** the DMG Member is permitted to retain a copy thereof to comply with applicable legal or regulatory requirements.

11. Warranty and Representation

11.1 The SCM represents and warrants that it will procure that:

11.1.1 the Nominating SCM and the DMG Member's employer (if different) are aware of the obligations of confidentiality arising out of this Agreement; and

11.1.2 nothing in this Agreement will cause the DMG Member to breach any duty or obligation (whether arising pursuant to contract or otherwise) which he owes to the Nominating SCM or to his employer, if different, or any other contract counterparty of the DMG Member.

12. Antitrust

12.1 The SCM acknowledges that the DMG comprises representatives of competing companies and that antitrust law prohibits the sharing of competitively sensitive information as between competitors. The SCM shall procure that its DMG Member has been made aware of the relevant obligations under antitrust laws prior to attending any meetings or calls of the DMG.

12.2 The SCM shall procure that the DMG Member does not share any competitively sensitive information relating to the SCM with any other members of the DMG. In particular, the DMG Member should not:

12.2.1 enter into general business discussions about the SCM's business or ventures in which it has an interest, except where strictly necessary for the purposes of the DMG;

12.2.2 disclose or enter into discussions relating to the SCM's spreads, margins, commissions (paid or received), fee schedules, pricing policies, current or future margins, trading volumes or the SCM's customers

12.2.3 disclose or enter into discussions relating to the SCM's future plans (such as new products or changes to trading arrangements, prospective clients, business opportunities or product development plans), strategic plans, or expansion plans; or

12.2.4 disclose or enter into discussions relating to prices, commissions paid or payable to, or any other terms and conditions of arrangements between the SCM and other clearing houses, suppliers, brokers or other intermediaries.

12.3 At the beginning of each meeting, the Chairman of the DMG will remind the participants of their obligations under antitrust law.

12.4 The Clearing House will circulate to DMG Members an agenda in advance of all meetings of the DMG. All meetings of the DMG must proceed strictly in accordance with the agenda and will be recorded in minutes circulated by the Clearing House. Participants must notify the Clearing House to the extent the minutes do not reflect the relevant meeting.

12.5 If any disclosure or discussions that may be contrary to antitrust law are initiated, the Chairman of the DMG should immediately cease such disclosure or discussions and,

if specific participants have raised concerns, allow them to record these concerns in the minutes.

12.13. Confidentiality and Non-Disclosure: General Obligations of the Clearing House

The Clearing House will treat all Confidential Material in the terms envisaged in this Schedule, confining use to the Rates Service DMP, restricting its availability on a "strictly need to know basis", and exercising every duty of care required of it as a Recognised Clearing House and as a Derivatives Clearing Organization.

13.14. Third Party Rights

A person who is not a party to this Annex shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.



LCH LIMITED

PROCEDURES SECTION 2I

FOREXCLEAR CLEARING SERVICE

SCHEDULE 1
CONFIDENTIALITY, NON-DISCLOSURE AND PARTICIPATION IN THE
FOREXCLEAR DEFAULT MANAGEMENT GROUP

1. Definitions

- 1.1 **"Confidential Material"** means data (including but not limited to portfolio data) and documents, which are not in the public domain and which are disclosed to the FXCCM, its associated companies and advisers, or to which the FXCCM, its associated companies and advisers obtains or otherwise has access as a result of participation in the ForexClear Default Management Process, (which, for the avoidance of doubt, does not include any information, data or documents provided to the Clearing House by the FXCCM).
- 1.2 **"FXDMG Member"** means an individual appointed by a Nominating FXCCM.
- 1.3 **"Nominating FXCCM"** means a ForexClear Member who, through their obligations under the ForexClear DMP Annex, makes available a representative to serve on the FXDMG.
- 1.4 **"Permitted Purpose"** means proper fulfilment by the FXCCM of its duties under the ForexClear DMP Annex and includes, after the completion of the Auction, the use by the FXCCM its associated companies and advisers (to be determined by it at its discretion) of any data or documents related to portfolios successfully won through the Auction, for the purposes of its own ongoing portfolio management and to enable it to comply with ongoing legal or regulatory requirements.
- 1.5 References denoting the masculine (including "his" and "he") shall be construed as the feminine if the FXDMG Member is female.
- 1.6 All other terms have the meaning ascribed to them in the Default Rules (including the ForexClear DMP Annex).

Confidentiality and Non-Disclosure: General Obligations of the FXCCM

2. Confidentiality

- 2.1 The FXCCM agrees that, in consideration of being given Confidential Material, it will keep all such Confidential Material in the strictest confidence, adhere to the provisions of this Agreement in respect thereof and, subject to paragraph 2.3 below, will not disclose it to any person without the prior written permission of the Managing Director, Risk of the Clearing House or a Director of Risk Management of the Clearing House, providing always that the FXCCM shall be relieved of such an obligation of confidentiality in respect of any Confidential Material if :
- (a) it comes into the public domain other than through a breach by the FXCCM of this Agreement; or
 - (b) b) the FXCCM is expressly obliged to do so by order of a court of competent jurisdiction upon the application of a third party, or as a result of any request to disclose such part or parts of the Confidential Material in connection with any

inquiry or other request by a regulatory authority or self-regulatory authority asserting jurisdiction over the FXCCM.

- 2.2 The FXCCM further agrees that it will not use any Confidential Material for any purpose other than the Permitted Purpose. In this regard the FXCCM expressly acknowledges and agrees that the Confidential Material may contain commercially sensitive information which if used inappropriately or otherwise than in accordance with this Schedule 1 might result in the gaining of an unfair commercial advantage by the FXCCM over other members of the Clearing House ForexClear Service.
- 2.3 Subject to paragraph 2.4 below the FXCCM may disclose any Confidential Material to any of its employees, representatives, associated companies and advisers on a "**strictly need to know**" basis, in the event that any such person needs that Confidential Material for the Permitted Purpose (and to that extent only).
- 2.4 The FXCCM agrees to establish and adhere to adequate procedures (including, without limitation, the establishment of appropriate Chinese walls) to ensure that any employee or representative to whom any Confidential Material is disclosed shall not use any part or all of that Confidential Material for any proprietary purpose outside the scope of the Permitted Purpose.
- 2.5 This paragraph and the duties hereunder shall survive the termination of this Schedule 1 and, in relation to any Confidential Material, shall expire on the second anniversary of the date the Confidential Material was first provided to the FXCCM.

3. **Secrecy**

- 3.1 Except in accordance with the terms of this Schedule 1, the FXCCM agrees that it shall treat as strictly confidential and shall not disclose or allow to be divulged to any person:
 - (a) Confidential Material;
 - (b) the fact that it has received any Confidential Material;
 - (c) the existence of any discussions or negotiations between the parties in this matter.
 - (d) details of the Permitted Purpose and any of the proposals, terms, conditions, facts or other matters relating to any of the forgoing. Subject only to the FXCCM being relieved of such an obligation because of the circumstances covered in paragraphs 2.1(a) and 2.1(b).
- 3.2 The Clearing House undertakes to ensure that the FXCCM is fully apprised of information on the ForexClear Default Management Process that it makes public and which is accordingly of relevance to the FXCCM's obligations.

4. **Property**

The parties acknowledge that the property in the Confidential Material (or any part of it) shall not pass to the FXCCM or any FXCCM, and the property in the media on which it is conveyed to the receiving party shall not pass to the FXCCM or any FXCCM unless expressly so agreed by the Clearing House in writing.

5. **Return of Confidential Material**

Upon request by the Clearing House, and in any event upon fulfilment of the Permitted Purpose, the FXCCM shall promptly return to the Clearing House by a secure method of transportation all or any part of the Confidential Material and all copies thereof in its possession or control or that of its employees or representatives, including all other papers, programs and records incorporating any of that Confidential Material, or shall destroy such information and shall certify to the Clearing House in writing that it has done so provided that the FXCCM is permitted to retain copies of any Confidential Material which it requires as part of its portfolio management or otherwise for legal or regulatory reasons.

6. **No Representations or Warranties; No Conflict of Interest**

6.1 Subject to references made in Paragraph 7 (*Liability*), the Confidential Material is disclosed by the Clearing House without any representation or warranty whatsoever as to its accuracy or completeness or otherwise.

6.2 The Clearing House acknowledges and agrees that, subject to compliance with the terms of this Schedule 1 by the FXCCM and any of its employees or representatives to whom Confidential Material is provided in accordance with this Schedule 1, the FXCCM's participation in the ForexClear Default Management Process shall not prevent the FXCCM from carrying out any transaction, or otherwise providing investment services in respect of, investments that the FXCCM may subsequently learn are the subject of Confidential Material and, furthermore, the Clearing House agrees that it shall not be able to assert that the FXCCM has a conflict of interest in doing so nor shall the Clearing House have a claim or action in respect of the foregoing against the FXCCM or any of its directors, employees or other representatives.

7. **Liability**

7.1 Subject to Regulation 52 (*Exclusion of Liability*), the parties agree and acknowledge that neither the Clearing House nor any of its employees or representatives shall have any liability whatsoever to the FXCCM or any of its employees or representatives, for any loss or damage of whatsoever kind howsoever arising directly or indirectly out of or in connection with the disclosed Confidential Material or its use.

7.2 The Clearing House accepts liability for any personal injury or death caused by the negligence of the Clearing House and any fraud or wilful default on the part of the Clearing House, for any actions that it may take on the basis of advice given to it by the FXDMG, and for the accuracy of the information (confidential material as defined in this Schedule 1) that it distributes to the FXCCM in connection with the ForexClear Default Management Process.

7.3 Under no circumstances shall the Clearing House have any liability to the FXCCM for (a) any consequential loss or other indirect loss of whatsoever kind or (b) loss of anticipated profit (whether direct or indirect).

8. Remedies

Without affecting any other rights or remedies that the Clearing House may have, the FXCCM acknowledges that the Clearing House may be irreparably harmed by any breach of the terms of this Schedule 1 and that damages alone may not necessarily be an adequate remedy. Accordingly, the Clearing House will be entitled to the remedies of injunction, specific performance and other equitable relief, or any combination of these remedies, for any threatened or actual breach of its terms, and not proof of special damages will be necessary to enforce this Agreement.

Confidentiality and Non-Disclosure and General Terms of Participation in ForexClear Default Management Group

9. Conflict of Interest

The FXCCM shall procure that, in the event that a FXDMG Member takes the view that a possible conflict of interest may arise with regard to any matter forming part of the business of the FXDMG, he shall promptly report his view to the Chairman of the FXDMG, who shall act accordingly, taking the advice of other FXDMG Members as appropriate.

10. Confidentiality

- 10.1 Subject to paragraph 10.3 below, the FXCCM shall procure that the FXDMG Member shall keep all Confidential Material strictly confidential to himself and will not disclose it to any person who is not a FXDMG Member (including, for the avoidance of doubt, the FXCCM who recommended his appointment to the FXDMG (the Nominating FXCCM) or his employer (if different) or any other employee, adviser, officer or fellow worker of that FXCCM or his employer) without the prior written permission of the Managing Director, Risk of the Clearing House or his properly authorised delegate, providing always that the FXDMG Member shall be relieved of such an obligation of confidentiality in respect of any Confidential Material if it comes into the public domain in the circumstances covered in paragraphs 2.1(a) and 2.1(b) above.
- 10.2 Subject to paragraph 10.3 below, the FXCCM shall procure that the FXDMG Member shall not use any Confidential Material for any purpose other than the proper fulfilment of his duties as a FXDMG Member.
- 10.3 The parties acknowledge that, in the event that a Default Notice is issued by the Clearing House in respect of any ForexClear Clearing Member, the FXDMG Member may be required by the Nominating FXCCM and/or his employer (if different) to provide certain services to the Clearing House in the management of the default. In such event, and only in such event, the parties acknowledge that the FXDMG Member shall be entitled to disclose any part or parts of the Confidential Material as may be agreed by the Clearing House, in such manner and form and in accordance with such procedures as may be prescribed by the Clearing House and/or the FXDMG with regard to the management of that default.
- 10.4 Upon request by the Clearing House, and in any event upon termination of the membership of the FXDMG Member of the FXDMG, the FXCCM shall procure that the FXDMG Member shall promptly return to the Clearing House by a secure method

of transportation all or any part of the Confidential Material and all copies thereof in his possession or control, including all abstracts, notes, drawings and other papers, programs and records incorporating any of that Confidential Material, or shall destroy such information and shall certify to the Clearing House in writing that it has done so, provided that the FXDMG Member is permitted to retain a copy thereof to comply with applicable legal or regulatory requirements.

11. Antitrust

11.1 The FXCCM acknowledges that the FXDMG comprises representatives of competing companies and that antitrust law prohibits the sharing of competitively sensitive information as between competitors. The FXCCM shall procure that its FXDMG Member has been made aware of the relevant obligations under antitrust laws prior to attending any meetings or calls of the FXDMG.

11.2 The FXCCM shall procure that the FXDMG Member does not share any competitively sensitive information relating to the FXCCM with any other members of the FXDMG. In particular, the FXDMG Member should not:

(a) enter into general business discussions about the FXCCM's business or ventures in which it has an interest, except where strictly necessary for the purposes of the FXDMG;

(b) disclose or enter into discussions relating to the FXCCM's spreads, margins, commissions (paid or received), fee schedules, pricing policies, current or future margins, trading volumes or the FXCCM's customers;

(c) disclose or enter into discussions relating to the FXCCM's future plans (such as new products or changes to trading arrangements, prospective clients, business opportunities or product development plans), strategic plans, or expansion plans; or

(d) disclose or enter into discussions relating to prices, commissions paid or payable to, or any other terms and conditions of arrangements between the FXCCM and other clearing houses, suppliers, brokers or other intermediaries.

11.3 At the beginning of each meeting, the Chairman of the FXDMG will remind the participants of their obligations under antitrust law.

11.4 The Clearing House will circulate to FXDMG Members an agenda in advance of all meetings of the FXDMG. All meetings of the FXDMG must proceed strictly in accordance with the agenda and will be recorded in minutes circulated by the Clearing House. Participants must notify the Clearing House to the extent the minutes do not reflect the relevant meeting.

11.5 If any disclosure or discussions that may be contrary to antitrust law are initiated, the Chairman of the FXDMG should immediately cease such disclosure or discussions and, if specific participants have raised concerns, allow them to record these concerns in the minutes.

11.12. **Warranty and Representation**

The FXCCM represents and warrants that it will procure that:

- (a) the Nominating FXCCM and the FXDMG Member's employer (if different) are aware of the obligations of confidentiality arising out of this Procedure; and
- (b) nothing in this Schedule 1 will cause the FXDMG Member to breach any duty or obligation (whether arising pursuant to contract or otherwise) which he owes to the Nominating FXCCM or to his employer, if different, or any other contract counterparty of the FXDMG Member.

12.13. **Confidentiality and Non-Disclosure: General Obligations of the Clearing House**

The Clearing House will treat all Confidential Material in the terms envisaged in Schedule 1 (*Confidentiality, non-disclosure and participation in the ForexClear Default Management Group*), confining use to the ForexClear Default Management Process, restricting its availability on a "**strictly need to know basis**", and exercising every duty of care required of it as a Recognised Clearing House and as a Derivatives Clearing Organization.

Appendix II
Procedures Section 2I

Appendix III
FCM Procedures



FCM PROCEDURES OF THE CLEARING HOUSE

LCH LIMITED

SCHEDULE 2.1B
CONFIDENTIALITY, NON-DISCLOSURE AND PARTICIPATION IN
THE DEFAULT MANAGEMENT GROUP

1. Definitions

- 1.1 “**Confidential Material**” means data (including but not limited to portfolio data) and documents, which are not in the public domain and which are disclosed to the FCM Clearing Member, its associated companies and advisers, or to which the FCM Clearing Member, its associated companies and advisers obtains or otherwise has access as a result of participation in the Rates Service DMP, (which, for the avoidance of doubt, does not include any information, data or documents provided to the Clearing House by the FCM Clearing Member).
- 1.2 “**DMG Member**” means an individual appointed by a Nominating FCM Clearing Member.
- 1.3 “**Nominating FCM Clearing Member**” means a SwapClear Member who, through their obligations under the Rates Service DMP, makes available a representative to serve on the Rates Service DMG.
- 1.4 “**Permitted Purpose**” means proper fulfillment by the FCM Clearing Member of its duties under the Rates Service DMP Annex and includes, after the completion of the Auction, the use by the FCM Clearing Member, its associated companies and advisers (to be determined by it at its discretion) of any data or documents related to portfolios successfully won through the Auction, for the purposes of its own on-going portfolio management and to enable it to comply with on-going legal or regulatory requirements.
- 1.5 References denoting the masculine (including “his” and “he”) shall be construed as the feminine if the DMG Member is female.
- 1.6 All other terms have the meaning ascribed to them in the FCM Rulebook, which includes the Default Rules (including the Rates Service DMP Annex).

General Obligations of the FCM Clearing Member

The obligations of an FCM Clearing Member set forth in this Schedule shall only apply in the event such FCM Clearing Member does not have an affiliated SwapClear Clearing Member that has agreed to participate in the Rates Service DMP on behalf of such FCM Clearing Member.

Confidentiality and Non-Disclosure: ~~General Obligations of the FCM Clearing Member~~

2. Confidentiality

- 2.1 The FCM Clearing Member agrees that, in consideration of being given Confidential Material, it will keep all such Confidential Material in the strictest confidence, adhere to the provisions of this Schedule in respect thereof and, subject to paragraph 2.3, will not disclose it to any person without the prior written permission of the Managing Director, Risk of the Clearing House or a Director of Risk Management of the

Clearing House, providing always that the FCM Clearing Member shall be relieved of such an obligation of confidentiality in respect of any Confidential Material if:

- 2.1.1 it comes into the public domain other than through a breach by the FCM Clearing Member of this Schedule; or
 - 2.1.2 the FCM Clearing Member is expressly obliged to do so by order of a court of competent jurisdiction upon the application of a third party, or as a result of any request to disclose such part or parts of the Confidential Material in connection with any inquiry or other request by a regulatory authority or self-regulatory authority asserting jurisdiction over the FCM Clearing Member.
- 2.2 The FCM Clearing Member further agrees that it will not use any Confidential Material for any purpose other than the Permitted Purpose. In this regard the FCM Clearing Member expressly acknowledges and agrees that the Confidential Material may contain commercially sensitive information which if used inappropriately or otherwise than in accordance with this Schedule might result in the gaining of an unfair commercial advantage by the FCM Clearing Member over other members of the Clearing House SwapClear Service.
- 2.3 Subject to paragraph 2.5, the FCM Clearing Member may disclose any Confidential Material to any of its employees, representatives, associated companies and advisers on a “strictly need to know” basis, in the event that any such person needs that Confidential Material for the Permitted Purpose (and to that extent only).
- 2.4 The FCM Clearing Member agrees to establish and adhere to adequate procedures (including, without limitation, the establishment of ~~appropriate—Chinese walls~~ **information barriers**) to ensure that any employee or representative to whom any Confidential Material is disclosed shall not use any part or all of that Confidential Material for any proprietary purpose outside the scope of the Permitted Purpose.
- 2.5 This paragraph and the duties hereunder shall survive the termination of this Agreement and, in relation to any Confidential Material, shall expire on the second anniversary of the date the Confidential Material was first provided to the FCM Clearing Member.

3. **Secrecy**

- 3.1 Except in accordance with the terms of this Annex, the FCM Clearing Member agrees that it shall treat as strictly confidential and shall not disclose or allow to be divulged to any person:
- 3.1.1 Confidential Material;
 - 3.1.2 the fact that it has received any Confidential Material;
 - 3.1.3 the existence of any discussions or negotiations between the parties in this matter;
 - 3.1.4 details of the Permitted Purpose and any of the proposals, terms, conditions, facts or other matters relating to any of the foregoing. Subject only to the FCM

SCHEDULE 2.2D
CONFIDENTIALITY, NON-DISCLOSURE AND PARTICIPATION IN
THE FOREXCLEAR DEFAULT MANAGEMENT GROUP

1. Definitions

1.1 “**Confidential Material**” means data (including but not limited to portfolio data) and documents, which are not in the public domain and which are disclosed to the FXCCM, its associated companies and advisers, or to which the FXCCM, its associated companies and advisers obtains or otherwise has access as a result of participation in the ForexClear DMP, (which, for the avoidance of doubt, does not include any information, data or documents provided to the Clearing House by the FXCCM).

1.2 “**FXDMG Member**” means an individual appointed by a Nominating FXCCM.

1.3 “**Nominating FXCCM**” means a ForexClear Member who, through their obligations under the ForexClear DMP Annex, makes available a representative to serve on the ForexClear DMG.

1.4 “**Permitted Purpose**” means proper fulfillment by the FXCCM of its duties under the ForexClear DMP Annex and includes, after the completion of the Auction, the use by the FXCCM its associated companies and advisers (to be determined by it at its discretion) of any data or documents related to portfolios successfully won through the Auction, for the purposes of its own on-going portfolio management and to enable it to comply with on-going legal or regulatory requirements.

1.5 References denoting the masculine (including “his” and “he”) shall be construed as the feminine if the ForexClear DMG Member is female.

1.6 All other terms have the meaning ascribed to them in the Default Rules (including the ForexClear DMP Annex).

General Obligations of the FXCCM

The obligations of an FXCCM set forth in this Schedule shall only apply in the event such FXCCM does not have an affiliated FXCCM that has agreed to participate in the ForexClear DMP on behalf of such FXCCM.

Confidentiality and non-disclosure: general obligations of the FXCCM

2. Confidentiality

2.1 The FXCCM agrees that, in consideration of being given Confidential Material, it will keep all such Confidential Material in the strictest confidence, adhere to the provisions of this Agreement in respect thereof and, subject to paragraph 2.3, will not disclose it to any person without the prior written permission of the Managing Director, Risk of the Clearing House or a Director of Risk Management of the Clearing House, providing always that the FXCCM shall be relieved of such an obligation of confidentiality in respect of any Confidential Material if:

(a) it comes into the public domain other than through a breach by the FXCCM of this Agreement; or

(b) the FXCCM is expressly obliged to do so by order of a court of competent jurisdiction upon the application of a third party, or as a result of any request to disclose such part or parts of the Confidential Material in connection with any inquiry or other request by a regulatory authority or self-regulatory authority asserting jurisdiction over the FXCCM.

2.2 The FXCCM further agrees that it will not use any Confidential Material for any purpose other than the Permitted Purpose. In this regard the FXCCM expressly acknowledges and agrees that the Confidential Material may contain commercially sensitive information which if used inappropriately or otherwise than in accordance with this ~~Schedule 2.2D~~ Schedule 2.2D might result in the gaining of an unfair commercial advantage by the FXCCM over other members of the Clearing House ForexClear Service.

2.3 Subject to paragraph 2.5, the FXCCM may disclose any Confidential Material to any of its employees, representatives, associated companies and advisers on a “strictly need to know” basis, in the event that any such person needs that Confidential Material for the Permitted Purpose (and to that extent only).

2.4 The FXCCM agrees to establish and adhere to adequate procedures (including, without limitation, the establishment of appropriate ~~Chinese walls~~ information barriers) to ensure that any employee or representative to whom any Confidential Material is disclosed shall not use any part or all of that Confidential Material for any proprietary purpose outside the scope of the Permitted Purpose.

2.5 This paragraph and the duties hereunder shall survive the termination of this ~~Schedule 2.2D~~ Schedule 2.2D and, in relation to any Confidential Material, shall expire on the second anniversary of the date the Confidential Material was first provided to the FXCCM.

3. Secrecy

3.1 Except in accordance with the terms of this ~~Schedule 2.2D~~ Schedule 2.2D, the FXCCM agrees that it shall treat as strictly confidential and shall not disclose or allow to be divulged to any person:

(a) Confidential Material;

(b) the fact that it has received any Confidential Material;