

Via CFTC Portal

16 March 2019

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

LCH Limited Self-Certification: Rule changes concerning the termination of Clearing Member Status in the context of Polish Law

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 concerning the termination of Clearing Member Status in the context of Polish Law.

Part I: Explanation and Analysis

LCH proposes to amend its provisions on the termination of Clearing Member Status in the Procedures Section 1 (“Clearing Member, non-Member Market Participant and Dealer Status”) in the context of the applicable Polish Law for the purpose of settlement finality.

The proposed rule changes clarify LCH’s rights in the event a bankruptcy petition or order under the Polish Bankruptcy Law or a restructuring petition or order under the Polish Restructuring Law are served to LCH. In such cases (together “a petition or order served under Polish Law”), LCH has the right to terminate the Clearing Membership Agreement, as well as any other relevant agreement, with the Clearing Member subject to the aforementioned petition or order.

The changes will go live on, or after, 1 April 2019.

Part II: Description of Rule Changes

The Procedures Section 1 include two new paragraphs under section 1.6 (“Termination of Clearing Member Status”), paragraphs 1.6.3 and 1.6.4. Respectively, the paragraphs note that in the event a petition or order is served under Polish Law:

- LCH, in its absolute discretion, may terminate the Clearing Membership Agreement by giving notice to the relevant Clearing Member and the termination shall take effect on the expiry of the given notice period. Ahead of the termination date, LCH may take certain steps in accordance with its Default Rules (e.g. to discharge the Clearing Member’s rights and liabilities under its Contracts with LCH) and, upon the termination date, LCH shall close out all remaining open Contracts associated with the Clearing Member.

- The Clearing Membership Agreement, and any other agreement related to LCH's provisions of clearing services to the relevant Clearing Member, shall together constitute a master agreement in the meaning of the Polish Law. The proposed rules further clarify that if that master agreement is terminated by the Clearing Member or by the given bankruptcy or restructuring representative, and such termination is enforceable under relevant laws, LCH's rights under its Default Rules will prevail over such laws.

Part III: Core Principle Compliance

LCH has reviewed the changes against the requirements of the Core Principles, in particular Core Principle E, and finds that they 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

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 regarding this submission, please contact me at julian.oliver@lch.com.

Yours sincerely,



Julian Oliver

Chief Compliance Officer

LCH Limited

Appendix I
Procedures Section 1
("Clearing Member, non-Member Market Participant and Dealer Status")



LCH LIMITED

PROCEDURES SECTION 1

**CLEARING MEMBER, NON-MEMBER MARKET
PARTICIPANT AND DEALER STATUS**

1. CLEARING MEMBER, NON-MEMBER MARKET PARTICIPANT AND DEALER STATUS

1.1 Application Procedure – Clearing Member, Special Clearing Member and Dealer Status

An application for Clearing Member status of the Clearing House, or for dealer status (whether as a ForexClear Dealer, RepoClear Dealer or SwapClear Dealer, each a "**Dealer**") must be made on the appropriate form which can be obtained from the Clearing House's Membership team. Additional information (including legal documents) must be supplied where necessary and submitted to the Clearing House with the completed form.

An application for the status of special Clearing Member ("**Special Clearing Member**") must be initiated by a written request to the Clearing House. The nature of the application procedure and the documents and information required from the applicant will be determined by the Clearing House by reference to the nature of the application and will be notified by the Clearing House to the applicant upon receipt of such written request.

Applicants approved by the Clearing House for Clearing Member or Dealer status, ("**Approved Applicants**") must, within six months of notification of their approval, fulfil all conditions attached to their approval. If an Approved Applicant does not fulfil all such conditions within these six months, the Clearing House may, at its sole discretion, consider the grant of approval to have lapsed and may notify the prospective Clearing Member or Dealer accordingly that they will be required to provide further information, following which the application will be submitted for re-approval.

Clearing Members have the right to apply for approval to clear one or more of the markets cleared by the Clearing House, subject to meeting the requirements of the Clearing House in respect of each such market. Please note that Clearing Member status does not provide membership of the company LCH.Clearnet Limited or any right to a shareholding therein, nor does it provide the right to any shareholding in LCH.Clearnet Group Limited or any entitlement or right to participate in any way in LCH.Clearnet SA or the clearing services it offers. LCH.Clearnet SA has its own arrangements and admission criteria for Clearing Member status – see the LCH.Clearnet SA Sections of the LCH.Clearnet website for further details.

Applicants approved as Dealers for ForexClear, RepoClear and/or SwapClear will be admitted to the Register of ForexClear Dealers, Register of RepoClear Dealers, and/or the Register of SwapClear Dealers ("**the OTC Registers**"), as appropriate. Successful admission to one OTC Register does not confer automatic admission to any other OTC Register.

1.1.1 *Clearing Member Status*

The terms and conditions binding on each Clearing Member are set out in the Clearing Membership Agreement as amended. Two copies of this document will be provided to the applicant who must sign both (but not date them) and

risks. In particular, the Clearing House will need to be satisfied (in its sole discretion and based, where appropriate, on external legal advice) that the Clearing House's arrangements for (i) the segregation of positions entered into by the Clearing Member on behalf of its Clearing Clients and of the Collateral held by the Clearing House in respect of such positions; and (ii) the porting of such positions and Collateral, would be effective under the laws (including, in particular, the insolvency laws) applicable to the relevant Clearing Member.

Clearing Members should contact the Clearing House's Membership team for further details of the arrangements for client clearing in place within the Clearing House.

1.5.4 *Special Clearing Members*

A Special Clearing Member is only approved to clear the types of contract on the Clearing House service(s) and/or on the market(s) stipulated in its Clearing Membership Agreement, subject to the terms of that Agreement.

1.6 **Termination Of Clearing Member Status**

1.6.1 In the event that a Clearing Member wishes to retire from Clearing Member status, it may do so by giving written notice to the Clearing House not less than three months ahead of the proposed termination date. By the close of business on the proposed termination date, the Retiring Member shall ensure that all Contracts registered in the Retiring Member's name have been closed-out or transferred so as to ensure that there are no open Contracts to which the Retiring Member is a party at the proposed termination date. Once all such Contracts have been closed-out or transferred, such Retiring Member shall be entitled to request that the Clearing House releases and returns to it any Collateral held by the Clearing House for such Retiring Member. Retiring Members will need to give the Clearing House notice of termination in respect of all such Dealer agreements in accordance with the terms of those agreements and the relevant Section of the Rulebook. For further information on the retirement process, Clearing Members should contact the Clearing House's Membership team.

1.6.2 If a Clearing Member has not been active on any exchange or market for a continuous period of three months, they will be asked to confirm that they intend to utilise their Clearing Member status and failing a satisfactory response, they will be asked to retire from Clearing Member status.

1.6.3 In the event that a bankruptcy petition under the Polish Bankruptcy Law (ustawa z dnia 28 lutego 2003 roku Prawo upadłościowe) or a restructuring petition under the Polish Restructuring Law (ustawa z dnia 15 maja 2015 r. Prawo restrukturyzacyjne) is presented or a bankruptcy order under the Polish Bankruptcy Law or a restructuring order under the Polish Restructuring Law is made, the Clearing House may in its absolute discretion terminate with respect to the affected Polish Clearing Member the Clearing Membership Agreement by notice. Any such termination by notice will take effect on the expiry of the period specified in the notice. During the termination period specified in the notice, the Clearing House may take the steps listed in Rules 6 of the Default

Rules, it deems appropriate in the circumstances: (a) to discharge all the Polish Clearing Member's rights and liabilities under or in respect of all Contracts to which it is party or upon which it is or may be liable; and (b) to complete the process set out in Rule 8. Any Contracts of the Defaulter which have not been closed out or transferred by the termination date set in the notice shall be closed-out on the close of business on the termination date. Termination of the Clearing Membership Agreement will result in termination of the terms of any other agreement to which the Clearing House and the Polish Clearing Member are party which relates to the provision of central counterparty and other services by the Clearing House, the terms of, and applicable to, each and every registered Contract, the Rulebook and all amendments to any of the foregoing.

1.6.4 The Clearing Membership Agreement, the terms of any other agreement to which the Clearing House and the Polish Clearing Member are party which relates to the provision of central counterparty and other services by the Clearing House, the terms of, and applicable to, each and every registered Contract, the Rulebook and all amendments to any of the foregoing shall together constitute a master agreement (*umowa ramowa*) in the meaning of the Polish Bankruptcy Law (*ustawa z dnia 28 lutego 2003 roku Prawo upadłościowe*) and Polish Restructuring Law (*ustawa z dnia 15 maja 2015 r. Prawo restrukturyzacyjne*) between the Clearing House and the Polish Clearing Member and both parties acknowledge that all registered Contracts are entered into in performance of that master agreement. If that master agreement is terminated by the Polish Clearing Member or by the relevant bankruptcy or restructuring representative and such termination is enforceable under the relevant laws, this does not prejudice the Clearing House's rights under Rule 3 of the Default Rules.

1.7 Net Capital Requirements

1.7.1 Categories of Clearing Member Status

There are ten categories of Clearing Member status currently in use. These are as follows:

Category B

Turquoise Derivatives	-	Individual Clearing Member (clearing own business)
LCH EnClear Services	-	LCH EnClear Clearing Member being a Participant for Services: OTC Emissions and/or Freight divisions (see Section 2E) (clearing own business)
NODAL Exchange	-	Individual Clearing Member (clearing own business)
Rates Exchange	-	Clearing Member (clearing own business)