



LCH.CLEARNET LIMITED
PROCEDURES SECTION 5
DISCIPLINARY PROCEEDINGS

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1. DISCIPLINARY PROCEEDINGS

1.1 Scope of this Procedure

All Clearing Members are subject to Disciplinary Proceedings pursuant to Section 5 of these Procedures (the "**Disciplinary Proceedings**").

Any alleged breach by a Clearing Member of an obligation set out in the Rulebook (the "**Alleged Breach**") may be dealt with in accordance with the provisions of this Section 5.

The disciplinary procedures contained in this Section 5 are without prejudice to:

- (a) any action and/or measures that may be taken by the Clearing House based on any other procedure set out in the Rulebook including, without limitation, the right of the Clearing House to issue a Default Notice under the Default Rules;
- (b) the Clearing House's right to take no action where it considers that taking action would be disproportionate, or otherwise, in its discretion; and
- (c) any provision of Applicable Law concerning enforcement by a Regulatory Body.

1.2 Investigation Procedure

Subject to the provisions of Section 1.3 (*Immediate Measure*), the investigation of an Alleged Breach pursuant to these Disciplinary Proceedings shall be handled in accordance with this Section 1.2.

- (a) *Opening of the Investigation Procedure:* When the Clearing House commences proceedings to investigate an Alleged Breach:
 - (i) the Clearing House shall send a written notice to the Clearing Member, setting out the details of the Alleged Breach, including a summary of the facts relied on in sufficient detail for a reasonable person in the Clearing Member's position to be able to properly understand and to respond to the allegations made against it;
 - (ii) the Clearing House shall identify a suitably senior representative of any entity of the LCH.Clearnet Group that shall lead the investigation procedure on behalf of the Clearing House and shall inform the Clearing Member as to who this representative will be in the written notice which is sent in accordance with sub-paragraph (i) above;
 - (iii) Following receipt of the written notice sent in accordance with sub-paragraph (i) above, the Clearing Member shall be permitted to (x) raise objections in writing to the Alleged Breach of which it has been notified and/or (y) raise objections to the identity of the representative that is to lead the investigation procedure, on grounds of conflicts of interest, within 48 hours. Where an objection is raised, either the Chief Executive Officer of the Clearing House or the Chief Compliance

Officer of the Clearing House shall discuss the perceived conflict of interest with the Clearing Member within 24 hours and shall make a decision on whether an alternative representative needs to be identified for the purposes of sub-paragraph (ii) above;

- (iv) the Clearing Member shall be required to provide any information, copies or records and documents that may be reasonably requested, in connection with the examination of the Alleged Breach, to the Clearing House, save that the Clearing Member shall not be compelled to disclose any information which it is prohibited from disclosing by virtue of Applicable Law or regulation, as a result of agreements signed with third parties or as a result of legal professional privilege (in which case the Clearing Member shall provide the Clearing House with proof of such prohibition). The Clearing Member is permitted to request that the Clearing House provides to it copies of the documentation it relies on during the investigation, provided that the Clearing House shall not be required to reveal any information which it deems to be confidential;
 - (v) the Clearing House may send a representative (being either the representative identified as leading the investigation procedure on behalf of the Clearing House or another representative) to the Clearing Member's offices at any time during normal business hours, having provided reasonable notice (proportionate to the seriousness of the Alleged Breach) to the Clearing Member as part of the investigation procedure. The Clearing Member shall only be entitled to refuse access to such representative in the event of a substantiated conflict of interest. The Clearing Member shall make available all information, records and documents kept by the Clearing Member that may be reasonably required for the examination of the Alleged Breach, to the Clearing House's representative; and
 - (vi) the Clearing Member shall exercise best endeavours to procure the attendance of any of its directors, officers, employees, agents and representatives, as may be reasonably requested, at a specified time on reasonable notice (at either the offices of the Clearing House or at those of the Clearing Member) in order to answer questions or to provide explanations that may be relevant for the examination of the Alleged Breach.
- (b) *Report*: Following the conclusion of the investigation procedure, the Clearing House shall notify the Clearing Member and produce a written report (the "**Report**") in relation to the Alleged Breach and provide it to the Clearing Member, within no more than 14 days from the notification by the Clearing House of the conclusion of the investigation procedure.

The Report shall contain the findings of the investigation, reference the provision of the Rulebook allegedly breached by the relevant Clearing Member and indicate the Clearing House's intended course of action in relation to the Alleged Breach, being either:

- (i) to proceed with Disciplinary Proceedings, in accordance with this Section 5, if the Clearing House believes that there is prima facie evidence of the Alleged Breach having been committed;
 - (ii) to discontinue these Disciplinary Proceedings and refer the matter to the Chief Executive Officer of the Clearing House to take action in accordance with the provisions of the Rulebook if the Clearing House believes that there is prima facie evidence of the Alleged Breach having been committed but the sanctions set out in Section 1.4 (*Sanctions*) of this Section 5 are, in the Clearing House's reasonable opinion, inadequate; or
 - (iii) to take no further action.
- (c) *Disciplinary Committee Formation:* Where the Clearing House determines that it wishes to proceed with Disciplinary Proceedings in accordance with paragraph (b)(i) of Section 1.2 (*Investigation Procedure*) above, it will convene a "**Disciplinary Committee**" consisting of:
- (i) The Chairman of the Risk Committee of the Clearing House, or his representative;
 - (ii) The Chief Compliance Officer of the Clearing House, or his representative;
 - (iii) The Chief Risk Officer of the Clearing House, or his representative, and
 - (iv) Two members of the Executive Committee of LCH.Clearnet Group.

Details of the precise composition of the Disciplinary Committee shall be provided to the Clearing Member as part of the Report, as appropriate.

- (d) *Clearing Member Response:* The Clearing Member shall respond to the Disciplinary Committee, within 14 days of receiving a Report which indicates that the Clearing House intends to proceed with Disciplinary Proceedings, providing a statement of defence responding to the allegations.

If no response has been received by the Disciplinary Committee within 14 days or such extended period as has been agreed between the Clearing Member and the Disciplinary Committee, the Clearing House shall be relieved of its obligations to follow the remaining steps of the investigation procedure (as set out in paragraph (e) below of this Section 1.2) and the Disciplinary Committee may instead make a determination in respect of the Alleged Breach and issue its Recommendation to the Clearing House as provided for in paragraphs (g) and (h) of this Section 1.2 below.

- (e) *Exploratory Meetings:* Once the Clearing Member has responded to the Report, either the Clearing Member or the Disciplinary Committee can, within 7 days, request a meeting with the other party to ask further questions and discuss the Alleged Breach (the "**Meeting**").

Unless otherwise agreed between the Clearing Member and the Disciplinary Committee, the Meeting will be held at the Clearing House's offices in London, provided that, if appropriate, the Meeting may take place at the Clearing House's offices in New York, within 14 days from the request for a Meeting.

The Disciplinary Committee and the relevant Clearing Member are each entitled to bring to the Meeting any person relevant to the Disciplinary Proceedings which includes but is not limited to the following:

- (i) relevant experts;
- (ii) legal advisors; and
- (iii) accounting advisors.

The Clearing House and/or the Clearing Member shall only be entitled to object to the attendance by any of the above if there is a substantiated conflict of interest.

The Disciplinary Committee shall, in addition, invite the Clearing House representative that led the investigation procedure to attend the Meeting.

The Disciplinary Committee shall, subject to the provisions of these Disciplinary Proceedings, decide upon its own procedure for conducting the Meeting and considering and determining the matters to be discussed in the course of the Meeting, on the basis of the Report, the Clearing Member's response to the Report, and such other information and documentation as the Disciplinary Committee considers appropriate. A secretary will be appointed to keep minutes of the Meeting.

The Disciplinary Committee may reasonably request further or other documentation and information from the Clearing Member, save that the Clearing Member shall not be compelled to disclose any information which it is prohibited from disclosing by virtue of Applicable Law, as a result of agreements signed with third parties or as a result of legal professional privilege (in which case the Clearing Member shall provide the Clearing House with proof of such prohibition).

The matters discussed at the Meeting are confidential. The Disciplinary Committee and the Clearing Member must ensure that any persons attending the Meeting are subject to a confidentiality agreement.

To ensure the efficiency of the Meeting, neither the Disciplinary Committee nor the Clearing Member shall bring more than six representatives, unless otherwise agreed.

- (f) *Determination:* Having considered the Report, the Clearing Member's response to the Report, any other information and documentation provided to the Disciplinary Committee in accordance with paragraph (e) above of this Section 1.2 and having conducted the Meeting, the Disciplinary Committee must determine whether, in its view, the Alleged Breach has been committed.

The Disciplinary Committee shall make its determination, in accordance with this paragraph (f), by a majority of the attendees, provided that no determination shall be made without a quorum of three (3) Disciplinary Committee members being in attendance.

In the event of a tie, the Chairman shall have a casting vote.

For the avoidance of doubt, the Disciplinary Committee shall not be bound to comply with any rule of Applicable Law or court procedure in respect of the admissibility of evidence and may, in its discretion, accept, any finding of fact by:

- (i) a relevant Regulatory Body;
 - (ii) a Governmental Authority; or
 - (iii) the courts of England and Wales in connection with a dispute.
- (g) *Recommendation*: Within 7 days of the later of:
- (i) the Clearing Member's response to the Report; and
 - (ii) the date of the Meeting, if applicable,

the Disciplinary Committee shall communicate its determination, made in accordance with paragraph (f) above of this Section 1.2, to the Clearing House (the "**Recommendation**").

The Disciplinary Committee shall set out in its Recommendation the grounds on which the Disciplinary Committee has determined that the Alleged Breach has or has not been committed and its proposal as to the sanctions, if any, that should be imposed by the Clearing House upon the Clearing Member pursuant to Section 1.4 (*Sanctions*) of this Section 5.

This paragraph (g) is without prejudice to the rights of the Disciplinary Committee to recommend that these Disciplinary Proceedings be discontinued and refer the matter to the Chief Executive Officer of the Clearing House to take action in accordance with the provisions of the Rulebook if the Disciplinary Committee has determined that the Alleged Breach has been committed but the sanctions set out in Section 1.4 (*Sanctions*) of this Section 5 are, in the Disciplinary Committee's reasonable opinion, inadequate.

- (h) *Decision Notice*: Following receipt of a Recommendation, pursuant to paragraph (g) above of this Section 1.2, the Clearing House must decide whether or not to sanction the Clearing Member in accordance with Section 1.4 (*Sanctions*) below of this Section 5 or otherwise in accordance with the provisions of the Rulebook.

For the avoidance of doubt, the Clearing House shall not be bound by the terms of the Recommendation of the Disciplinary Committee.

A decision by the Clearing House in accordance with this paragraph (h) will be made by the Chief Executive Officer of the Clearing House or another suitably senior executive of the Clearing House.

Within 14 days of receiving a Recommendation, the Clearing House must notify the Clearing Member of its decision by registered mail to the address notified to the Clearing House in its admission application (the "**Decision Notice**").

A Decision Notice shall include details of the grounds on which the Clearing House has come to its decision and the sanction(s), if any, to be imposed against the Clearing Member by the Clearing House pursuant to Section 1.4 (*Sanctions*) below or otherwise in accordance with the provisions of the Rulebook.

- (i) *Action*: Notwithstanding any decision by the Clearing House to convene a Disciplinary Committee and to proceed with Disciplinary Proceedings in accordance with paragraphs (c) to (i) of this Section 1.2 above, the Clearing House may at any time choose to:
 - (i) discontinue the Disciplinary Proceedings;
 - (ii) determine that, in light of the relevant facts and circumstances, no sanction should be imposed upon the relevant Clearing Member pursuant to Section 1.4 (*Sanctions*) below or otherwise in accordance with the provisions of the Rulebook;
 - (iii) take alternative action in accordance with the provisions of the Rulebook (including, without limitation, suspension or termination of the Clearing Member's membership of the Clearing House pursuant to the Rulebook and/or the issuance of a Default Notice in respect of such Clearing Member in respect of the Clearing Member pursuant to the Default Rules), in which case the Clearing House shall be deemed to have instituted Disciplinary Proceedings in respect of the Alleged Breach; or
 - (iv) amend the scope of matters being considered by the Disciplinary Committee by amending the Report to add, delete or alter any detail of the Alleged Breach or to add detail of an additional Alleged Breach. For the avoidance of doubt, where the Report is amended in this way, the provisions of this Section 1.2 will apply (and, unless otherwise agreed between the Clearing Member and the Disciplinary Committee, any timing specified in this Section 1.2 will restart) in respect of the amended Report.

1.3 **Immediate Measure**

Where the Alleged Breach comprises of a breach of:

- (a) any of a Clearing Member's obligations set out in the Rulebook when such breach constitutes a threat to the integrity or safety of the Clearing House or increases the risk exposure of the Clearing House or other Clearing Members;
- (b) a Clearing Member's obligation to satisfy the relevant membership criteria pursuant to Section 1 (*Clearing Member and Dealer Status*) of the Procedures;
- (c) a Clearing Member's obligation to provide information and reporting to the Clearing House pursuant to Section 1 (*Clearing Member and Dealer Status*) of the Procedures;
- (d) a Clearing Member's obligations to submit its clearing activity to audits and inspections pursuant to Section 1 (*Clearing Member and Dealer Status*) of the Procedures;
- (e) a Clearing Member's obligations to satisfy its record keeping requirements pursuant to Section 1 (*Clearing Member and Dealer Status*) of the Procedures;
- (f) a Clearing Member's obligation to transfer Collateral to the Clearing House by the required time in accordance with Regulation 20 (*Margin and Collateral*) of the Rulebook and Section 3 (*Financial Transactions*) of the Procedures,

the Chief Executive Officer of the Clearing House or the Chief Compliance Officer of the Clearing House shall be entitled at their sole discretion to (a) issue a letter to the relevant Clearing Member, reminding such Member of their obligations under the Rulebook or (b) impose a fine on the Clearing Member in accordance with Section 1.4 (*Sanctions*), without being required to follow the procedure set out in Section 1.2 (*Investigation Procedure*) above. In such circumstances the Clearing House must notify the Clearing Member of its decision and the sanction that is to be imposed by way of a Decision Notice.

1.4 **Sanctions**

The Clearing House shall be entitled, in its absolute discretion, to impose the following sanctions against a Clearing Member, pursuant to this Section 5, provided that any such sanction is proportionate and commensurate with the seriousness of the Alleged Breach:

- (a) to impose a fine or require the Clearing Member to make any other form of payment in an amount which it considers appropriate;
- (b) public censure, by way of publishing all or part of the decision taken by the Clearing House pursuant to Disciplinary Proceedings on the website of the Clearing House;
- (c) suspension for a fixed period, as determined by the Clearing House in its sole discretion of one or all of the clearing services offered by the Clearing House;
- (d) issuance of a private warning or reprimand;
- (e) termination of the Clearing Membership Agreement; and/or

- (f) any combination of the above.

1.5 **Disputing a decision**

Where a Clearing Member wishes to dispute the Clearing House's decision to impose sanctions listed in Section 1.3 (*Immediate Measure*) or 1.4 (*Sanctions*), a Clearing Member may, within 28 days (or such longer period as the Chief Executive Officer of the Clearing House or the Chief Compliance Officer of the Clearing House may, at their discretion, direct) of receiving the Decision Notice in accordance with paragraph 1.2(h) of Section 1.2 (*Investigation Procedure*) or 1.3 (*Immediate Measure*), file an Appeal in accordance with Section 7 of the Procedures. In the event that the Clearing Member does not lodge an appeal within the relevant timeframe, the decision rendered by the Clearing House in connection with the Alleged Breach shall be final and binding. In the event that the Clearing Member does lodge an appeal, the results of the appeal process shall be final and binding.

1.6 **Reporting and publication**

The Clearing House shall:

- (a) report on its monitoring procedures in respect of the Rulebook compliance and breaches of the Rulebook to its Regulatory Body pursuant to Applicable Law and/or on the basis of any arrangements between the Clearing House and any Regulatory Body;
- (b) immediately notify the Regulatory Body of a decision to suspend or terminate a Clearing Member's membership rights or to issue a Default Notice in respect of a Clearing Member (in each case in accordance with the Rulebook);
- (c) prepare and publish a general report on the application of these Disciplinary Proceedings, from time to time but at least once a year, provided however that only the details of those Clearing Members who have defaulted or whose membership rights have been suspended or terminated by the Clearing House shall be disclosed; and
- (d) be entitled to publish (i) breaches by its Clearing Members of the criteria for Clearing Member status pursuant to the Clearing Membership Agreement, as prescribed for in the Rulebook; and (ii) breaches by its Clearing Members for not disclosing the prices and fees of each of the Services separately (including any applicable discounts and rebates and the conditions to benefit from them).

1.7 **Infringement of Applicable Law**

If the Clearing House finds, in the course of the investigation procedure, or otherwise, serious indications of a possible infringement of Applicable Law, it shall report the matter to the relevant Regulatory Body as soon as possible.