

# SUBMISSION COVER SHEET

Registered Entity Identifier Code (optional) LCHLTD Date: October 18, 2012

**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

Amended Default Rules: Definitions, 2.d, 8.d, 8.e, 9, 9A.a, 9.A.b, 9.c.i, 9.c.ii, 9.d, 10.a.i, 10.b, 10.c.iii.  
FCM Regulations: Definitions, 4.d, 4.e, 4.f, 4.g, 4.h, 4.i, 4.j, 5.o, 6.c, 9.b, 9.c, 9.i, 10.h, 10.j, 10.n, 10.o, 10.p, 16, 29.  
FCM Procedures: 2.15.4, 4.10.

## DESCRIPTION

Amendments to LCH.Clearnet Limited’s Rules and Regulations concerning the introduction of Legally Segregated, Operationally Commingled (“LSOC”) Accounts, and concerning Bunch Trade Registration for post registration allocation.

**Via Electronic mail**

Ms Sauntia Warfield  
Office of the Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**RE: Amendments to LCH.Clearnet Limited's Rules and Regulations in relation to the introduction of Legally Segregated, Operationally Commingled ("LSOC") Accounts, and with regards to Bunched Trade Registration for post registration allocation.**

Dear Ms Warfield

LCH.Clearnet Limited ("LCH.Clearnet"), a derivatives clearing organization registered with the Commodity Futures Trading Commission (the "CFTC"), is submitting for self-certification, pursuant to CFTC Regulation §40.6, amendments to LCH.Clearnet's Rules and Regulations to reflect changes to the LCH.Clearnet SwapClear service. This submission is made in order to comply with Part 22 of the CFTC Rule<sup>1</sup>, as well as to address CFTC Rule 1.35 regarding the allocation of bunched orders post registration.

**Part I: Explanation and Analysis**

The following changes to the SwapClear service are planned to take effect from November 5, 2012:

Introduction of Legally Segregated, Operationally Commingled ("LSOC") Accounts: In order to comply with CFTC Part 22 - Protection of Cleared Swaps Customer Contracts and Collateral - ("LSOC" rules), LCH.Clearnet will be introducing certain changes to its SwapClear service, and the associated account class offerings. LCH.Clearnet plans to release the LSOC model with effect from November 5, 2012<sup>2</sup>. LCH.Clearnet notes that its rules as submitted are intended to comply with Part 22 as currently constituted, and may require subsequent revision following expected guidance from the Commission relating to the manner in which FCM buffer may be held in a client account.

Bunched Order Trade Registration: In order to comply with CFTC Rule 1.35 regarding the execution of bunched orders by a fund manager for post registration allocation, LCH.Clearnet plans to implement changes with effect from November 5, 2012. (CFTC Rule

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<sup>1</sup> Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 FR 6336 (Feb. 7, 2012)

<sup>2</sup> Subject to the regulatory approval by the UK Financial Services Authority ("FSA")

1.35 became effective on 1 October 2012, an extension of time for compliance to market participants was granted by the CFTC until June 1, 2013).

## **Rationale for the Rule Amendments**

### **1. “Legally Segregated, Operationally Commingled” (“LSOC”)**

#### **1.1. Introduction**

Part 22 describes the manner in which cleared swaps collateral must be treated prior to and after bankruptcy by both FCMs and DCOs. The model introduced by CFTC Regulation Part 22 permits client collateral of cleared swaps customers to be kept, pre-default, in one account at both the FCM and DCO level. However, in the event of an FCM default, a DCO will not have recourse to the collateral posted by one customer to cover losses suffered by another customer.

#### **1.2 General LSOC Principles**

##### **1.2.1 The LSOC Segregation Calculation**

CFTC Regulation 22.2(d), Limitations of Use, states that:

“No futures commission merchant shall use, or permit the use of, the Cleared Swaps Customer Collateral of one Cleared Swaps Customer to purchase, margin, or settle the Cleared Swaps...of, any person other than such Cleared Swaps Customer. “

As the rule does not allow for any period of time when individual treatment is not applied, it is the responsibility of the FCM to ensure that the information the DCO is relying upon is accurate. In order to comply, to the extent that the collateral a customer has provided to the FCM is less than the initial margin requirement of the DCO, an FCM will fund the remaining required margin from its own capital and not the excess collateral of any other customer.

In order to ensure customers are receiving the protections required by LSOC, an FCM must always ensure that the DCO has an accurate depiction of the disposition of customer funds in its possession to enable the DCO to segregate any customer collateral it holds and to enable it to ensure that the FCM is compliant with its obligation not “to permit” the collateral of one customer to margin another customer in accordance with CFTC Regulation 22.2.

##### **1.2.2 Unallocated Excess**

“Unallocated Excess” funds are those held by a DCO attributed to each FCM but not allocated to individual clients. In the event that a default occurs while the DCO is holding Unallocated Excess, the DCO may not use these funds to meet any losses, and will instead return them to the Bankruptcy Trustee of the defaulted FCM. A DCO may not rely on this value in a default. However, Unallocated Excess may belong to a customer with an increased requirement and a DCO may utilise Unallocated Excess as long as the FCM provides a certification that all or part of the Unallocated Excess may be used. However, LCH.Clearnet does not currently intend to support this functionality, as reflected in the rules attached hereto.

### **1.2.3 Variation Margin Is Not Required to Be Segregated**

The protection against fellow customer risk granted by LSOC only applies to Cleared Swap Customer Collateral, and CFTC staff has informed LCH.Clearnet, along with other market participants, that it does not apply to unsettled Variation Margin. Cleared Swap Customer Collateral includes any property in the individual customer account belonging to that customer. Therefore, once Variation Margin is paid to an FCM's Cleared Swaps Customer Account, it receives the protections granted pursuant to Part 22. As a DCO, LCH.Clearnet will continue to settle the variation margin gains and losses of an FCM's underlying customers on a net basis, before and after a default.

### **1.2.4. LSOC Protection is based on Post Haircut Value**

The protection that Part 22 provides is based on the "value" of the initial margin requirement associated with the customer's portfolio of rights and obligations, as calculated by the DCO, and is segregated on this basis. All collateral delivered to the DCO is valued on a post haircut basis, regardless of whether it is required or excess collateral.

### **1.2.5. The FCMs Buffer May Be Commingled With Customer Funds**

Part 22 provides that "any collateral deposited by a Futures Commission Merchant which is identified as such futures commission merchants own property may be used by the derivatives clearing organization...to margin, guarantee, or secure the cleared swaps of any or all cleared swaps customers". Because it is the responsibility of the FCM to identify the value of collateral that is the FCM's own contribution to the customer pool at the DCO, it is also the responsibility of the FCM to ensure that amount the DCO is relying upon, as the FCMs own value, is always accurate in accordance with CFTC Regulation 22.2.

As stated in FCM Regulation 10(h)(iv), LCH.Clearnet, LCH.Clearnet will allow an FCM to deposit its own funds into the Cleared Swaps Customer account at the DCO, but these funds must be separately identified to the DCO in order for them to be treated as such.

### **1.2.6 LSOC Without Excess**

Part 22 requires that a DCO that intended to accept excess customer funds from an FCM, to require a report from the FCM at least daily reflecting the value of the collateral of the value belonging to each individual customer. The "value of collateral required" arising from a customer's "portfolio of rights and obligations", or swap portfolio, is a customer's Initial Margin Requirement.

LCH.Clearnet does not intend to offer a 'with excess' model on 5 November 2012.

### **1.2.7 Establishing a Customer's Legally Segregated Value ("LSV")**

Once an FCM meets its margin obligation at LCH.Clearnet, LCH.Clearnet will adjust the legally segregated values of each customer, thereby protecting a customer's collateral value at LCH.Clearnet from being used to meet the obligations of any other customer in the event of a default.

In accordance with Part 22, LCH.Clearnet will only use an individual customer's LSV to meet any loss arising from that customer's own swap portfolio. Once porting can be arranged, a customer may be transferred with its LSV.

#### **1.2.8 The Treatment of "Excess" in "LSOC Without Excess"**

As a result of the nature of clearing, funds may become excess without an explicit excess deposit. This will be evident in cases where a customer's margin requirement decreases or the value of the swaps customer collateral pool increases. In such cases, the DCO is limited in how it is able to treat this excess value. In a model where the DCO does not have collateral value reporting from the FCM, the DCO will be unaware of whether an FCM has met a margin call on behalf of a customer or if the customer has actually prefunded. As a result, when a customer's requirement decreases, creating excess, the DCO may not presume such excess to be FCM Buffer. The DCO can either call an FCM for the aggregate amount by which any customer's new Initial Margin requirement is greater than the customer's LSV and return all Unallocated Excess once the call is met or the DCO can allow the FCM to provide a certification that stipulates how much of the Unallocated Excess can be used to offset the call. In the second instance the DCO could either return any remaining Unallocated Excess or hold it to be used along with future certifications.

LCH.Clearnet will not support the FCM certification method with effect from 5 November.

#### **1.2.9 FCM Lodged Excess**

Under Part 22, In LSOC Without Excess, an FCM is permitted to deposit excess funds with the DCO for the purposes of meeting any customer requirement in the future, so long as the funds only consist of the FCM's "Buffer", and are characterized as "Unallocated Excess". Thus, these funds are required to be of no greater value than the FCM's capital contribution to its swaps customer segregation pool.

Unallocated Excess could only be used for the collateralisation of risk if the FCM provided a certification to the DCO that doing so would not create fellow customer risk. As reflected in the attached rules, LCH.Clearnet will allow FCMs to post FCM Buffer, but will not allow FCMs to post customer excess until the LSOC With Excess model is implemented.

#### **1.2.10 Margining**

Each time the DCO performs an Initial Margin Settlement with the FCM, or seeks to collateralize the increase in requirements of individual customers, the DCO will base its call on the aggregate amount by which a customer's requirements have gone up in aggregate. This amount may be reduced by the firm's buffer deposited at the DCO as well as Unallocated Excess accompanied by FCM certification.

The variation margin settlement each day will be handled separately from the initial margin Settlement described above. By separating the two, the DCO will ensure that it is not offsetting a decrease in customer IM requirements with a Net variation margin loss across all customers. LCH.Clearnet will separate initial margin and variation margin settlement in a model where it does not receive customer specific excess reporting from the FCM.

### **1.3 “Bunched Order” Trade Registration**

CFTC Rule 1.35 requires that bunched orders submitted by a fund manager or other relevant entity be allocated to the ultimate customer as soon as practicable after execution and sufficiently before the end of the day on which the swap is executed to ensure that clearing records can identify the ultimate customer for each trade. LCH.Clearnet will initially register bunched orders as one trade for clearing as a single bunched order, and will then allocate the transaction among participating customer accounts for clearing purposes post acceptance/registration. Until allocation, the registered bunched orders will sit in a suspense sub-account at the clearinghouse within the account of the applicable FCM at the DCO. FCM Regulation 5(o) has been introduced in LCH Clearnet’s Rulebook to make provision for this bunched order allocation process.

LCH.Clearnet has developed the following process to address bunched orders, as reflected in the attached Rulebook provisions:

- The bunched order is sent for clearing by the account manager and executing broker.
- FCM agrees to clear the account manager’s side of the trade on behalf of that account manager.
- Once accepted by the FCM, the standard trade registration process will run over the bunched order(s), and it/they will be cleared once all liabilities are covered.
- Each cleared bunched order will be booked into a ‘suspense’ account. The account manager then executes a further transaction with the client to which it wishes to allocate part of the bunched order.
- An offsetting trade between the account manager and the client reduces the notional value of the bunched order and results in an allocation to the relevant client.

## **Part II: Amendments to the Rules & Regulations of LCH.Clearnet**

### **1. Amendments to FCM Regulations (at Exhibit A1)**

Certain changes have been made to LCH.Clearnet’s FCM regulations in order to incorporate the requirements of Part 22 and CFTC Rule 1.35 including:

The Definitions will be amended to include a description of

- Account Manager,
- Executing Party,
- Allocating Transaction,
- Applied FCM Buffer,
- Cleared Swap,
- Cleared Swaps
- Account Class,
- FCM Buffer,
- FCM Client Sub-Account Balance,
- FCM OTC Client Segregated Sub-Account,
- Permitted Depository,

- Unallocated FCM Collateral,
- Unallocated FCM SwapClear Transaction,
- Unallocated FCM SwapClear Contract,
- Unallocated Excess,
- FCM Client Sub-Account Balance, Permitted Depository ,
- Unallocated Excess Sub-Account.
- Excess Margin,
- FCM Approved Trade Source system,
- FCM Client, LCH Approved Outsourcing Party,
- LCH OTC Client Segregated Depository Account,
- Executing Party, FCM Client.

**Regulation 4** requires that each FCM Clearing Member keeps books and records identifying all information regarding its Affiliates, FCM Clients for which it provides SwapClear Clearing Services, and regarding trades made on its own behalf through its Proprietary Account.

**Regulation 4.d** will be amended to include the requirement that books and records must also include all FCM Contracts and Account Assets maintained in each FCM OTC Client Segregated Sub-Account for the Relevant Client.

This demand is mirrored on the side of LCH.Clearnet, by the addition of **Regulation 4.f** which requires LCH.Clearnet to establish and maintain on its books and records an FCM OTC Client Segregated Sub-Account and an FCM Buffer sub-account, in the name of each FCM Client of an FCM Clearing Member. The Client Sub-Account and FCM Buffer Sub-Account will be sub-accounts of the FCM Omnibus OTC Client Account maintained for the FCM Clearing Member. LCH.Clearnet will also be required to reflect on its books all FCM SwapClear Contracts and associated Account Assets held on behalf of FCM Clients. LCH.Clearnet however, will have no responsibility to ensure that the information provided by the FCM Clearing Member regarding FCM Contracts and Account Assets held by itself are correct.

Ancillary changes were made in **Regulations 4.e and 4.g** to accommodate for the introduction of Part 22 of the CFTC Regulations.

**Regulation 4.h** will be amended to contain the ‘waterfall’ for how initial margin increases are met across sub-accounts and the FCM Clearing Member’s Proprietary Account, as well as details in case LCH.Clearnet increases the Required Margin of FCM SwapClear contracts of an FCM Client and the order in which the margin increase shall be met.

FCM Clearing Members are required to inform the Clearing House of all FCM SwapClear Contracts and Account Assets held by such Clearing Member for each of its FCM Clients.

**Regulation 4.i** will be amended to include the duty of the FCM Clearing Member to instruct LCH.Clearnet as to the FCM SwapClear Contracts and Assets reflected in each corresponding FCM SwapClear OTC Client Segregated Sub-Account.

Under **Regulation 4.j** FCM Clearing Members will not be allowed to withdraw any amounts from their FCM Omnibus OTC Client Account or Proprietary Account, if this would cause the Margin Requirements not to be met. The regulation has been amended to include the prohibition of FCM Clearing Members to withdraw amounts from their Proprietary Accounts where there is insufficient margin in an FCM Client Sub-Account, and an insufficient amount of FCM Buffer available to offset such a deficiency in the Required Margin.

Ancillary changes were made to **Regulations 4.e and 4.g** to include provisions for the introduction of Part 22 of CFTC Rules regarding the holding of Collateral.

**Regulation 5.o** contains the new mechanism for the execution of a ‘bunched order’ by an Account Manager Executing Party and subsequent allocation of such bunched order through the registration of further transactions.

**Regulation 6.c** introduces rule changes to cater for the introduction of Part 22 of the CFTC Regulations and its effect on accounts (including the required level of segregation). In particular, the new regulation requires that LCH.Clearnet must treat the value of all Account Assets received on behalf of a Client as belonging to that Client, and therefore cannot be used to margin, guarantee or secure Contracts or Obligations of other Clients or of the Clearing Member. Furthermore, LCH.Clearnet will not be allowed to combine or consolidate the balances of several FCM Omnibus OTC Client Accounts belonging to the same FCM Clearing Member.

The rules regarding the provisions for the transfer of the portfolio of an FCM Client will be amended to cater for the introduction of FCM OTC Client Segregated Sub-Accounts. **Regulation 9.b, 9.c and 9.i** will be amended to cater for the introduction of sub-accounts.

**Regulation 10.h** addresses how LCH.Clearnet deals with excess attributable to an account (both proprietary accounts and client sub-accounts). It includes a restriction on FCM Clearing Members providing excess to LCH.Clearnet (in the LSOC without excess model). The provision also details how excess is swept to an Unallocated Excess Account at the end of each day.

**Regulations 10.j and 10.n** will be amended to include Client Segregated Sub-Accounts. Ancillary changes were made to **Regulations 10.o and 10.p**.

**Regulation 16** will be amended to include the right of LCH.Clearnet to convert monies standing to the debit or credit of an FCM Clearing Member’s accounts (including FCM OTC Client Segregated Depository Accounts and FCM Omnibus OTC Client Accounts) into any currency it thinks fit, at reasonable rates. **Regulation.29** will be amended and updated to provide for changes introduced by Part 22 of the CFTC Regulations.

## **2 Amendments to the FCM Procedures (at Exhibit A2)**

**Rule 2.15.4 of the Procedures** details how, in the event that LCH.Clearnet determines that an FCM Client will be liquidated, hedging and liquidation costs are allocated to such FCM Clients. It provides supplementary procedures (in addition to the Default Rules and other applicable provisions in the Rulebook) that will apply upon the default of an FCM Clearing Member.

**Rule 4.10 of the Procedures** will be amended to contain provisions detailing how, when Unallocated Excess has been created, it may be released to an FCM Clearing Member. The rule change will address how Unallocated Excess or FCM Clearing Buffer may be returned to the FCM Clearing Member.

### **3 Amendments to the Default Rules (at Exhibit A3)**

The Default Rules were amended in order to accommodate the introduction of LSOC accounts:

**Rule 8 (d)** has been amended to expand the provisions to cater for the fact that proprietary assets of a clearing member may be used to make good a shortfall across all sub-accounts, rather than across the general omnibus account.

**Rule 8.e.** has been amended to cater for the fact that there is a separate net sum for each sub-account rather than across the (former) omnibus client account as a whole.

**Rule 8 (penultimate paragraph):** Provisions have been included to explain that Unallocated Excess may not be used by LCH.Clearnet in making good any losses that it suffers. Unallocated Excess must be returned to the clearing member's bankruptcy official (use of such excess may mean a breach of Part 22)

**Rule 8 (final paragraph)** As part of the SwapClear Default Management Process, LCH.Clearnet hedges the contracts of clients that are not ported to an alternative clearing member. The reference in this paragraph cross refers to the new section in the FCM Procedures which sets out how hedging and liquidation costs are apportioned.

**Rule 9** will be amended to cater for corresponding changes for the introduction of multiple net sums for multiple sub-accounts.

**Rule 9.A.a** deals with the transfer of FCM Contracts between FCM Clearing Members in case of a default, and the credit of individual clients' variation margin credits post default to the transferee FCM Clearing Member.

**Rule 9.A.b** deals with the transfer of FCM Contracts between FCM Clearing Members in case of a default, and the credit of individual clients' variation margin payments post default directly to the client

**Rule 9.c.i** contains provisions to limit the return of post default variation margin credits where a sum is due to LCH.Clearnet with respect to the relevant client.

**Rule 9.c.ii** deals with rights of LCH.Clearnet to set off any payments or credits in regards to Variation Margin owed by LCH.Clearnet against excess liquidation costs applicable to the relevant client, where an FCM Client's FCM SwapClear Contracts are liquidated.

**Rule 9.d** Each FCM Client of a defaulter is made a third-party beneficiary of rule 9A. This clause is designed to ensure that individual clients' post default variation margin payments are enforceable.

Changes will be made in **Rules 10.a, 10.i, 10.b and 10.c** to cater for the introduction of multiple sub-accounts.

### **Part III: Compliance with CFTC Regulation 39.13(g)(8)(i)**

No Rule amendments will be made in relation to CFTC Regulation 39.13(g)(8)(i) for the SwapClear service. LCH.Clearnet's SwapClear service is already compliant with CFTC

Regulation 39.13(g)(8)(i) as SwapClear clients are margined on a gross basis which is reflected at Regulation 4 (h) of the FCM Regulations.

#### **Part IV: Certification by LCH.Clearnet**

LCH.Clearnet certifies to the CFTC, in accordance with CFTC Regulation §40.6, that the amended rules, comply with the Commodity Exchange Act and the CFTC Regulations promulgated thereunder. In addition, LCH.Clearnet certifies that 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)

A signed certification is attached to this submission as Exhibit B.

#### **Part V: Compliance with Core Principles**

LCH.Clearnet will continue to comply with all Core Principles following the introduction of these proposed amendments into the LCH.Clearnet Rulebook. LCH.Clearnet has concluded that its compliance with Core Principles would not be adversely affected by these changes. Finally, the rule changes as a result of CFTC regulation coming into effect on November 8, 2012 will ensure continued compliance with the Core Principles and in particular with Core Principle E.

#### **Part VI: 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.

Should you have any questions regarding this submission please contact me on +44-207-426-7285 or at [jay.ier@lchclearnet.com](mailto:jay.ier@lchclearnet.com).

Yours sincerely



**Jay Iyer**  
**Chief Compliance Officer**  
**LCH.Clearnet Limited**

**Exhibit A – 1  
FCM Regulations**

See Attached

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**Definitions**

In these FCM Regulations and the FCM Procedures, except where the context otherwise requires, the following words and expressions shall have the following meanings:

- Account Assets* - Means all cover, cash, margin, securities, receivables, rights, intangibles and any other collateral or assets deposited with or transferred to the Clearing House by an FCM Clearing Member in connection with an account carried by such FCM Clearing Member on behalf of an FCM Client, as cover for and in respect of the clearing of FCM SwapClear Contracts for such FCM Client.
- Account Manager Executing Party* = Means an Executing Party that is eligible under the CEA and the CFTC Regulations to execute Unallocated FCM SwapClear Transactions.
- Affiliate* - Means, with respect to an FCM Clearing Member, any entity that controls, is controlled by or is under common control with such FCM Clearing Member, and the account of which, when carried by the FCM Clearing Member, would be considered a ~~proprietary account~~ Cleared Swaps Proprietary Account pursuant to CFTC Regulation ~~4.3(y)~~ 22.1 (or any such successor or replacement regulation).
- Allocating Transaction* = Has the meaning assigned to such term in FCM Regulation 5(o)(iii).
- Applied FCM Buffer* = Has the meaning assigned to such term in FCM Regulation 10(h)(iv)(A).
- Auction Portfolio* - Has the meaning assigned to it in the SwapClear DMP Annex of the Default Rules
- Business Day* - Means in respect of an FCM SwapClear Contract (except where specified otherwise in the relevant FCM SwapClear Contract Terms), a day on which the Clearing House is open for business as set forth in the FCM Procedures.
- Carrying FCM Clearing Member* - Means an FCM Clearing Member carrying an account for an FCM Client, and in respect of which the FCM SwapClear Contracts and Account Assets held in such account may be transferred to a Receiving FCM Clearing Member pursuant to FCM Regulation 9 of these FCM Regulations and in accordance with the FCM Procedures.
- CEA* - Means the U.S. Commodity Exchange Act.
- CFTC* - Means the U.S. Commodity Futures Trading Commission.
- CFTC Regulations* - Means the rules and regulations promulgated by the CFTC.

<u>Cleared Swap</u>	= <u>Means “Cleared Swap” as such term is defined in CFTC Regulation 22.1.</u>
<u>Cleared Swaps Account Class</u>	= <u>Means the account class for cleared swaps accounts (as defined in CFTC Regulations 190.01(a)(i) and 190.01(pp)) for purposes of Part 190 of the CFTC Regulations and Section 4d(f) of the CEA.</u>
<i>Clearing House</i>	- Means LCH.Clearnet Limited whose registered office is located at Aldgate House, 33 Aldgate High Street, London EC3N 1EA, United Kingdom.
<i>Closing-out Contract</i>	- Means for the purposes of these FCM Regulations, an FCM SwapClear Contract effected by or on behalf of the Clearing House and registered in an FCM Clearing Member’s name, being an FCM SwapClear Contract on the same terms (except as to price) as an Open Contract in the FCM Clearing Member’s name, save that where the Clearing House is paying Rate X under the terms of such open FCM SwapClear Contract, the Clearing House shall pay Rate Y under the terms of such closing-out FCM SwapClear Contract, and vice-versa.
<i>Contribution</i>	- Means, in relation to the Default Fund Rules, the meaning assigned to it in rule 17 of the Default Fund Rules.
<i>cover</i>	- Means an amount determined by the Clearing House of cash or, with the approval of the Clearing House, security in a currency and a form acceptable to the Clearing House as prescribed by the FCM Procedures.
<i>defaulter</i>	- Has the meaning attributed to it in rule 4 of the Default Rules.
<i>Default Fund Rules</i>	- Means the Clearing House’s Default Fund Rules from time to time in force.
<i>Default Rules</i>	- Means the Clearing House’s Default Rules from time to time in force pursuant to part II of schedule 21 to the UK Companies Act 1989.
<i>Economic Terms</i>	- Means that part of the FCM SwapClear Contract Terms designated as Economic Terms by the Clearing House from time to time.
<i>Excess Margin</i>	- Means <del>cover delivered to</del> <u>in respect of an FCM Client’s FCM OTC Client Segregated Sub-Account or in respect of an FCM Clearing Member’s Proprietary Account, cover (excluding FCM Buffer or Applied FCM Buffer) held by</u> the Clearing House <del>by an FCM Clearing Member</del> in respect of <del>its</del> FCM SwapClear Contracts <u>corresponding to any such account</u> , which is in excess of the Required Margin in respect of such <u>corresponding</u> FCM SwapClear Contracts <u>as determined by the Clearing House in accordance with the FCM Rulebook.</u>

- Executing Party* - Means ~~any party to a swap transaction with respect to which at least one party to such transaction applies to have its side of such transaction registered with~~each person described as a party to an FCM SwapClear Transaction in the details submitted to the Clearing House ~~(through its FCM Clearing Member or on its own behalf as an FCM Clearing Member, as applicable) as an FCM SwapClear Contract, and the other party to such transaction applies to have its side of such transaction registered with the Clearing House either as an FCM SwapClear Contract (through its FCM Clearing Member or on its own behalf as an FCM Clearing Member, as applicable) or as an SCM SwapClear Contract (through its SwapClear Clearing Member or on its own behalf as a SwapClear Clearing Member, as applicable), as the case may be~~by an FCM Clearing Member and/or via the relevant FCM Approved Trade Source System.
- FCM* - Means a futures commission merchant, as defined under the CEA that is registered in such capacity with the CFTC.
- FCM Approved Trade Source System* - Means a system ~~approved~~or facility, such as an exchange, a clearing house, a swap execution facility, a designated contract market or other similar venue, approved by the Clearing House for executing FCM SwapClear Transactions ~~by~~and/or submitting such FCM SwapClear Transactions to the Clearing House.
- FCM Buffer* = Has the meaning assigned to such term in FCM Regulation 10(h)(iv)(A).
- FCM Clearing Member* - Means an FCM that has been approved by the Clearing House for the clearing of FCM SwapClear Contracts on behalf of FCM Clients, in accordance with an FCM Clearing Membership Agreement and the FCM Procedures, and pursuant to these FCM Regulations, and as such is a “Clearing Member” for all purposes under the Default Rules, the Default Fund Rules and the FCM Default Fund Agreement, unless otherwise specified in these FCM Regulations.
- FCM Clearing Membership Agreement* - Means the agreement so designated under which, inter alia, the Clearing House agrees to make available clearing services to an FCM Clearing Member in respect of FCM SwapClear Contracts together with any ancillary agreements.
- FCM Client* - Means a client of an FCM Clearing Member (but not including Affiliates of such FCM Clearing Member) with positions in ~~the Cleared OTC Derivatives Account Class (as that term is defined in CFTC Regulation 190.01(ee))~~Cleared Swaps, including FCM SwapClear Contracts, on behalf of which the FCM Clearing Member provides FCM SwapClear Clearing Services and clears FCM SwapClear Contracts; provided that any such client is

only an FCM Client with respect to its positions in ~~cleared OTC derivatives (as that term is defined in CFTC Regulation 190.01(o))~~ Cleared Swaps.

*FCM Client Business* - Means the provision of FCM SwapClear Clearing Services by an FCM Clearing Member to its FCM Clients.

*FCM Client Sub-Account Balance* = Means with respect to an FCM Client, at any given time, the value of Account Assets attributable to such FCM Client's FCM OTC Client Segregated Sub-Account as determined by the Clearing House in accordance with the FCM Rulebook. For the avoidance of doubt, an FCM Client's Account Assets in no event includes any FCM Buffer applied by the Clearing House in respect of such FCM Client's FCM OTC Client Segregated Sub-Account.

*FCM Default Fund Agreement* - Means an agreement in a form prescribed by the Clearing House, entered into between an FCM Clearing Member and the Clearing House relating to the Clearing House's default fund.

*FCM Omnibus OTC Client Account with LCH* - Means an omnibus account located in the United States and maintained on the books of the Clearing House in the name of an FCM Clearing Member for the benefit of its FCM Clients, in which all FCM SwapClear Contracts cleared by such FCM Clearing Member on behalf of such FCM Clients, and all associated cover and other payments and deliveries, will be reflected on the books of the Clearing House. The Clearing House will establish FCM OTC Client Sub-Accounts within each FCM Omnibus OTC Client Account with LCH.

*FCM OTC Client Segregated Depository Account* - Means an omnibus account located in the United States and maintained by an FCM Clearing Member for its FCM Clients with a ~~depository~~ Permitted Depository, which is segregated in accordance with the CEA and ~~regulations of the~~ CFTC Regulations and contains the Account Assets deposited by such FCM Clients in connection with FCM SwapClear Contracts cleared for such FCM Clients by such FCM Clearing Member.

*FCM OTC Client Segregated Sub-Account* = Means an individual segregated sub-account established on the books of the Clearing House on behalf of an FCM Client of an FCM Clearing Member, reflecting the FCM SwapClear Contracts, and all associated Account Assets, carried for each such FCM Client by such FCM Clearing Member, based on information provided by the applicable FCM Clearing Member.

*FCM Procedures* - Means the document containing the working practices and administrative or other requirements of the Clearing House for the purposes of implementing or supplementing these FCM Regulations, or the procedures for application for and regulation of membership of the Clearing House.

- FCM Regulations*

- Means these FCM Regulations entitled as such, relating to FCM SwapClear Contracts and the clearing of FCM SwapClear Contracts only, from time to time in force.
- FCM Rulebook*

- Means the FCM Regulations, the Other Specific Regulations, the FCM Procedures and such other rules of the Clearing House, which are applicable to FCM SwapClear Clearing Services, as published and amended from time to time.
- FCM Segregated Accounts*

- Means, with respect to each FCM Clearing Member, its FCM OTC Client Segregated Depository Accounts and its PPS Accounts in which the FCM Clearing Member holds funds of its FCM Clients.
- FCM SwapClear Clearing End-User Notice*

- Means the “FCM SwapClear Clearing End-User Notice” as specified by the Clearing House from time to time and as published by the Clearing House on its website or otherwise.
- FCM SwapClear Clearing Services*

- Means the services provided by an FCM Clearing Member in connection with FCM SwapClear Contracts cleared on behalf of its FCM Clients or its Affiliates, as the case may be.
- FCM SwapClear Contract*

- Means a contract that is registered for clearing and is entered into by the Clearing House with an FCM Clearing Member on the FCM SwapClear Contract Terms, and which is governed by these FCM Regulations.
- FCM SwapClear Contract Terms*

- Means the terms applicable to each FCM SwapClear Contract as set out from time to time in the FCM Regulations.
- FCM SwapClear Transaction*

- Means any transaction ~~entered into between two Executing Parties for purposes~~ the details of which are presented to the Clearing House via an Approved Trade Source System for the purpose of having ~~at least one side of~~ such transaction registered ~~with~~ at the Clearing House as ~~an FCM SwapClear Contract, and the other side of such transaction registered with the Clearing House as either an FCM SwapClear Contract or two FCM SwapClear Contracts (or, where a corresponding presentation has been made in respect of the same transaction for registration of~~ an SCM SwapClear Contract, one SCM SwapClear Contract and one FCM SwapClear Contract), regardless of whether (a) such transaction is an existing swap transaction, (b) it was entered into in anticipation of clearing, and (c) it is contingent on clearing.
- Initial Margin*

- Means an amount determined and published from time to time by the Clearing House with regard to each category of FCM SwapClear Contract, in respect of which FCM Clearing Members may be required to provide cover in such amount to the Clearing House in accordance with these FCM Regulations and the FCM Procedures as a

condition of registration of an FCM SwapClear Contract by the Clearing House and otherwise in respect of all FCM SwapClear Contracts registered with the Clearing House, as prescribed by these FCM Regulations and the FCM Procedures.

- LCH.Cleernet Group*

  - Means the group of undertakings consisting of LCH.Cleernet Limited, LCH.Cleernet Group Limited and Banque Centrale de Compensation S.A. trading as LCH.Cleernet SA. (Reference to a “member” of LCH.Cleernet Group within these FCM Regulations is to be construed accordingly).
  
- LCH Approved Outsourcing Party*

  - Means a ~~party approved for these purposes~~ person, designated as such by the Clearing House, as ~~set out~~ may be provided for in the FCM Procedures.
  
- LCH OTC Client Segregated Depository Account*

  - Means the omnibus account (which will consist of one or more accounts at one or more ~~depositories~~ Permitted Depositories which are commingled for purposes of the applicable provisions of the CEA and ~~regulations of the CFTC Regulations~~) located in the United States and maintained by the Clearing House for the benefit of FCM Clients of its FCM Clearing Members with a ~~depository~~ Permitted Depository, which is segregated in accordance with the CEA and ~~regulations of the CFTC Regulations~~, is part of the Cleared ~~OTC Derivatives Swaps Account Class under Part 190 of the CFTC’s regulations~~ and contains the ~~cover~~ Account Assets deposited by such FCM Clearing Members on behalf of their FCM Clients in connection with FCM SwapClear Contracts cleared for such FCM Clients by such FCM Clearing Members.
  
- Official Quotation*

  - Means a price determined by the Clearing House under FCM Regulation 11.
  
- “Open Contract” or “open contract”*

  - Means an FCM SwapClear Contract which has not been closed-out, settled or invoiced back in accordance with the FCM Regulations and the FCM Procedures. The terms “Open Contract” and “open contract” shall not include a Closing-out Contract.
  
- Other Specific Regulations*

  - Means the Clearing House’s Default Rules, Default Fund Rules, Settlement Finality Regulations and related Definitions and provisions relating to construction as published and amended by the Clearing House from time to time.
  
- Permitted Depository

  - = Means “Permitted Depository” as such term is defined in CFTC Regulations 22.1 and 22.4.
  
- Portfolios*

  - Has the meaning assigned to it in the SwapClear DMP Annex of the Default Rules.
  
- Price*

  - Means, in the case of an FCM SwapClear Contract, the price calculated by the Clearing House in accordance with

Regulations or the FCM Procedures.

*Standard Terms* - Means that part of the FCM SwapClear Contract Terms designated as Standard Terms by the Clearing House from time to time.

*Suspension Sub-Account* = Has the meaning assigned to such term in FCM Regulation 5(o)(ii).

*SwapClear Clearing Member* - Means a person who is designated as such by the Clearing House pursuant to the UK General Regulations and who is not an FCM Clearing Member.

*SwapClear DMP* - Has the meaning assigned to it in the SwapClear DMP Annex of the Default Rules.

*UK General Regulations* - Means the Default Rules, the Default Fund Rules and the Settlement Finality Regulations, and the Clearing House's General Regulations from time to time in force.

*Unallocated Excess* = Has the meaning assigned to such term in FCM Regulation 10(h)(v)(A).

*Unallocated Excess Sub-Account* = Has the meaning assigned to such term in FCM Regulation 10(h)(iii).

*Unallocated FCM SwapClear Contract* = Has the meaning assigned to such term in FCM Regulation 5(o)(ii).

*Unallocated FCM SwapClear Transaction* = Has the meaning assigned to such term in FCM Regulation 5(o)(i).

*Variation Margin* - Means an amount determined by the Clearing House in accordance with the FCM Procedures in respect of original contracts or Open Contracts (as the case may be) by reference to the difference between the contract value of such contracts (as determined in accordance with the FCM Procedures) and the value of such contracts at the Reference Price or at such other prices as the Clearing House may determine pursuant to the FCM Procedures, in respect of which FCM Clearing Members may be required to provide cover in such amount to the Clearing House in accordance with these FCM Regulations and the FCM Procedures.

Any reference in these FCM Regulations or the FCM Procedures to statutes or statutory instruments or provisions thereof shall be to such statutes or statutory instruments or provisions thereof as amended, modified or replaced from time to time.

Reference to writing contained in these FCM Regulations or the FCM Procedures shall include typing, printing, lithography, photography or any other mode of representing or reproducing words in a visible form.

- contribute to the Clearing House Default Fund in accordance with the FCM Rulebook;
- (vi) be able to successfully participate or demonstrate that it has: (A) an affiliated SwapClear Clearing Member (or, alternatively, a non-SwapClear Clearing Member Affiliate that clears through the FCM Clearing Member) that can successfully participate; or (B) an LCH Approved Outsourcing Party that can successfully participate in a SwapClear “fire drill” run by the Clearing House from time to time which shall involve submitting a bid for a notional portfolio of trades within a specific currency in a specified timeframe. Submission of a bid outside the timeframe specified by the Clearing House or submitting a bid that is unreasonable will constitute a failure of the “fire drill” and the applicant’s FCM Clearing Member application will not be approved;
  - (vii) be able to participate or demonstrate that it has: (A) an affiliated SwapClear Clearing Member (or, alternatively, a non-SwapClear Clearing Member Affiliate that clears through the FCM Clearing Member) that can successfully participate; or (B) an LCH Approved Outsourcing Party that can successfully participate in the Default Management Process operated by the Clearing House;
  - (viii) have, within its corporate group, at least one banking institution, credit institution, securities firm, investment banking firm or similar entity licensed by the competent authorities of the United States or a member state of the European Union, or the equivalent of a banking institution, credit institution, securities firm, investment banking firm or similar entity licensed by the competent authorities of a country outside the United States and the European Union and which is subject to prudential rules considered by the Clearing House to be at least as stringent as those applicable to banking institutions, credit institutions, securities firms, investment banking firms or similar entities, as applicable, within the United States or the European Union; and
  - (ix) in the event of a default be able to receive from the Clearing House and process FCM SwapClear Contracts and SCM SwapClear Contracts, and any associated hedge trades, in FPML format.
- (d) Each FCM Clearing Member shall at all times continue to comply with and satisfy the qualifications and requirements set forth in FCM Regulation 3(c) and shall promptly notify the Clearing House if it has breached or reasonably expects to breach any such qualifications or requirements.
  - (e) Notwithstanding anything else contained in this FCM Regulation 3 or in the FCM Procedures, an applicant to become an FCM Clearing Member shall provide any additional documentation or information that is reasonably requested by the Clearing House in order to verify or substantiate the ability of such FCM Clearing Member applicant to satisfy its obligations under the FCM Rulebook or to satisfy its obligations as an FCM Clearing Member.

**Regulation 4** ~~Regulation 4~~ FCM Client Business and Proprietary Account Trading

- (a) Subject to the provisions of these FCM Regulations, FCM SwapClear Clearing Services may be provided by an FCM Clearing Member to its FCM Clients on any terms and conditions mutually agreed to by the FCM Clearing Member and the FCM Client, provided, however, that each FCM Clearing Member shall, before providing FCM SwapClear Clearing Services to any FCM Client, ensure that:
- (i) it has entered into an agreement with that FCM Client, or an Addendum to an existing Agreement with such FCM Client, which, in either case, binds the FCM Client to the applicable provisions of the FCM Rulebook by direct reference to the FCM Rulebook or otherwise, and any such other provisions as shall be agreed from time to time between the Clearing House and FCM Clearing Members, or as may be prescribed by the Clearing House; and
  - (ii) the FCM Client has been provided with or has been directed to a copy of the FCM SwapClear Clearing End-User Notice and that the FCM Clearing Member confirms to the Clearing House in writing that it has done so.
- (b) FCM SwapClear Clearing Services may be provided by an FCM Clearing Member to its FCM Clients, and FCM SwapClear Contracts may be entered into by an FCM Clearing Member with the Clearing House on behalf of its FCM Clients only through an FCM Omnibus OTC Client Account with LCH maintained by the Clearing House in the name of the FCM Clearing Member for the benefit of its FCM Clients.
- (c) If and to the extent permitted in the FCM Procedures, FCM Clearing Members shall be permitted to enter into and clear FCM SwapClear Contracts for their own account or accounts of their Affiliates, in each case through their Proprietary Accounts. An FCM Clearing Member wishing to provide FCM SwapClear Clearing Services to Affiliates shall enter into an agreement with each such Affiliate, or an Addendum to an existing agreement which, in either case, binds the Affiliate to the applicable provisions of the FCM Rulebook by direct reference to the FCM Rulebook or otherwise, and any such other provisions as shall be agreed from time to time between the FCM Clearing Member and the Affiliate, or as may be prescribed by the Clearing House. An FCM Clearing Member providing FCM SwapClear Clearing Services to its Affiliates shall notify the Clearing House of any Affiliates for which it provides such FCM SwapClear Clearing Services.
- (d) Each FCM Clearing Member shall maintain appropriate books and records identifying all pertinent information regarding its FCM Clients and any Affiliates for which it provides FCM SwapClear Clearing Services and regarding trades made on its own behalf through its Proprietary Account, the FCM SwapClear Contracts cleared for such FCM Clients, Affiliates, or on its own behalf, and the cover held in respect of such cleared FCM SwapClear Contracts, subject to the provisions of the following paragraph (e). Without limitation of the foregoing, each FCM Clearing Member shall ensure that its books and records accurately reflect at all times the FCM Contracts and Account Assets maintained in each FCM OTC Client Segregated Sub-Account for the relevant FCM Client.
- (e) Each FCM Clearing Member shall establish and maintain an FCM OTC Client Segregated Depository Account on behalf of its FCM Clients, in accordance with applicable provisions of the CEA and ~~regulations of the~~ CFTC Regulations, including but not limited to Part ~~41, Part 22~~ and Part 190 of such regulations, and as further set forth in FCM Regulation 29. The FCM OTC Client Segregated Depository Account shall be maintained with a ~~depository~~ Permitted Depository in accordance with the

CEA and CFTC Regulations and the FCM Clearing Member may physically commingle assets of all of its FCM Clients (provided that such assets are deposited or held in connection with Cleared Swaps) in such FCM OTC Client Segregated Depository Account in a single omnibus account established and maintained in accordance with CFTC Regulations. The FCM OTC Client Segregated Depository Account maintained by each FCM Clearing Member shall be designated as part of the Cleared ~~OTC Derivatives Swaps~~ Account Class for ~~the purposes of Part 190 of the CFTC's regulations and Section 2(h) of the CEA.~~ the CFTC Regulations.

(f) The Clearing House shall establish and maintain on its books and records an FCM OTC Client Segregated Sub-Account in the name and on behalf of each FCM Client of an FCM Clearing Member, as a sub-account of the FCM Omnibus OTC Client Account with LCH maintained for such FCM Clearing Member. The Clearing House shall reflect on its books and records the FCM SwapClear Contracts and associated Account Assets held on behalf of the relevant FCM Client, provided that the books and records of the Clearing House in this regard shall be based solely on the information provided by the FCM Clearing Member, and the Clearing House shall have no obligation to verify such information or to investigate independently the FCM Contracts and Account Assets held on behalf of the relevant FCM Client. The Clearing House shall, in accordance with the provisions of FCM Regulation 10(h), establish and maintain on its books and records an FCM Buffer sub-account on behalf of each FCM Clearing Member and its FCM Clients, as a sub-account of the FCM Omnibus OTC Client Account with LCH maintained for each such FCM Clearing Member.

(g) ~~(f)~~ The Clearing House shall establish and maintain an LCH OTC Client Segregated Depository Account on behalf of the FCM Clients, in accordance with applicable provisions of the CEA and ~~regulations of the~~ CFTC Regulations, including but not limited to Part ~~41, Part 22~~ and Part 190 of such regulations. The LCH OTC Client Segregated Depository Account shall be maintained with a ~~depository~~ Permitted Depository in accordance with the CEA and CFTC Regulations and the Clearing House may physically commingle assets of all of the FCM Clients (provided that such assets are deposited or held in connection with FCM SwapClear Contracts) in such FCM OTC Client Segregated Depository Account in a single omnibus account established and maintained in accordance with CFTC Regulations. All cover deposited by FCM Clearing Members in connection with FCM SwapClear Contracts cleared on behalf of FCM Clients shall be held in such LCH OTC Client Segregated Depository Account. ~~The Each~~ LCH OTC Client Segregated Depository Account shall be maintained by the Clearing House separately from any and all assets of the FCM Clearing Members, or any other assets that the Clearing House is holding for clients (other than FCM Clients) and shall contain no assets other than cover deposited by FCM Clearing Members in connection with the clearing of FCM SwapClear Contracts on behalf of their FCM Clients. The LCH OTC Client Segregated Depository Account maintained by the Clearing House shall be designated as part of the Cleared ~~OTC Derivatives Swaps~~ Account Class for ~~the purposes of Part 190 of the CFTC's regulations~~ Regulations.

~~(g)~~ ~~The~~

(h) Where the amount of Required Margin relating applicable to the FCM SwapClear Contracts cleared by an FCM Clearing Member on behalf of its FCM Clients, its Affiliates, or on its own behalf, will be calculated by the Clearing House, and discharged by the FCM Clearing Member in respect of all such FCM SwapClear Contracts, by: of an FCM Client is increased by the Clearing House, the obligation of

the applicable FCM Clearing Member to provide additional cover to the Clearing House to satisfy such increased Required Margin shall be discharged by:

- (i) if and to the extent that there is Excess Margin available that is attributable to such FCM Client's FCM OTC Client Segregated Sub-Account, deduction by the Clearing House of amounts from such Excess Margin, ~~provided that, in accordance with these FCM Regulations, including without limitation FCM Regulation 29, in no event shall Excess Margin attributable to FCM Clients be available to satisfy Required Margin requirements relating to Proprietary Accounts;~~
- (ii) ~~otherwise, delivery by the~~ if the application of clause (i) above is insufficient, by the application of any available FCM Buffer of the applicable FCM Clearing Member (in accordance with the FCM Procedures and FCM Regulation 10(h)) and/or by delivery by the applicable FCM Clearing Member to the Clearing House of cover with a value which is at least sufficient to discharge the relevant requirement; additional cover on behalf of such FCM Client; and
- (iii) if the obligation of the FCM Clearing Member to satisfy the Required Margin has not been fully discharged pursuant to clauses (i) and (ii) above, by other means (if any) available to the Clearing House in accordance with the FCM Rulebook.

Where the amount of Required Margin applicable to the FCM SwapClear Contracts of an FCM Clearing Member's Proprietary Account is increased by the Clearing House, the obligation of the applicable FCM Clearing Member to provide additional cover to the Clearing House to satisfy such increased Required Margin shall be discharged by:

- (x) if and to the extent that there is Excess Margin available in the FCM Clearing Member's Proprietary Account, deduction by the Clearing House of amounts from such Excess Margin;
- (y) delivery by the FCM Clearing Member to the Clearing House of additional cover; and
- (z) in the obligation of the FCM Clearing Member to satisfy the Required Margin has not been fully discharged pursuant to clauses (x) and (y) above, by other means (if any) available to the Clearing House in accordance with the FCM Rulebook.

FCM Clients and FCM SwapClear Contract positions established for FCM Clients shall be subject to gross margin requirements on all such positions, and FCM Clearing Members shall require its FCM Clients to satisfy such gross margin requirements. FCM SwapClear Contract positions established in an FCM Clearing Member's Proprietary Account on its own behalf and for its Affiliates shall be subject to net margin requirements, such that an FCM Clearing Member shall be required to deposit a net margin amount with the Clearing House in connection with all of the FCM SwapClear Contract positions of itself and its Affiliates. An FCM Clearing Member may impose margin requirements on its Affiliates for which it provides FCM SwapClear Clearing Services on a net basis, netting the positions and related margin requirements with respect to a single Affiliate or across multiple Affiliates, or an FCM Clearing Member may impose such margin requirements on a gross basis.

- (i) ~~(h)~~ An FCM Clearing Member shall provide the Clearing House with all information required under the FCM Procedures regarding the FCM SwapClear Contracts and

Account Assets held by such FCM Clearing Member for each of its FCM Clients and shall instruct the Clearing House as to the FCM SwapClear Contracts and Account Assets to be reflected in each corresponding FCM OTC Client Segregated Sub-Account, at such times and in such form as required under the FCM Procedures. In addition, an FCM Clearing Member shall, as soon as reasonably practicable following a request from the Clearing House, provide the Clearing House with any other information which the Clearing House may reasonably require in relation to the FCM Clients or Affiliates of the FCM Clearing Member, or the clearing of FCM SwapClear Contracts by such FCM Clearing Member on behalf of its FCM Clients, its Affiliates, or on its own behalf.

- (i) ~~(+)~~ No FCM Clearing Member may withdraw any amount from its FCM Omnibus OTC Client Account with LCH or its Proprietary Account if such withdrawal would cause the account balance to be less than the Required Margin then attributable to such FCM Omnibus OTC Client Account with LCH or Proprietary Account, as applicable, determined by the Clearing House in accordance with the provisions of the FCM Rulebook; provided, further, that the Clearing House may prohibit an FCM Clearing Member from withdrawing any amount from its Proprietary Account if the account balance in any of its FCM OTC Client Segregated Sub-Accounts would be less than the Required Margin then attributable to any such FCM OTC Client Segregated Sub-Account and there is an insufficient amount of FCM Buffer available to offset any such deficiencies.

**Regulation 5**      **Regulation 5-Registration of FCM SwapClear Contracts; Novation and Post-Novation Compression**

- (a) In order for an FCM to submit an FCM SwapClear Transaction for registration as an FCM SwapClear Contract, the FCM must be currently approved as an FCM Clearing Member pursuant to these FCM Regulations. The Executing Parties to such FCM SwapClear Transaction shall be responsible for any give-up or other agreement mutually agreed to among the parties with respect to such transactions, as applicable. An FCM Clearing Member must submit the particulars of an FCM SwapClear Transaction for registration as FCM SwapClear Contracts in accordance with these FCM Regulations. Each FCM SwapClear Transaction involving an FCM Client shall be presented to the Clearing House for registration on behalf of such FCM Client by its FCM Clearing Member. ~~It is a condition for registration as an FCM SwapClear Contract that both sides of the underlying FCM SwapClear Transaction be presented for clearing (as one FCM SwapClear Contract and one SCM SwapClear Contract, or as two FCM SwapClear Contracts, as the case may be).~~
- (b) Where an Executing Party enters into an FCM SwapClear Transaction on an FCM Approved Trade Source and such FCM SwapClear Transaction is to be cleared through an FCM Clearing Member, the Clearing House shall notify the FCM Clearing Member of such FCM SwapClear Transaction and request acceptance for registration in accordance with the FCM Procedures. Upon receipt of acceptance for registration by the Clearing House from the FCM Clearing Member, (i) the FCM Clearing Member shall be deemed to have presented the FCM SwapClear Transaction to the Clearing House (and such presentation may not be withdrawn by the FCM Clearing Member unless otherwise provided in the FCM Rulebook) and the Clearing House shall register the FCM SwapClear Transaction subject to, and in accordance, with these FCM Regulations and the FCM Procedures and (ii) such FCM Clearing Member shall be obligated to pay, upon request of the Clearing House, all cover required by the Clearing House in connection with the registration of the FCM SwapClear Transaction.
- (c) Without prejudice to the Clearing House's rights under paragraph (f) of this FCM Regulation 5, an FCM Clearing Member shall be bound by an FCM SwapClear Contract registered in its name on behalf of an FCM Client or an Affiliate pursuant to the presentation of particulars of an FCM SwapClear Transaction by it, and by the other FCM Clearing Member or SwapClear Clearing Member, as applicable.
- (d) The Clearing House shall register an FCM SwapClear Contract in respect of an FCM SwapClear Transaction presented for registration within a commercially reasonable time, provided that:
- (i) both sides of the relevant FCM SwapClear Transaction have been properly presented and submitted for clearing by (or on behalf of the) the Executing Parties;
- (ii) ~~(d) Without prejudice to the Clearing House's rights under paragraph (f) of this FCM Regulation 5, an~~the relevant FCM SwapClear Transaction, ~~particulars of which are submitted for registration as FCM SwapClear Contracts, must meet~~ meets the eligibility criteria prescribed in ~~these FCM Regulations and the FCM Procedures~~Rulebook at the time the particulars of the FCM SwapClear Transaction are presented to the Clearing House and ~~must continue~~continues to meet such criteria at the Registration Time ~~in order to be registered as FCM SwapClear Contracts, at which time the FCM SwapClear Contracts shall replace and supersede such corresponding;~~

- (iii) each FCM SwapClear Contract is consented to by the relevant FCM Clearing Member (automatically or otherwise) in accordance with paragraph (b) above and Section 2.3.2 of the FCM Procedures;
- (iv) the applicable FCM Clearing Member has paid or transferred, upon request of the Clearing House and in accordance with FCM Regulation 10 and such other applicable provisions of the FCM Rulebook, all cover in respect of such FCM SwapClear Contract prior to registration; and
- (v) all the conditions applicable (under the terms of the FCM Rulebook or the Rulebook, as the case may be) for the registration of the other corresponding FCM SwapClear Contract or the other SCM SwapClear Contract (as the case may be) deriving from the relevant FCM SwapClear Transaction, have been satisfied.

If for any reason in respect of an FCM SwapClear Contract the other corresponding FCM SwapClear Contract or SCM SwapClear Contract (as the case may be) is not registered by the Clearing House, the Clearing House shall de-register such FCM SwapClear Contract or SCM SwapClear Contract (as the case may be) and shall not have any liability whatsoever to any FCM Clearing Member or to any other person in contract, tort (including without limitation, negligence), trust, as a fiduciary or under any other cause of action in respect of any damage, loss, cost or expense of whatsoever nature suffered or incurred as a result of such de-registration.

- (e) The Clearing House shall be deemed to register an FCM SwapClear Contract, in accordance with this FCM Regulation 5 in the name of an FCM Clearing Member on behalf of an FCM Client or an Affiliate (or, if applicable, on the FCM Clearing Member's own behalf), at the time prescribed in the FCM Procedures ("Registration Time"). At the Registration Time, the FCM Clearing Member, and the FCM Client or Affiliate if applicable, will be deemed to be bound by the relevant FCM SwapClear Contract on the terms entered into between the FCM Clearing Member and the Clearing House automatically and without any further action by such FCM Clearing Member or FCM Client or Affiliate, which such terms shall, without limitation, incorporate all applicable terms of these FCM Regulations and Schedule A hereto.
- (f) If at any time after registration of FCM SwapClear Contracts, the Clearing House determines that the corresponding FCM SwapClear Transaction of which details were submitted for registration did not, at the Registration Time, meet the eligibility criteria for registration as FCM SwapClear Contracts pursuant to the FCM Rulebook, the Clearing House shall, as soon as practicable thereafter, set aside such FCM SwapClear Contracts. Upon the FCM SwapClear Contracts being set aside under this FCM Regulation 5, the particulars of the corresponding FCM SwapClear Transaction in question shall be deemed never to have been submitted to the Clearing House. Any payment made under, or in respect of, an FCM SwapClear Contract set aside under this paragraph shall be repayable to the person who made the payment. Without prejudice to FCM Regulation 26 and its obligations under this FCM Regulation 5, the Clearing House (and each other member of the LCH.Clearnet Group and their respective officers, employees and agents) shall have no liability whatsoever to any person arising out of or in respect of the registration by it in error or otherwise of an FCM SwapClear Contract in respect of a transaction which did not meet the eligibility criteria at the Registration Time to enable it to be registered as an FCM SwapClear Contract.
- (g) Where the FCM Procedures so provide, the Clearing House may require the FCM Clearing Members in whose names one or more FCM SwapClear Transactions are

Economic Terms as one or more other FCM SwapClear Contracts previously registered for the account of such FCM Clearing Member, and all such FCM SwapClear Contracts are either (i) registered on the FCM Clearing Member's own behalf, (ii) registered on behalf of the same FCM Client or (iii) registered on behalf of the same Affiliate, the FCM Clearing Member may request that the Clearing House compress and combine all such FCM SwapClear Contracts by terminating the relevant existing FCM SwapClear Contracts and compressing them into one FCM SwapClear Contract reflecting the aggregate economic terms, or the net economic terms, as the case may be, of the original FCM SwapClear Contracts. For purposes of this FCM Regulation 5(n), two or more FCM SwapClear Contracts may be deemed by the Clearing House to have "substantially the same Economic Terms" if they are based on the same underlying currencies and the Clearing House considers them, in its sole discretion, to have substantially the same fundamental economic attributes which influence the amount, value date and direction of all coupon cash flows. Two or more FCM SwapClear Contracts that are compressed under the terms of this FCM Regulation 5(n) shall be aggregated if the position of the FCM Clearing Member (on its own behalf) or the relevant FCM Client or Affiliate is in the same direction on each such FCM SwapClear Contract (i.e., obligations to make payment aggregated and rights to receive payment aggregated), such that the FCM SwapClear Contract that replaces the compressed FCM SwapClear Contracts shall have a notional amount equal to the total notional amount of the compressed FCM SwapClear Contracts. Two or more FCM SwapClear Contracts that are compressed under the terms of this Regulation 5(n) shall be netted if the position of the FCM Clearing Member (on its own behalf) or the relevant FCM Client or Affiliate is in the opposite direction on two or more of each such FCM SwapClear Contracts (i.e., obligations to make payment netted against rights to receive payment), such that the FCM SwapClear Contract (if any) that replaces the compressed FCM SwapClear Contracts shall have a notional amount equal to the net notional amount of the compressed FCM SwapClear Contracts, and provided that in the event that the net notional amount is equal to zero such compression shall result in no replacement FCM SwapClear Contracts. The Clearing House shall determine (in its sole discretion) whether FCM SwapClear Contracts that are the subject of a request for compression from the FCM Clearing Member may be compressed and, if such FCM SwapClear Contracts are compressed, the Clearing House shall determine the resulting notional amount of the FCM SwapClear Contract(s) (if any) that replaces the compressed FCM SwapClear Contracts, and such determination shall be binding on the FCM Clearing Member, absent manifest error. It is a condition for compression of FCM SwapClear Contracts that the amount of cover that the Clearing House requires in respect of the original FCM SwapClear Contracts is equal to that which is required by the Clearing House in respect of the replacement FCM SwapClear Contract(s).

(o) Unallocated FCM SwapClear Transactions. In accordance with all other applicable provisions of the FCM Rulebook, an FCM Clearing Member may register an FCM SwapClear Contract subject to post-registration allocation on behalf of an Account Manager Executing Party in accordance with the following provisions:

(i) An FCM SwapClear Transaction executed by or on behalf of an Account Manager Executing Party and subject to post-registration allocation (such transaction, an "Unallocated FCM SwapClear Transaction") shall be notified to the Clearing House as such at the time it is submitted or presented to the Clearing House.

(ii) The FCM SwapClear Contract registered on behalf of an Account Manager Executing Party that results from an Unallocated FCM SwapClear Transaction (an "Unallocated FCM SwapClear Contract") shall be

registered in a suspense sub-account of the applicable FCM Clearing Member's FCM Omnibus OTC Client Account with LCH (such sub-account, the "**Suspension Sub-Account**").

- (iii) The allocation of a portion of an Unallocated FCM SwapClear Contract to an FCM Client is effected by the entering into of an FCM SwapClear Transaction between the applicable Account Manager Executing Party and the relevant FCM Client (such transaction, an "**Allocating Transaction**") which results in: (A) an FCM SwapClear Contract being registered in the name of the FCM Clearing Member (on behalf of the Account Manager Executing Party) having substantially the same Economic Terms (but a lower notional value) as the Unallocated FCM SwapClear Contract such that the Unallocated FCM SwapClear Contract and that FCM SwapClear Contract can be compressed in accordance with FCM Regulation 5(n); and (B) the corresponding FCM SwapClear Contract being registered in the name of the applicable FCM Client.

An FCM Clearing Member must notify the Clearing House when it submits or accepts an FCM SwapClear Transaction which is an Allocating Transaction.

- (iv) An FCM Clearing Member that submits and clears Unallocated FCM SwapClear Transactions and Allocating Transactions must comply with the applicable provisions of the CFTC Regulations (including CFTC Regulation 1.35) and all other applicable law, and shall be responsible for ensuring that Account Manager Executing Parties clearing through it shall be in compliance therewith.

**Regulation 6** ~~Regulation 6~~ Treatment of Accounts at LCH

- (a) Accounts shall be opened between each FCM Clearing Member and the Clearing House in accordance with the FCM Procedures. An FCM Clearing Member shall be responsible to LCH for all obligations owed to the Clearing House in respect of every account opened in respect of such FCM Clearing Member.
- (b) This paragraph applies to an FCM Clearing Member's Proprietary Accounts. In the event that more than one Proprietary Account is opened in respect of an FCM Clearing Member, the Clearing House shall have the right to combine or consolidate the balances on any or all of the FCM Clearing Member's Proprietary Accounts, treat all such accounts as a single account and set off any amount or amounts standing from time to time to the credit of any one or more of such accounts in or towards payment or satisfaction of all or any of the FCM Clearing Member's liabilities to the Clearing House on any one or more of such accounts, or in or towards payment or satisfaction of any other obligations of the FCM Clearing Member to the Clearing House, including but not limited to, obligations arising in connection with FCM Client Business.
- (c) This paragraph applies to an FCM Clearing Member's FCM Omnibus OTC Client Accounts with LCH. ~~Unless the FCM Rulebook provides otherwise~~ FCM Omnibus OTC Client Accounts with LCH shall be held and administered in accordance with the CEA and all applicable CFTC Regulations (including but not limited to Part 1, Part 22 and Part 190 of such regulations) including as set forth in FCM Regulation 25. In accordance with CFTC Regulation 22.15 (and subject to CFTC Regulation 22.3(d)), the Clearing House shall treat the value of all Account Assets received from each FCM Clearing Member on behalf of an identified FCM Client as belonging to each such individual FCM Client, and such amount shall not be used to margin, guarantee, or secure the FCM Contracts or other obligations of the applicable FCM Clearing Member, other FCM Clients or any other person, except as permitted under the FCM Rulebook (and not prohibited by the CEA or CFTC Regulations) or as permitted under Part 22 of the CFTC Regulations. In accordance with the foregoing, in the event that more than one FCM Omnibus OTC Client Account with LCH is opened in respect of an FCM Clearing Member (unless otherwise prohibited by the FCM Rulebook), the Clearing House shall ~~have the right to not~~ combine or consolidate the balances ~~on any or all~~ of such FCM Omnibus OTC Client Accounts ~~(within the same account class for purposes of Part 190 of the CFTC Regulations) with LCH of an FCM Clearing Member, treat all such accounts as a single account and set off any amount or amounts standing to the credit of any one or more of such FCM Omnibus OTC Client Accounts with LCH of an FCM Clearing Member in or towards payment or satisfaction of all or any of the FCM Clearing Member's liabilities to the Clearing House on any one or more of such FCM Omnibus OTC Client Accounts with LCH.~~ with LCH of an FCM Clearing Member.
- (d) Amounts standing to the credit of an FCM Clearing Member's account relating to Contributions made under the Default Fund Rules may be applied as provided for in the Default Fund Rules.
- (e) Any rights of set-off, combination of accounts or appropriation which the Clearing House may have under these FCM Regulations or otherwise shall apply whether or not accounts are denominated in the same currency.
- (f) Interest calculated on a basis determined from time to time by the Clearing House in accordance with the FCM Procedures may at the Clearing House's discretion (but subject to the provisions of the Default Fund Rules) be paid, ~~or, in the case of~~

- ~~negative interest rates, be charged,~~ on amounts standing to the credit of any of the FCM Clearing Member's accounts.
- (g) Debit balances due to the Clearing House on any account opened in respect of an FCM Clearing Member are payable by such FCM Clearing Member on demand and interest may at the Clearing House's discretion be charged on debit balances remaining unpaid (whether or not demand for payment is made) on a basis and at a rate determined from time to time by the Clearing House in accordance with the FCM Procedures.
  - (h) Subject to the provisions of the Default Fund Rules, the Clearing House may at its absolute discretion alter the basis of calculating interest rates and such alteration shall be effective in respect of all current and future business on the date notified to FCM Clearing Members in accordance with the FCM Procedures.
  - (i) If an FCM Clearing Member specifies a Termination Date under FCM Regulation 26A, the FCM Clearing Member shall be entitled to set off any or all amounts (whether present or future, liquidated or unliquidated, actual or contingent) due as between the Clearing House and the FCM Clearing Member, provided that in accordance with these FCM Regulations, including without limitation FCM Regulation 29, an FCM Clearing Member's obligations to the Clearing House (other than solely in respect of the obligations of its FCM Clients) may never be set off with amounts in FCM OTC Client Segregated Depository Accounts.
  - ~~(j) — Where a payment has been made to the Clearing House by an FCM Clearing Member through the PPS, that payment will only be credited to the account of the FCM Clearing Member with the Clearing House if it (i) is paid into an account of the Clearing House with an institution which is solvent, (ii) that institution has performed its concentration function (being the transfer of net funds from the institution to a central account in the name of the Clearing House) and (iii) the institution has made the relevant payments to other Members on the date when the payment was due to be received by the Clearing House.~~

**Regulation 9**     **~~Regulation 9~~-Transfer**

- (a) Other than in the event that an FCM Clearing Member is a defaulter, Open Contracts in such FCM Clearing Member's name shall not be allocated or transferred except as provided in this FCM Regulation 9.
- (b) Upon the instruction or at the request of an FCM Client, via a Receiving FCM Clearing Member (as set out in the FCM Procedures), to transfer that FCM Client's entire portfolio (and not less than an entire portfolio) of FCM SwapClear Contracts held in the relevant FCM OTC Client Segregated Sub-Account from a Carrying FCM Clearing Member, the Clearing House shall transfer: (x) the relevant FCM OTC Client Segregated Sub-Account and all FCM SwapClear Contracts entered into by the Carrying FCM Clearing Member on behalf of such FCM Client, as identified to the Clearing House by the Carrying FCM Clearing Member, the Clearing House being entitled to rely conclusively on the instructions of the Carrying FCM Clearing Member with respect to the FCM SwapClear Contracts to be transferred (such transfer to occur by novation of such FCM SwapClear Contracts rather than by closeout and rebooking of new FCM SwapClear Contracts); and (y) upon request, if any, of the Receiving FCM Clearing Member on behalf of the relevant FCM Client, all Account Assets deposited with or transferred to the Clearing House by a Carrying FCM Clearing Member and held by the Clearing House in the relevant FCM OTC Client Segregated Sub-Account in respect of the FCM SwapClear Contracts that are being transferred to a Receiving FCM Clearing Member designated by the FCM Client as set out in the FCM Procedures (the Clearing House being entitled to rely conclusively on the instructions of the Carrying FCM Clearing Member with respect to such Account Assets), provided that:
- (i) such FCM Client has not become insolvent (such FCM Client to be presumed to be solvent by the Clearing House unless evidenced to the contrary by the Carrying FCM Clearing Member in the manner set forth in the FCM Procedures or as otherwise reasonably determined by the Clearing House);
  - (ii) neither the Carrying FCM Clearing Member nor the Receiving FCM Clearing Member is a defaulter;
  - (iii) the Receiving FCM Clearing Member has consented to such transfer;
  - (iv) the Clearing House considers that it has received sufficient cover from the Receiving FCM Clearing Member in order to enable the transfer; and
  - (v) the FCM Client has satisfied (such satisfaction to be presumed by the Clearing House unless evidenced to the contrary by the Carrying FCM Clearing Member in the manner set forth in the FCM Procedures or as otherwise reasonably determined by the Clearing House) all outstanding obligations that are due and payable to the Carrying FCM Clearing Member and its Affiliates, including any increased margin due and payable that may result from the proposed transfer, unless the Carrying FCM Clearing Member otherwise consents.

For purposes of (v) above, with respect to obligations owed to Affiliates of the Carrying FCM Clearing Member by an FCM Client, "obligations" shall consist only of those obligations that arise as a result of cross-margining, cross-netting or other similar arrangements with respect to the FCM SwapClear Contracts being transferred or the FCM Client's related collateral.

- (c) Upon the instruction or at the request of an FCM Client via a Receiving FCM Clearing Member (as set out in the FCM Procedures) to transfer a portion of that FCM Client's portfolio of FCM SwapClear Contracts held in the relevant FCM OTC Client Segregated Sub-Account from a Carrying FCM Clearing Member, (the "Porting FCM SwapClear Contracts"), the Clearing House shall transfer (such transfer to occur by novation of such Porting FCM SwapClear Contracts rather than by closeout and rebooking of new FCM SwapClear Contracts) the Porting FCM SwapClear Contracts entered into by the Carrying FCM Clearing Member on behalf of such FCM Client to a Receiving FCM Clearing Member, designated by the FCM Client as set out in the FCM Procedures, provided that:
- (i) such FCM Client has not become insolvent (such FCM Client to be presumed to be solvent by the Clearing House unless evidenced to the contrary by the Carrying FCM Clearing Member in the manner set forth in the FCM Procedures or as otherwise reasonably determined by the Clearing House);
  - (ii) neither the Carrying FCM Clearing Member nor the Receiving FCM Clearing Member is a defaulter;
  - (iii) the Receiving FCM Clearing Member has consented to such transfer;
  - (iv) the Receiving FCM Clearing Member has provided sufficient cover to the Clearing House in respect of its current FCM SwapClear Contracts and the Porting FCM SwapClear Contracts in order to enable the transfer;
  - (v) the FCM Client has satisfied (such satisfaction to be presumed by the Clearing House unless evidenced to the contrary by the Carrying FCM Clearing Member in the manner set forth in the FCM Procedures or as otherwise reasonably determined by the Clearing House) all outstanding obligations that are due and payable to the Carrying FCM Clearing Member and its Affiliates, including any increased margin due and payable that may result from the proposed transfer, unless the Carrying FCM Clearing Member otherwise consents; and
  - (vi) in the event that the transfer will lead to an increased cover requirement from the Carrying FCM Clearing Member to the Clearing House, the Carrying FCM Clearing Member provides sufficient cover to the Clearing House in respect of such increased cover requirement.
- For purposes of (v) above, with respect to obligations owed to Affiliates of the Carrying FCM Clearing Member by an FCM Client, "obligations" shall consist only of those obligations that arise as a result of cross-margining, cross-netting or other similar arrangements with respect to the FCM SwapClear Contracts being transferred or the FCM Client's related collateral.
- (d) Upon request from the Clearing House, and in order to facilitate a transfer pursuant to FCM Regulation 9(b), the Carrying FCM Clearing Member shall notify the Clearing House of the Account Assets which are attributable to the transferring FCM Client and, along with the Receiving FCM Clearing Member, shall take such actions and provide such information in connection with the transfer as may be required under the FCM Procedures. In the event that the Carrying FCM Clearing Member fails to notify the Clearing House of the Account Assets that are attributable to the relevant FCM Client, the Clearing House shall transfer such collateral as it deems appropriate and as set out in the FCM Procedures.

- (e) (i) By notifying the Clearing House of a request to accept a transfer of FCM SwapClear Contracts of an FCM Client, and the related Account Assets if applicable, pursuant to FCM Regulation 9(b) or 9(c), the Receiving FCM Clearing Member shall be deemed to have represented to the Clearing House that all of the conditions set forth herein and in the FCM Procedures to the transfer of the account of the FCM Client have been satisfied. Upon receipt of such transfer instructions, and provided that it does not determine, in its sole discretion, that the transfer cannot be effected under these FCM Regulations or the FCM Procedures, the Clearing House shall transfer the FCM SwapClear Contract(s) into the name of the Receiving FCM Clearing Member as agent for the relevant FCM Client.
- (ii) In the case where a transfer pursuant to FCM Regulation 9(b) will include the transfer of the related Account Assets in addition to the transfer of FCM SwapClear Contracts:
- (A) Upon completion of the transfer, the Account Assets deposited with or transferred to the Clearing House by the Carrying FCM Clearing Member and held by the Clearing House in respect of the FCM SwapClear Contracts that are being transferred shall, without limitation, be deemed to have been delivered by the Receiving FCM Clearing Member to the Clearing House and subject to the security interest granted by the Receiving FCM Clearing Member pursuant to FCM Regulation 10(n). Furthermore, and for the avoidance of doubt, the Carrying FCM Clearing Member shall have no right or entitlement to assert any claim over, or right with respect to, the Account Assets transferred.
- (B) The transfer of the FCM SwapClear Contracts and related Account Assets shall be deemed to occur simultaneously, and the transfer of the FCM SwapClear Contracts shall be conditioned on the transfer of the related Account Assets, and vice versa.
- (C) If the transfer of all such FCM SwapClear Contracts and related Account Assets is not completed for any reason, then any actual transfer of Account Assets or FCM SwapClear Contracts that has occurred, as the case may be, shall be deemed not to have occurred, and any actual transfer of Account Assets or FCM SwapClear Contracts that has occurred shall be immediately unwound.
- (f) ~~Rights~~ Except as may be permitted by paragraph (h) below, expressly permitted by other parts of the FCM Rulebook or as may otherwise be expressly permitted by the Clearing House in writing, rights under an Open Contract shall not be capable of assignment by an FCM Clearing Member. Any such purported assignment by an FCM Clearing Member, or any purported transfer that is not in compliance with this FCM Regulation 9, shall be void.
- (g) If an FCM Clearing Member is a defaulter, the Clearing House shall take such actions, subject to and in accordance with the Default Rules (including the SwapClear DMP Annex), and as may be required by the CEA, CFTC Regulations and applicable bankruptcy laws regarding the liquidation or transfer of FCM SwapClear Contracts carried by such FCM Clearing Member on behalf of its FCM Clients. If possible under such applicable laws and regulations and the Default Rules, the Clearing House shall undertake to dispose of open FCM SwapClear Contracts held by FCM Clients of the defaulter in accordance with the instructions of

such FCM Clients, either by liquidating such FCM SwapClear Contracts or by transferring such FCM SwapClear Contracts to the FCM Clearing Member designated by such FCM Clients, provided that the Clearing House shall at all times act in accordance with the Default Rules, the requirements of the CEA, CFTC Regulations and applicable bankruptcy laws regarding the liquidation or transfer of FCM SwapClear Contracts and, provided further, that the Clearing House shall have no responsibility or liability whatsoever for any action taken or not taken with respect to the accounts and FCM SwapClear Contracts of FCM Clients of the defaulter in accordance with such laws or regulations or the directions of any Regulatory Body or bankruptcy trustee. In the event that the Clearing House does not receive instructions from FCM Clients in a timely manner, or the Clearing House for any reason deems it necessary or appropriate for its protection, or the protection of market participants, the Clearing House may take any action with respect to the Open Contracts of FCM Clients of the defaulter that it determines to be appropriate in its sole discretion which may include as part of the SwapClear DMP including an FCM SwapClear Contract in respect of FCM Client Business in an Auction Portfolio if determined to be appropriate by the Clearing House, provided that the relevant Auction Portfolio does not include any type of positions of the defaulting FCM Clearing Member other than FCM SwapClear Contracts in respect of FCM Client Business. Risk Neutralisation in relation to such FCM SwapClear Contracts and the auction process in relation to an Auction Portfolio of such FCM SwapClear Contracts shall be conducted in accordance with the provisions of the SwapClear DMP Annex.

- (h) If and to the extent permitted under the FCM Procedures, an FCM Clearing Member may transfer Open Contracts between its Proprietary Account and accounts of its FCM Clients, and vice versa, upon a client default or otherwise as permitted under and subject to applicable provisions of the CEA and CFTC Regulations regarding segregation of assets, and in accordance with the FCM Procedures.
- (i) Notwithstanding anything to the contrary in these FCM Regulations, in making any transfer of ~~anone or more~~ FCM ~~Client-account~~ Contracts (and ~~if applicable~~ the related ~~FCM-SwapClear-Contracts-and~~ Account Assets) pursuant to this FCM Regulation 9, the Clearing House shall be authorized and entitled to rely conclusively on the instructions of and information provided by the relevant FCM Clearing Member(s), which shall be solely responsible for all such instructions and information, including ensuring that the transfer is properly authorized, the transfer is being made from the appropriate FCM OTC Client Segregated Sub-Account and that the appropriate account, FCM SwapClear Contracts and Account Assets have been identified, and the Clearing House shall have no responsibility or liability therefor.

- (d) Notwithstanding paragraph (c) above, the Clearing House shall be entitled at its absolute discretion, without assigning any reason and without prior notice to an FCM Clearing Member, to modify the amount of Initial Margin applicable to an FCM SwapClear Contract or to call for larger or additional amounts of cover for Initial Margin to be furnished to it by an FCM Clearing Member, either before registration of a contract or at any time after registration. Any cover called by the Clearing House pursuant to this paragraph shall be furnished by the FCM Clearing Member on demand and in such form as the Clearing House may require.
- (e) The Clearing House shall be entitled at any time to demand immediate provision of cover from an FCM Clearing Member in an amount deemed necessary by the Clearing House without reference to Official Quotations or Reference Prices in respect of any Open Contract in the FCM Clearing Member's name, if, in the opinion of the Clearing House, the furnishing of such cover by the FCM Clearing Member is necessary in the circumstances then prevailing which may be affecting or may in the Clearing House's opinion be likely to affect market conditions or the FCM Clearing Member's performance of its obligations under the terms of such contracts or under the terms of any original or confirmed contract to which the member is party. In this paragraph, "immediate provision" means payment to the Clearing House within one hour of demand.
- (f) The Clearing House shall be entitled to make an accommodation charge at a rate determined by the Clearing House and specified in the FCM Procedures, in respect of any security furnished to it as cover in a form prescribed by the FCM Procedures. Any alteration in the basis of calculating the rates of accommodation charge shall become effective in respect of all current and future business by the time specified in the FCM Procedures.
- (g) Without prejudice to the requirements of paragraph (c) above or any other applicable requirements contained in the FCM Rulebook, the Clearing House may at its absolute discretion accept cover in an agreed amount and in a form other than those specified in the FCM Procedures, subject always to the Clearing House's prior assessment as to the appropriateness of such form of cover in accordance with its standard risk management procedures and with any special arrangements which the Clearing House may prescribe in each case (including as to valuation and haircut). The Clearing House may at its discretion make an accommodation charge at a special rate.

(h) [Excess Margin; FCM Buffer; Unallocated FCM Collateral.](#)

(i) [Excess Margin. If Official Quotations in respect of Open Contracts indicate, or the Clearing House otherwise determines, that Excess Margin is maintained with the Clearing House by an FCM Clearing Member in respect of its Proprietary Account or an FCM OTC Client Segregated Sub-Account, then any such Excess Margin shall be subject to the provisions of this FCM Regulation 10\(h\) and the other provisions of the FCM Rulebook.](#)

(ii) [Excess Margin in Proprietary Accounts. An FCM Clearing Member is permitted to maintain Excess Margin with the Clearing House in respect of its Proprietary Account. An FCM Clearing Member that is not a defaulter may request the return of any such Excess Margin at any time, and upon such request the Clearing House shall return such Excess Margin, except where any FCM OTC Client Segregated Sub-Account of such FCM Clearing Member has insufficient cover to satisfy the Required Margin applicable to it and such FCM Clearing Member does not have sufficient FCM Buffer posted](#)

with the Clearing House to satisfy any such deficit. Even where an FCM Clearing Member has not requested the return of its Excess Margin held in a Proprietary Account, the Clearing House may, in its discretion, elect at any time to return any such Excess Margin to the applicable FCM Clearing Member.

(iii) Restriction on Excess Margin in FCM OTC Client Segregated Sub-Accounts on a Day-to-Day Basis. Excess Margin is not permitted to be maintained in any FCM OTC Client Segregated Sub-Account on a day-to-day basis. However, an FCM Client's FCM OTC Client Segregated Sub-Account is permitted to hold Excess Margin on an intraday basis. Any Excess Margin attributable to an FCM Client's FCM OTC Client Segregated Sub-Account that exists in such sub-account following a daily close of the FCM SwapClear Service shall be transferred by the Clearing House into an Unallocated Excess sub-account of the applicable FCM Omnibus OTC Client Account with LCH (such sub-account, with respect to each FCM Clearing Member, the "**Unallocated Excess Sub-Account**") on the morning of the following Business Day (and as such, such Excess Margin shall become Unallocated Excess); provided that all sums due from the relevant FCM Clearing Member at such time in respect of the FCM Omnibus OTC Client Account with LCH have been paid to the Clearing House. If at any time an FCM Clearing Member posts cover with the Clearing House on behalf of an FCM Client in an amount which would cause such FCM Client's FCM OTC Client Segregated Sub-Account to contain Excess Margin, the Clearing House shall be permitted to reject the deposit of any such Excess Margin or to immediately transfer any such Excess Margin back to the FCM Clearing Member.

(iv) FCM Buffer.

(A) An FCM Clearing Member is permitted to deposit collateral that is the property of such FCM Clearing Member (and not any of its FCM Clients) to its FCM Omnibus OTC Client Account with LCH as excess cover for the benefit of all of its FCM Clients (such collateral, "**FCM Buffer**"), and such FCM Buffer shall be recorded by the Clearing House as attributable to such FCM Clearing Member in a sub-account of its FCM Omnibus OTC Client Account with LCH designated as an FCM Buffer sub-account. The Clearing House shall be permitted to apply any portion of an FCM Clearing Member's FCM Buffer (any portion of FCM Buffer when applied, "**Applied FCM Buffer**") to any FCM OTC Client Segregated Sub-Account of such FCM Clearing Member which is in or would become in default.

(B) At any time, the Clearing House shall never apply FCM Buffer in an amount that, in respect of an FCM Client, would cause the sum of the FCM Client's FCM OTC Client Segregated Sub-Account balance and the Applied FCM Buffer applicable to such FCM Client's FCM OTC Client Segregated Sub-Account at such time (if any) to exceed the amount of Required Margin applicable to it. In the event that any such excess exists (e.g., due to a decrease in Required Margin, the posting of additional Account Assets attributable to such FCM Client, or other reasons) with respect to an FCM OTC Client Segregated Sub-Account, the Clearing House shall reduce the amount of Applied FCM Buffer applicable to such FCM Client in an amount sufficient to remove any such excess, and any such reduced portion of Applied

FCM Buffer shall again become FCM Buffer (and shall no longer be considered Applied FCM Buffer).

(C) Any Applied FCM Buffer that is applied to an FCM OTC Client Segregated Sub-Account on a Business Day and remains applied to such sub-account at the opening of the FCM SwapClear Service on the following Business Day (as necessary to satisfy the applicable Required Margin) shall, at such time, be deemed to become part of the cover deposited in such FCM Client's FCM OTC Client Segregated Sub-Account and shall no longer be considered Applied FCM Buffer (or, for the avoidance of doubt, FCM Buffer).

(D) An FCM Clearing Member that is not a defaulter may request the return of any of its FCM Buffer that is not Applied FCM Buffer at any time, and upon such request the Clearing House shall return such FCM Buffer.

(v) Unallocated Excess.

(A) The Clearing House shall hold any funds deposited in an Unallocated Excess Sub-Account (such funds, the "Unallocated Excess") for the benefit of the FCM Clients of the applicable FCM Clearing Member as a class (the identities of which shall be recorded by such FCM Clearing Member and not the Clearing House in accordance with this FCM Regulation 10 and other applicable provisions of the FCM Rulebook), segregated in accordance with the CEA and CFTC Regulations, including Part 22 of the CFTC Regulations. The Clearing House shall treat and record the Unallocated Excess in respect of an FCM Clearing Member on an unallocated basis, and the Clearing House shall not attribute any portions of such Unallocated Excess to the individual FCM Clients of such FCM Clearing Member (although the Unallocated Excess shall be held for the benefit of the applicable FCM Clients as a class (in accordance with Part 22 of the CFTC Regulations), the records of which are kept by the applicable FCM Clearing Member).

(B) Each FCM Clearing Member that maintains Unallocated Excess in its Unallocated Excess Sub-Account on behalf of its FCM Clients shall ensure that its books and records accurately reflect at all times the FCM Client or FCM Clients to which such Unallocated Excess is attributable and the amount attributable to each such FCM Client.

(C) An FCM Clearing Member is permitted to deposit additional collateral (i.e. collateral that does not already constitute Account Assets) belonging to its FCM Clients directly into its Unallocated Excess Sub-Account, upon its instruction and with the prior written approval of the Clearing House in accordance with the FCM Procedures, and any such collateral so deposited shall become Unallocated Excess.

(D) The Clearing House shall not be permitted to, and shall not, at any time (x) apply any Unallocated Excess as FCM Buffer or to the FCM Clearing Member's Proprietary Account, or (y) except in accordance with an instruction by the applicable FCM Clearing Member, apply it to an FCM OTC Client Segregated Sub-Account.

- (E) Upon the request of an FCM Clearing Member, in accordance with the FCM Procedures, the Clearing House will return Unallocated Excess to an FCM Clearing Member. The FCM Clearing Member shall be deemed to represent to the Clearing House, upon making any such request, that any such request complies with the CFTC Regulations and that the returned Unallocated Excess will remain segregated as required under the CFTC Regulations and the FCM Rulebook.
- (F) Upon the default of an FCM Clearing Member, any Unallocated Excess in such FCM Clearing Member's Unallocated Excess Sub-Account shall be held by the Clearing House for the benefit of the applicable FCM Clients in accordance with Part 190 of the CFTC Regulations and applicable law, and the Clearing House shall not be permitted to apply any such Unallocated Excess to the obligations of the FCM Clearing Member to the Clearing House (on behalf of its FCM Clients or otherwise) except to the extent directed by the applicable bankruptcy trustee or Regulatory Body in accordance with applicable law.
- (i) If, in the sole discretion of the Clearing House, any security which has been furnished to it by an FCM Clearing Member as cover pursuant to these FCM Regulations is no longer either of sufficient value or otherwise acceptable to the Clearing House, the Clearing House shall be entitled to demand further provision of cover from such FCM Clearing Member. Such cover shall be furnished by such FCM Clearing Member on demand in a form prescribed by the FCM Procedures, provided that at any time the Clearing House shall be entitled to require the FCM Clearing Member to furnish it with cover in a specified form and to demand that the FCM Clearing Member replace the whole or part of any security furnished by an FCM Clearing Member pursuant to these FCM Regulations by cover in the form of cash.
- (i) ~~(h)~~ Without prejudice to the requirements of paragraph (c) above or any other applicable requirements contained in the FCM Rulebook, and subject to paragraph (h) above and the settlement of any other obligations of an FCM Clearing Member to the Clearing House: ~~— (i) an FCM Clearing Member may request the return of any Excess Margin at any time; and (ii)~~, upon the close-out or termination of an FCM SwapClear Contract in accordance with the FCM Rulebook, the Clearing House shall return all Initial Margin attributable to such FCM SwapClear Contract to the respective FCM Clearing Member, provided that no portion of such Initial Margin is required as cover or otherwise required by the FCM Rulebook for any other positions established by the FCM Clearing Member with respect to its Proprietary Account (with respect to Initial Margin to be released in connection with positions for the Proprietary Account) or ~~any of its~~ an applicable FCM OTC Client Segregated Sub-Accounts (with respect to Initial Margin to be released in connection with positions for ~~the such~~ FCM OTC Client Segregated Accounts Sub-Account).
- ~~(i) If, in the opinion of the Clearing House, any security which has been furnished to it by an FCM Clearing Member as cover pursuant to these FCM Regulations is no longer either of sufficient value or otherwise acceptable to the Clearing House, the Clearing House shall be entitled to demand further provision of cover from such FCM Clearing Member. Such cover shall be furnished by such FCM Clearing Member on demand in a form prescribed by the FCM Procedures, provided that at any time the Clearing House shall be entitled to require the FCM Clearing Member to furnish it with cover in a specified form and to demand that the FCM Clearing Member replace the whole or part of any security furnished by an FCM Clearing Member pursuant to these FCM Regulations by cover in the form of cash.~~

- ~~(j) If, in respect of Open Contracts in an FCM Clearing Member's name, Official Quotations indicate that Excess Margin is maintained with the Clearing House by such FCM Clearing Member in respect of such contracts, the Clearing House may, or at the FCM Clearing Member's request in accordance with FCM Regulation 10(h) shall, release the Excess Margin.~~
- (k) If the Clearing House takes any step or steps under the Default Rules in relation to an FCM Clearing Member, any sum (including without limitation the price due to be paid by the Clearing House in respect of the delivery of any property or currency by or on behalf of the FCM Clearing Member) standing to the credit of any of the FCM Clearing Member's accounts shall be treated as cover, provided that under no circumstances will any assets in the FCM Omnibus OTC Client Accounts with LCH be applied to the satisfaction of proprietary obligations of the FCM Clearing Member or any other obligations not related to such FCM Clearing Member's FCM Client Business.
- (l) Each FCM Clearing Member and, to the extent applicable, such FCM Clearing Member's guarantor in accordance with FCM Regulation 3(c), shall be obligated to perform all of their respective obligations (including without limitation to pay all amounts due) as required pursuant to the FCM Regulations, the Default Rules (including the SwapClear DMP Annex) and the Default Fund Rules, as applicable. Each FCM Clearing Member and, to the extent applicable, such FCM Clearing Member's guarantor in accordance FCM Regulation 3(c), shall be entitled to the return of any amounts due to them (after all obligations to the Clearing House have been satisfied) pursuant to the FCM Regulations, the Default Rules (including the SwapClear DMP Annex) and the Default Fund Rules, as applicable.
- (m) Unless the Clearing House otherwise agrees in writing, cover provided to the Clearing House by way of cash shall not be capable of assignment by any person. Any purported assignment by an FCM Clearing Member (whether by way of security or otherwise) of cash cover provided to the Clearing House shall be void. An FCM Clearing Member shall not otherwise encumber (or seek to encumber) any cash cover provided to the Clearing House.
- (n) Each FCM Clearing Member hereby grants the Clearing House a first security interest in and a first priority and unencumbered first lien upon any and all cover, cash, securities, receivables, rights and intangibles and any other collateral or assets deposited with or transferred to the Clearing House, or otherwise held by the Clearing House (including without limitation all property deposited in the Default Fund, a Proprietary Account or in an FCM Omnibus OTC Client Account with LCH, or any amounts owing to an FCM Clearing Member in the Default Fund or a Proprietary Account), including all substitutions for and proceeds of, any such property, in connection with any FCM SwapClear Contracts cleared for such FCM Clearing Member, its Affiliates, or its FCM Clients, as security for unconditional payment and satisfaction of the obligations and liabilities of the FCM Clearing Member to the Clearing House. The FCM Clearing Member agrees to take any and all actions, including but not limited to the execution of any and all documents, requested by the Clearing House in order to perfect, maintain or enforce the security interest granted to the Clearing House hereunder. The Clearing House may exercise any and all rights available to it with respect to the security interest granted hereunder, in accordance with the FCM Regulations and applicable laws. Notwithstanding the foregoing, in no event shall the Clearing House's security interest in an FCM Clearing Member's FCM Omnibus OTC Client Accounts with LCH be exercised to satisfy any obligations or liabilities of (i) such FCM Clearing Member other than in connection with obligations or liabilities relating to such FCM Clearing Member's FCM Omnibus

OTC Client Accounts with LCH, or (ii) an FCM Client with an FCM OTC Client Segregated Sub-Account by application of Account Assets held in the FCM OTC Client Segregated Sub-Account of another FCM Client.

- (o) Each FCM Clearing Member shall ensure that where it has entered into an FCM SwapClear Transaction which results in an FCM SwapClear Contract that is of a non-hedging nature (as such term is used in the CFTC Regulations), it shall collect additional cover from the relevant FCM Client in respect of such non-hedging FCM SwapClear 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.
- (p) Each FCM Clearing Member shall ensure that no FCM Client withdraws cover from the FCM OTC Client Segregated Depository Account unless the net liquidating value (as ~~that~~the term is used in the CFTC Regulations) plus the cover remaining in that FCM OTC 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 SwapClear Contracts entered into on behalf of that FCM Client.

**Regulation 16** ~~Regulation 16~~ **Currency Conversion**

For the purpose of exercising any rights under these FCM Regulations, the Clearing House shall be entitled in its discretion to convert monies standing to the debit or credit of an FCM Clearing Member's accounts (including FCM OTC Client Segregated Depository Accounts and FCM Omnibus OTC Client Accounts with LCH) into such other currency or currencies as it thinks fit, such conversion to be effected at such reasonable rate or rates of exchange as the Clearing House may determine in accordance with the FCM Procedures.

**Regulation 26** — Exclusion of Liability**Regulation 26** **EXCLUSION OF LIABILITY**

- (a) ~~Neither the Clearing House nor any other member of the LCH.Clearnet Group shall have any liability to an FCM Clearing Member or any other person in respect of any dispute arising from or in relation to any FCM SwapClear Contract, including but not limited to, any dispute as to the validity or otherwise of such FCM SwapClear Contract, the terms of such FCM SwapClear Contract or whether any alleged agreement or arrangement constitutes an FCM SwapClear Contract.~~ NEITHER THE CLEARING HOUSE NOR ANY OTHER MEMBER OF THE LCH.CLEARNET GROUP SHALL HAVE ANY LIABILITY TO AN FCM CLEARING MEMBER OR ANY OTHER PERSON IN RESPECT OF ANY DISPUTE ARISING FROM OR IN RELATION TO ANY FCM SWAPCLEAR CONTRACT, INCLUDING BUT NOT LIMITED TO, ANY DISPUTE AS TO THE VALIDITY OR OTHERWISE OF SUCH FCM SWAPCLEAR CONTRACT, THE TERMS OF SUCH FCM SWAPCLEAR CONTRACT OR WHETHER ANY ALLEGED AGREEMENT OR ARRANGEMENT CONSTITUTES AN FCM SWAPCLEAR CONTRACT.
- (b) ~~Without prejudice to the provisions of FCM Regulation 1 and FCM Regulation 26(d), neither the Clearing House nor any other member of the LCH.Clearnet Group shall have any liability whatsoever to any FCM Clearing Member, or to any other person in contract, tort (including without limitation, negligence), trust, as a fiduciary or under any other cause of action in respect of any damage, loss, cost or expense of whatsoever nature suffered or incurred as a result of: any suspension of clearing services, whether for a temporary period or otherwise, a step taken by the Clearing House under FCM Regulations 13, 14 or 5(g) or any failure or malfunction of any systems, communication lines or facilities, software or technology supplied, operated or used by the Clearing House or the relevant approved agent; the occurrence of any event which is outside the control of the Clearing House; or any exercise by the Clearing House of its discretion under the FCM Regulations, or any decision by the Clearing House not to exercise any such discretion.~~ WITHOUT PREJUDICE TO THE PROVISIONS OF FCM REGULATION 1 AND FCM REGULATION 26(D), NEITHER THE CLEARING HOUSE NOR ANY OTHER MEMBER OF THE LCH.CLEARNET GROUP SHALL HAVE ANY LIABILITY WHATSOEVER TO ANY FCM CLEARING MEMBER, OR TO ANY OTHER PERSON IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE), TRUST, AS A FIDUCIARY OR UNDER ANY OTHER CAUSE OF ACTION IN RESPECT OF ANY DAMAGE, LOSS, COST OR EXPENSE OF WHATSOEVER NATURE SUFFERED OR INCURRED AS A RESULT OF: ANY SUSPENSION OF CLEARING SERVICES, WHETHER FOR A TEMPORARY PERIOD OR OTHERWISE, A STEP TAKEN BY THE CLEARING HOUSE UNDER FCM REGULATIONS 13, 14 OR 5(G) OR ANY FAILURE OR MALFUNCTION OF ANY SYSTEMS, COMMUNICATION LINES OR FACILITIES, SOFTWARE OR TECHNOLOGY SUPPLIED, OPERATED OR USED BY THE CLEARING HOUSE OR THE RELEVANT APPROVED AGENT; THE OCCURRENCE OF ANY EVENT WHICH IS OUTSIDE THE CONTROL OF THE CLEARING HOUSE; OR ANY EXERCISE BY THE CLEARING HOUSE OF ITS DISCRETION UNDER THE FCM REGULATIONS, OR ANY DECISION BY THE CLEARING HOUSE NOT TO EXERCISE ANY SUCH DISCRETION.
- (c) ~~Without prejudice to FCM Regulation 26(b) and FCM Regulation 26(d), unless otherwise expressly provided in the FCM Regulations or in any other agreement to which the Clearing House is party, neither the Clearing House nor any other member of the LCH.Clearnet Group shall have any liability under any circumstances (including, without limitation, as a result of any negligence by the Clearing House, or~~

~~any other member of the LCH.Clearnet Group Limited, or their respective officers, employees, agents or representatives) to any FCM Clearing Member or any other Executing Party for any indirect or consequential loss or damage, or loss of anticipated profit (whether direct or indirect) or loss of bargain, suffered or incurred by any such FCM Clearing Member or other Executing Party and shall not in any circumstances be liable for any loss, cost, damage or expense suffered or incurred by any person as a result of any negligence on the part of the Clearing House, or any other member of the LCH.Clearnet Group Limited, or their respective officers, employees, agents or representatives.~~WITHOUT PREJUDICE TO FCM REGULATION 26(B) AND FCM REGULATION 26(D), UNLESS OTHERWISE EXPRESSLY PROVIDED IN THE FCM REGULATIONS OR IN ANY OTHER AGREEMENT TO WHICH THE CLEARING HOUSE IS PARTY, NEITHER THE CLEARING HOUSE NOR ANY OTHER MEMBER OF THE LCH.CLEARNET GROUP SHALL HAVE ANY LIABILITY UNDER ANY CIRCUMSTANCES (INCLUDING, WITHOUT LIMITATION, AS A RESULT OF ANY NEGLIGENCE BY THE CLEARING HOUSE, OR ANY OTHER MEMBER OF THE LCH.CLEARNET GROUP LIMITED, OR THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES) TO ANY FCM CLEARING MEMBER OR ANY OTHER EXECUTING PARTY FOR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE, OR LOSS OF ANTICIPATED PROFIT (WHETHER DIRECT OR INDIRECT) OR LOSS OF BARGAIN, SUFFERED OR INCURRED BY ANY SUCH FCM CLEARING MEMBER OR OTHER EXECUTING PARTY AND SHALL NOT IN ANY CIRCUMSTANCES BE LIABLE FOR ANY LOSS, COST, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY ANY PERSON AS A RESULT OF ANY NEGLIGENCE ON THE PART OF THE CLEARING HOUSE, OR ANY OTHER MEMBER OF THE LCH.CLEARNET GROUP LIMITED, OR THEIR RESPECTIVE OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES.

(d) ~~Nothing in this FCM Regulation 26 shall be construed as an attempt by the Clearing House to exclude any liability for any fraud, fraudulent misrepresentation or willful default on the part of the Clearing House. The Clearing House accepts liability for any personal injury or death caused by the negligence of the Clearing House and for any fraud or willful default on the part of the Clearing House.~~NOTHING IN THIS FCM REGULATION 26 SHALL BE CONSTRUED AS AN ATTEMPT BY THE CLEARING HOUSE TO EXCLUDE ANY LIABILITY FOR ANY FRAUD, FRAUDULENT MISREPRESENTATION OR WILLFUL DEFAULT ON THE PART OF THE CLEARING HOUSE. THE CLEARING HOUSE ACCEPTS LIABILITY FOR ANY PERSONAL INJURY OR DEATH CAUSED BY THE NEGLIGENCE OF THE CLEARING HOUSE AND FOR ANY FRAUD OR WILLFUL DEFAULT ON THE PART OF THE CLEARING HOUSE.

(e) ~~Without prejudice to the provisions of FCM Regulation 1 and FCM Regulation 26(d) neither the Clearing House, nor any other member of the LCH.Clearnet Group shall have any liability whatsoever to any FCM Clearing Member or to any other person (including, without limitation, any FCM Client) in contract, tort (including, without limitation, negligence), trust, as a fiduciary or under any other cause of action in respect of any damage, loss, cost or expense of whatsoever nature suffered or incurred by an FCM Clearing Member or any other person, as the case may be, as a result of the failure of any systems, communication facilities or technology.~~WITHOUT PREJUDICE TO THE PROVISIONS OF FCM REGULATION 1 AND FCM REGULATION 26(D) NEITHER THE CLEARING HOUSE, NOR ANY OTHER MEMBER OF THE LCH.CLEARNET GROUP SHALL HAVE ANY LIABILITY WHATSOEVER TO ANY FCM CLEARING MEMBER OR TO ANY OTHER PERSON (INCLUDING, WITHOUT LIMITATION, ANY FCM CLIENT) IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), TRUST, AS A FIDUCIARY

OR UNDER ANY OTHER CAUSE OF ACTION IN RESPECT OF ANY DAMAGE, LOSS, COST OR EXPENSE OF WHATSOEVER NATURE SUFFERED OR INCURRED BY AN FCM CLEARING MEMBER OR ANY OTHER PERSON, AS THE CASE MAY BE, AS A RESULT OF THE FAILURE OF ANY SYSTEMS, COMMUNICATION FACILITIES OR TECHNOLOGY.

**Regulation 29 ~~Regulation 29~~ Rules Relating to FCM OTC Client Segregated Accounts**

- (a) Notice of Deficiency in FCM ~~OTC Client Segregated Depository~~ Accounts. Whenever an FCM Clearing Member knows or should know that the aggregate amount of funds on deposit in its FCM Segregated Accounts is less than the total amount of such funds required by the CEA, CFTC Regulations and the FCM Rulebook to be on deposit, the FCM Clearing Member must report such deficiency immediately by telephone notice, confirmed immediately in writing by facsimile notice, to the Clearing House and the principal office of the CFTC in Washington, DC, to the attention of the Director and the Chief Accountant of the Division of Clearing and Intermediary Oversight, and, if the FCM Clearing Member is a securities broker or dealer, to the Securities and Exchange Commission, in accordance with 17 C.F.R. § 240.17a-11.
- (b) Segregation of Funds.
- (i) All FCM Client funds (deposited or held in connection with FCM Transactions and FCM Contracts) shall be separately accounted for and segregated as belonging to FCM Clients and shall be part of a separate account class, treated as a Cleared ~~OTC Derivatives Swaps~~ Account Class. All such funds must be held by the applicable FCM Clearing Member or deposited with a Permitted Depository, as defined in and for purposes of Part 190 of the CFTC's regulations. Such and such funds, when deposited with ~~the Clearing House, any bank, trust company or another FCM~~ a Permitted Depository, shall be deposited under an account name which ~~clearly identifies them as such~~ complies with the requirements of CFTC Regulation 22.6 and shows that they are segregated as required by the FCM Rulebook and Part 22 of the CFTC Regulations. Each FCM Clearing Member shall obtain and retain in its files for the period provided in CFTC Regulation 1.31 a written acknowledgment ~~from such bank, trust company or FCM, in accordance with CFTC Regulations 22.5, 1.20 and/or 1.26 (as applicable) from such Permitted Depository~~, that it was informed that the funds deposited in the FCM Segregated Accounts maintained by such ~~bank, trust company or FCM~~ Permitted Depository for the FCM Clearing Member are those of FCM Clients and are being held in accordance with the provisions of the CEA, CFTC Regulations and the FCM Rulebook. For the avoidance of doubt, all FCM Segregated Accounts maintained by an FCM Clearing Member shall be treated as segregated accounts and shall be subject to the requirements of the CEA and CFTC Regulations applicable to segregated accounts and to this FCM Regulation 29, regardless of the location of any such account. Without limitation of the foregoing, under no circumstances shall any portion of FCM Client funds held in FCM Segregated Accounts be obligated to the Clearing House, an FCM Clearing Member, any depository, or any other person except to purchase, margin, guarantee, secure, transfer, adjust or settle trades, contracts or transactions of FCM Clients. No person, including the Clearing House or any depository, that has received FCM Client funds for deposit in an FCM Segregated Account, as provided in this rule, may hold, dispose of, or use any such funds as belonging to any person other than the FCM Clients of the FCM Clearing Member which deposited such funds.
- (ii) All FCM Client funds received by the Clearing House from an FCM Clearing Member to purchase, margin, guarantee, secure or settle FCM SwapClear Contracts of the FCM Clearing Member's FCM Clients and all money accruing to such FCM Clients as the result of trades, contracts or transactions

so carried shall be separately accounted for and segregated as belonging to such FCM Clients, and the Clearing House shall not hold, use or dispose of such FCM Client funds except as belonging to such FCM Clients. Without limitation, all such funds shall be reflected in the appropriate FCM OTC Client Segregated Sub-Account established for the appropriate FCM Client. Such FCM Client funds, when deposited ~~in a bank or trust company~~with a Permitted Depository, shall be deposited under an account name which ~~clearly complies with the requirements of CFTC Regulation 22.6 and~~ shows that they are ~~the FCM Client funds of FCM Clearing Members, and are~~ segregated as required by the CEA, the CFTC Regulations and the FCM Rulebook. The Clearing House shall obtain and retain in its files for the period provided by CFTC Regulation 1.31, ~~an acknowledgment from such bank or trust company~~a written acknowledgment, in accordance with CFTC Regulations 22.5, 1.20 and/or 1.26 (as applicable), from such Permitted Depository that it was informed that the funds deposited in any LCH OTC Client Segregated Depository Accounts and any PPS Account(s) maintained by LCH are those of FCM Clients of FCM Clearing Members and are being held in accordance with the provisions of the CEA, CFTC Regulations and the FCM Rulebook.

- (iii) Each FCM Clearing Member shall treat and deal with FCM Client funds as belonging to such FCM Clients. All FCM Client funds shall be separately accounted for, and shall not be commingled with the money, securities or property of an FCM Clearing Member or of any other person, or be used to secure or guarantee the trades, contracts or transactions, or to secure or extend the credit, of any person other than the one for whom the same are held; provided, ~~however, that~~ all FCM Client funds in respect of an FCM Clearing Member may for convenienceSwapClear Contracts may be physically commingled ~~and deposited in the same account or accounts with any bank or trust company, with another person registered as an FCM Clearing Member, or with the Clearing House, and that such share thereof as in the normal course of business is necessary to purchase, margin, guarantee, secure, transfer, adjust, or settle the FCM SwapClear Contracts of such FCM Clients or resulting market positions, with the Clearing House or with any other person registered as an FCM Clearing Member, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes and other fees and charges, lawfully accruing in connection with such FCM SwapClear Contracts~~in the same LCH OTC Client Segregated Depository Account subject to and in accordance with the CEA and the CFTC Regulations; provided, further, that FCM Client funds may be invested in accordance with FCM Regulation 29(g).
- (iv) In no event may FCM Client funds (deposited or held in connection with FCM Transactions and FCM Contracts) be held or commingled and deposited with (A) FCM Client funds in the same account or accounts required to be separately accounted for and segregated pursuant to the provisions of Section 4d of the CEA and the regulations thereunder, or (ii) money, securities or property representing the foreign futures or foreign options secured amount held in accordance with CFTC Regulation 30.7.
- (v) In accordance with CFTC Regulation 22.15 (and subject to CFTC Regulation 22.3(d)), the Clearing House shall treat the value of all collateral received on behalf of each FCM Client as belonging to each such individual FCM Client, and such amount shall be credited to such FCM Client's applicable FCM OTC Client Segregated Sub-Account as provided in the FCM Rulebook, and shall

not be used to margin, guarantee, or secure the FCM Contracts or other obligations of the applicable FCM Clearing Member, other FCM Clients or any other person.

- (c) Care of Money and Securities Accruing to FCM Clients. All money received directly or indirectly by, and all money and securities accruing to, an FCM Clearing Member from the Clearing House or from any FCM Clearing Member or from any other person incident to or resulting from any cleared FCM SwapClear Contracts made by or through such FCM Clearing Member on behalf of any FCM Client shall be considered as accruing to such FCM Client within the meaning of the FCM Rulebook. Such money and securities shall be treated and dealt with as belonging to such FCM Client in accordance with the provisions of the CEA, CFTC Regulations and the FCM Rulebook. ~~Money~~The value of money and securities accruing in connection with an FCM Clients' Open Contracts ~~need not~~shall be separately credited to ~~individual accounts but may be treated and dealt with as belonging undivided to FCM Clients having open cleared FCM SwapClear Contracts which if closed would result in a credit to such FCM Clients.~~ such FCM Client's FCM OTC Segregated Sub-Account.
- (d) Use of FCM Client Funds Restricted. No FCM Clearing Member shall use, or permit the use of, FCM Client funds to purchase, margin, or settle the trades, contracts or transactions of, or to secure or extend the credit of, any person other than its FCM Clients. FCM Client funds held in an FCM OTC Client Segregated Depository Account shall not be used to carry trades or positions of the same FCM Client other than in connection with FCM SwapClear Contracts or other ~~OTC derivatives cleared through the facilities of a derivatives clearing organization that has established rules or bylaws which require cleared OTC derivatives (as that term is defined in CFTC Regulation 190.01(o)), along with the money, securities and/or other property margining, guaranteeing or securing such derivatives, to be held in a separate account~~Cleared Swaps. In addition, Account Assets held in an FCM OTC Client Segregated Sub-Account shall not be used to margin or carry trades or positions of any FCM Client other than the FCM Client for which such FCM OTC Client Segregated Sub-Account is held.
- (e) Interest of FCM Clearing Members in FCM Client Funds: Additions and Withdrawals. FCM Regulation 29(b), which prohibits the commingling of FCM Client funds with the funds of an FCM Clearing Member, shall not be construed to prevent an FCM Clearing Member from having a residual financial interest in FCM Client funds, segregated as required by the CEA, CFTC Regulations and the FCM Rulebook and set apart for the benefit of FCM Clients; nor shall such provisions be construed to prevent an FCM Clearing Member from adding to the segregated FCM Client funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, including FCM Buffer, of the type permitted under FCM Regulation 29(g), as it may deem necessary to ensure that its FCM Segregated Accounts hold at all times, at a minimum, an ~~aggregate~~ amount equal to the amount required by the CEA, CFTC Regulations and the FCM Rulebook. The books and records of an FCM Clearing Member shall at all times accurately reflect its interest in the segregated FCM Client funds. An FCM Clearing Member may draw upon such FCM Client funds to its own order, to the extent of its actual interest therein, including the withdrawal of securities held in FCM Segregated Accounts held by the Clearing House, a bank, trust company or other FCM Clearing Member, provided that any such withdrawals do not result in any such account holding less in segregated FCM Client assets than such account is required to contain at such time. Such withdrawal shall not result in FCM Client funds being used to purchase, margin or carry the trades, contracts or transactions, or extend the credit of any other FCM Client or other person.

- (f) Funds Held in FCM Segregated Accounts; Exclusions Therefrom. Money held in FCM Segregated Accounts by an FCM Clearing Member shall not include (i) money invested in obligations or stocks of any clearing organization or in memberships in or obligations of any contract market or (ii) money held by any clearing organization which it may use for any purpose other than to purchase, margin, guarantee, secure, transfer, adjust, or settle the FCM SwapClear Contracts of the FCM Clients of such FCM Clearing Member.
- (g) Investments of FCM Client Funds. An FCM Clearing Member or the Clearing House may invest FCM Client funds subject to the terms and conditions set forth in CFTC Regulation 1.25, which regulation shall apply to such funds in accordance with the provisions of the CEA and CFTC Regulations thereunder related to transactions in the Cleared ~~OTC Derivatives~~ Swaps Account Class.
- (h) Deposit of Instruments Purchased with FCM Client Funds.
- (i) Each FCM Clearing Member ~~who~~ that invests FCM Client funds in instruments permitted under FCM Regulation 29(g) shall separately account for such instruments and segregate such instruments as belonging to such FCM Clients. Such instruments, when deposited with ~~the Clearing House, a bank, trust company or another FCM Clearing Member~~ Permitted Depository, shall be deposited under an account name which clearly shows that they belong to FCM Clients and are segregated as required by the CEA, CFTC Regulations and the FCM Rulebook. Each FCM Clearing Member, upon opening an FCM Segregated Account, shall obtain and retain in its files an acknowledgment from such ~~bank, trust company or other FCM Clearing Member~~ Permitted Depository that it was informed that the instruments belong to FCM Clients and are being held in accordance with the CEA and CFTC Regulations. Such acknowledgment shall be retained in accordance with CFTC Regulation 1.31. Such ~~bank, trust company or other FCM Clearing Member~~ Permitted Depository shall allow inspection of the records of such assets at any reasonable time by representatives of the Clearing House.
- (ii) When it invests money belonging or accruing to FCM Clients of its FCM Clearing Members in instruments permitted under FCM Regulation 29(g), the Clearing House shall separately account for such instruments and segregate such instruments as belonging to such FCM Clients (provided that any such instruments may be held in commingled accounts, on behalf of all FCM Clients of all FCM Clearing Members, at one or more ~~depositories~~ Permitted Depositories). Such instruments, when deposited with a ~~bank or trust company~~ Permitted Depository, shall be deposited under an account name which will clearly show that they belong to FCM Clients and are segregated as required by the CEA, CFTC Regulations and the FCM Rulebook. Upon opening any such account, the Clearing House shall obtain and retain in its files a written acknowledgment from such ~~bank or trust company~~ Permitted Depository that it was informed that the instruments belong to FCM Clients of FCM Clearing Members and are being held in accordance with the provisions of the CEA and CFTC Regulations. Such acknowledgment shall be retained in accordance with CFTC Regulation 1.31. Such ~~bank or trust company~~ Permitted Depository shall allow inspection of such instruments at any reasonable time by representatives of the Clearing House.
- (i) Record of Investments.

such funds from receiving and retaining as its own any increment or interest resulting therefrom.

(l) FCM Segregated Accounts; Daily Computation and Record.

(i) Each FCM Clearing Member must compute as of the close of the previous Business Day:

(A) the aggregate amount of FCM Client funds on deposit in its FCM Segregated Accounts on behalf of FCM Clients, including the amounts attributable to each individual FCM Client;

(B) the amount of such FCM Client funds required by the CEA, CFTC Regulations and the FCM Rulebook to be on deposit in its FCM Segregated Accounts on behalf of such FCM Clients; and

(C) the amount of the FCM Clearing Member's residual interest in such FCM Client funds .

(ii) In computing the aggregate amount of funds required to be in its FCM Segregated Accounts, an FCM Clearing Member may offset any net deficit in a particular FCM Client's account against the then current market value of readily marketable securities, less applicable percentage deductions (i.e., "securities haircuts") as set forth in Rule 15c3-1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR § 241.15c3-1(c)(2)(vi)), held for the same customer's account. The FCM Clearing Member must maintain a security interest in the securities, including a written authorization to liquidate the securities at the FCM Clearing Member's discretion, and must segregate the securities in a safekeeping account with ~~the Clearing House, a bank, trust company or another FCM Clearing Member~~ a Permitted Depository. For purposes of this section, a security will be considered readily marketable if it is traded on a "ready market" as defined in Rule 15c3-1(c)(11)(i) of the Securities and Exchange Commission (17 CFR § 240.15c3-1(c)(11)(i)).

(iii) The daily computations required by this FCM Regulation 29 must be completed by the FCM Clearing Member prior to noon on the next Business Day and must be kept, together with all supporting data, in accordance with the requirements of CFTC Regulation 1.31.

(m) Classification of Positions. Each FCM Clearing Member shall maintain, as provided in CFTC Regulation 1.31, a record of all securities and property received from FCM Clients in lieu of money to margin, purchase, guarantee or settle the cleared FCM SwapClear Contracts of such FCM Clients. Such record shall show separately for each FCM Client: a description of the securities or property received; the name and address of such FCM Client; the dates when the securities or property were received; the identity of the ~~depositories~~ Permitted Depositories or other places where such securities or property are segregated; the dates of deposits and withdrawals from such ~~depositories~~ Permitted Depositories; and the dates of return of such securities or property to such FCM Client, or other disposition thereof, together with the facts and circumstances of such other disposition.

(n) CFTC Regulations. Without limitation of any other provisions of the FCM Rulebook, FCM Clearing Members shall at all times comply in all respects with the applicable provisions of Part 22 and Part 190 of the CFTC's regulations, as well as any other applicable CFTC Regulations, including as provided in FCM Regulation 29(o).

- (o) ~~(n)~~ Change in Law or Regulations. The Clearing House shall enforce the rules set forth in this FCM Regulation 29 (and set forth in these FCM Regulations generally) at all times in accordance with and subject to the CEA and CFTC Regulations. In the event that a change in law or in CFTC Regulations occurs but has not yet been reflected appropriately in the FCM Rulebook, the CFTC Regulations and applicable law will prevail, the provisions of this FCM Rulebook shall be deemed to be modified accordingly and the Clearing House will enforce these FCM Regulations in accordance with CFTC Regulations and applicable law.
- ~~(o) — Notwithstanding any other provision of these FCM Regulations, any assets held in or credited to an FCM Omnibus OTC Client Account with LCH, an LCH OTC Client Segregated Depository Account or a PPS Account held by LCH shall be treated as segregated assets, to the same extent and with the same force and effect as required with respect to margin held in connection with transactions in futures contracts under the CEA and CFTC Regulations and will, without limitation, be held in trust in accordance with the CEA and CFTC Regulations.~~

~~Regulation 30~~

**Exhibit A - 2  
FCM Procedures**

See Attached

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FCM Clearing Members should note that LCH Approved Outsourcing Agents may be subject to a more rigorous driving test and fire-drill than FCM Clearing Members (i.e. required to demonstrate an ability to price and bid a greater number of trades at tighter pricing tolerances and within more onerous timeframes). In addition, the Clearing House may require an FCM Clearing Member, that has appointed an LCH Approved Outsourcing Agent, to participate in an ad-hoc fire-drill or driving test with such notice as the Clearing House deems appropriate in its sole discretion.

The Clearing House reserves the right to revoke an entity's status as an LCH Approved Outsourcing Agent, in its sole discretion and without notice. In the event of such a revocation, the relevant FCM Clearing Member shall be required to assume those responsibilities that were previously outsourced. Such revocation may occur where the Clearing House considers that there is an insufficient number of third party entities that are providing outsourced default management services (usually a minimum of five providers at any one time).

Other than in exceptional circumstances and in the Clearing House's sole discretion, an LCH Approved Outsourcing Agent may not act on behalf of more than three clearing members.

**The appointment of an LCH Approved Outsourcing Agent does not absolve an FCM Clearing Member of its obligations under the SwapClear DMP (including its obligation to participate in an Auction) and an LCH Approved Outsourcing Agent's participation in the SwapClear DMP on behalf of an FCM Clearing Member, in the event of a default, shall not extend beyond the provision of operational and other ancillary support to that FCM Clearing Member.**

### 2.15.3 SwapClear DMG

The necessary involvement of FCM Clearing Members and the SwapClear DMG in the SwapClear DMP entails the assessment and dissemination of information that could give rise to conflicts of interest. To ensure that such potential conflicts are demonstrably contained, Appendix 2E establishes binding obligations of confidentiality, anonymity and the extent of dissemination of information on FCM Clearing Members (and their executives or directors who participate from time to time in the SwapClear DMG) and on the Clearing House.

Each FCM Clearing Member who makes available a representative to serve on the SwapClear DMG agrees, and shall procure that, to the extent applicable, its representatives agree to be bound by and to ensure that it and any of its executives or directors serving on the SwapClear DMG complies with Schedule [ ] covering confidentiality, non-disclosure and other terms.

### 2.15.4 Procedures for Liquidation of FCM SwapClear Contracts of FCM Clients

Upon the default of an FCM Clearing Member, the Clearing House has the power and authority, pursuant to the FCM Rulebook, the CEA and the CFTC Regulations, to liquidate the FCM SwapClear Contracts of FCM Clients which, pursuant to the FCM Rulebook, would be conducted in accordance with the SwapClear DMP. This section sets forth certain supplementary procedures (in addition to the Default Rules and other applicable provisions of the FCM Rulebook) that will apply under such circumstances.

When the Clearing House determines that an FCM Client account is non-transferable and its account and the FCM SwapClear Contracts held in such account

will be liquidated, the Clearing House shall transfer (either physically or by book-entry) such FCM Client's FCM SwapClear Contracts into an account of the Clearing House established for purposes of liquidating the FCM SwapClear Contracts of FCM Clients of the defaulter (such account, a "Hedged Account"). The Clearing House shall establish a separate Hedged Account for each currency of FCM SwapClear Contracts that are non-transferable and will be subject to liquidation and will include in each such Hedged Account the FCM SwapClear Contracts in the applicable currency that are to be liquidated, regardless of the FCM Clients for which such FCM SwapClear Contracts are held. The provisions of this section shall apply equally to any such Hedged Account.

An FCM Client whose FCM SwapClear Contracts are transferred into a Hedged Account is referred as a "Non-Porting Client". The Clearing House shall hold the Account Assets of each Non-Porting Client (segregated as belonging to each such applicable Non-Porting Client in accordance with the CFTC Regulations and Part 22 thereof) in its applicable FCM OTC Client Segregated Sub-Account until the liquidation of the entire Hedged Account and all FCM SwapClear Contracts and other positions therein, as described below. At the time that the FCM SwapClear Contracts of a Non-Porting Client are transferred into a Hedged Account, any outstanding and accrued but unpaid Variation Margin in respect of such FCM SwapClear Contracts shall be discharged as of the time such FCM SwapClear Contracts are transferred into the Hedged Account, by (i) in the event that Variation Margin is accrued but unpaid in favor of the Clearing House, debiting the FCM OTC Client Segregated Sub-Account of such FCM Client, or (ii) in the event that Variation Margin is accrued but unpaid in favor of the FCM Client, crediting the FCM OTC Client Segregated Sub-Account of such FCM Client.

Administration of a Hedged Account. The Clearing House may enter into hedge transactions and liquidate and/or auction the FCM SwapClear Contracts and hedges in a Hedged Account, and may take related actions with respect to a Hedged Account (and the positions held therein), in its sole discretion as permitted by the FCM Rulebook, the CEA and the CFTC Regulations, or as directed by an applicable Regulatory Body.

Allocation of Gains and Losses in a Hedged Account to Non-Porting Clients. The Clearing House will allocate losses and gains (including further variation margin changes, hedging costs (including the gains and losses associated with hedging transactions) and liquidation/auction costs and losses) to Non-Porting Clients in a Hedged Account in accordance with the following provisions:

4. At the time an FCM Client becomes a Non-Porting Client, such Non-Porting Client is assigned a risk factor (a "Risk Factor") which is equal to such Non-Porting Client's Initial Margin requirement with respect to its FCM SwapClear Contracts that are transferred into the Hedged Account at the time such FCM Client became a Non-Porting Client (i.e., at the time of transfer into the Hedged Account).
5. On the first day that FCM Clients become Non-Porting Clients, gains and losses in the Hedged Account on such day shall be allocated on a pro rata basis among such Non-Porting Clients based on their individual Risk Factors. The allocation of gains and losses on subsequent days shall be made in the same manner until the occurrence of a day (if applicable) in which additional Non-Porting Clients are included in the Hedged Account. Additional Non-Porting Clients that are included in the Hedged Account on a subsequent day, until further additional Non-Porting Clients are included in

the Hedged Account on a further subsequent day, are referred to as “New Non-Porting Clients”.

6. On a day when one or more New Non-Porting Clients are included in the Hedged Account, the Clearing House shall calculate a combined risk factor (the “Existing Non-Porting Clients Combined Risk Factor”) in respect of the Non-Porting Clients that were previously included in the Hedged Account and are not New Non-Porting Clients (such existing Non-Porting Clients, “Existing Non-Porting Clients”). The Existing Non-Porting Clients Combined Risk Factor shall be based on the amount of Initial Margin associated with the Hedged Account with respect to all positions (including all FCM SwapClear Contracts, hedges or other positions) held in the Hedged Account, at the beginning of the day on which New Non-Porting Clients are included in the Hedged Account (i.e., at a time prior to the transfer of the FCM SwapClear Contracts of New Non-Porting Clients into the Hedged Account). For the avoidance of doubt, the Existing Non-Porting Clients Combined Risk Factor is calculated without respect to the Initial Margin requirements applicable to the transferred FCM SwapClear Contracts of the New Non-Porting Clients.
7. On any day on which New Non-Porting Clients are included in the Hedged Account, gains and losses in the Hedged Account that are incurred on that day will be allocated among the Existing Non-Porting Clients (as a group) and the New Non-Porting Clients (individually) on a pro rata basis based on the Existing Non-Porting Clients Combined Risk Factor (with respect to the Existing Non-Porting Clients as a group) and the individual Risk Factors of each New Non-Porting Client (with respect to each such New Non-Porting Client individually). The gains and losses allocated in such manner to the Existing Non-Porting Clients as a group shall be further allocated to each individual Existing Non-Porting Client on a pro rata basis based on the Risk Factor of each such Existing Non-Porting Client. The allocation of gains and losses on subsequent days shall occur in the same manner as set forth in this paragraph (iv) until the occurrence of a day (if applicable) in which additional Non-Porting Clients are included in the Hedged Account and thus become the New Non-Porting Clients. In such a case, (A) the Existing Non-Porting Clients shall continue to be treated as Existing Non-Porting Clients, (B) the Non-Porting Clients previously constituting the New Non-Porting Clients shall then constitute Existing Non-Porting Clients (in accordance with the definition of New Non-Porting Clients in paragraph (ii) above), (C) the additional Non-Porting Clients included in the Hedged Account constitute the New Non-Porting Clients (in accordance with the definition of New Non-Porting Clients in paragraph (ii) above), and (D) the Clearing House shall recalculate the Existing Non-Porting Clients Combined Risk Factor and the allocation of gains and losses shall be in accordance with paragraph (iii) above and this paragraph (iv).
8. Upon the liquidation of the Hedged Account and all FCM SwapClear Contracts and other positions therein, by auction or otherwise, any gains or losses associated with such auction/liquidation shall be allocated among all Non-Porting Clients on a pro rata basis based on the Risk Factor of each Non-Porting Client, without regard to any Existing Non-Porting Clients Combined Risk Factor.

Settlement of Non-Porting Clients Following Liquidation of Hedged Account.  
Following the liquidation of a Hedged Account, the Clearing House shall allocate the

appropriate gains and losses (as determined in accordance with the above provisions) to each Non-Porting Client's FCM OTC Client Segregated Sub-Account.

## 2.16 **Payment of Stamp Tax**

Each FCM Clearing Member shall pay any stamp tax or duty levied or imposed upon it or in respect of its execution or performance of the FCM Clearing Membership Agreement, the FCM Default Fund Agreement, the FCM Regulations and the FCM Procedures (including any registration of an FCM SwapClear Contract) by a jurisdiction in which it is incorporated, organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting is located or by any other jurisdiction and shall indemnify the Clearing House against any stamp tax or duty levied or imposed upon the Clearing House or in respect of the Clearing House's execution or performance of the FCM Clearing Membership Agreement, the FCM Regulations and the FCM Procedures (including any registration of an FCM SwapClear Contract) by any such jurisdiction.

## 2.17 **Section 168, Finance Act 1994**

[Under section 696 Corporation Tax Act 2009 ("CTA 2009"), net payments in relation to certain derivative contracts (as defined in Section 576 CTA 2009) by any company (company "A") to a non-UK resident are denied UK tax relief unless one or more of the following conditions in section 697 CTA 2009 are met:

Company A is a bank, building society, financial trader or recognised clearing house acting as principal who has entered into the qualifying contract for the purposes of a UK trade.

The non-UK resident holds the qualifying contract (as principal) for the purposes of its UK trade.

A double tax treaty, that makes provision for interest, is in force between the UK and the country of residence of the non-UK resident (or, if different, the country of residence of the beneficial counterparty to the contract).

The Clearing House is considered a "recognised clearing house" as defined in section 285 of FSMA 2000.

Any contract must not be submitted to the Clearing House by FCM Clearing Members for clearing where one or more of the conditions in section 697 CTA 2009 are not satisfied, thereby bringing the contract within section 696 CTA 2009, nor should any FCM Clearing Member knowingly permit any such contract to be submitted by a SwapClear Participant. Should this occur the SwapClear FCM Clearing Member in whose name the contract is to be or has been registered must promptly notify the Clearing House and, in any event, within 30 days of that FCM Clearing Member becoming aware of the situation. Having investigated the circumstances, the Clearing House has an obligation to notify the HM Revenue & Customs of the event and the Clearing House may, in its absolute discretion suspend any Executing [Dealer][Party] submitting such a contract for registration from the Register of Executing [Dealers][Parties]. The Clearing House may also, in its absolute discretion take such action in respect of the SwapClear FCM Clearing Member as it deems fit in accordance with the Regulations. The SwapClear FCM Clearing Member shall indemnify the Clearing House against any Corporation Tax or any other tax levied or imposed upon the Clearing House in respect of any such

section 3.4.7 below.

Cash will be applied before to each liability.

FCM Clearing Members may choose to have cash applied before securities:

#### 3.4.4 **Order of Priority on Default**

Post-default the Clearing House is entitled to realise and/or apply cover in whatever order it deems appropriate.

### 3.5 **Interest And Accommodation Charge Structure**

The Clearing House applies interest to FCM Clearing Member's cleared cash balances.

The following rates are applied:

LDR – London Deposit Rate-the rate at which the Clearing House will pay [or charge](#) interest on credit cash balances (excluding DF Contributions).

CDR – Client Deposit Rate – the rate at which the Clearing House will pay [or charge](#) interest on credit cash balances on SwapClear Client financial accounts.

Default Fund Rate;

Rates are available from the Member Reporting Website.

The Clearing House reserves the right to alter the basis of calculating interest rates. Any alteration will be effective on the date notified.

#### 3.5.1 **Price Alignment Interest (PAI) Rate**

To minimise the impact of daily cash variation margin payments on the pricing of interest rate swaps, the Clearing House will charge interest on cumulative variation margin received by the clearing member and pay interest on cumulative variation margin paid in by the clearing member respect of these instruments. This interest element is known as price alignment interest ("PAI").

The calculation of PAI shall use the interest rates specified as below. The amount of PAI for each currency shall be calculated as:

The amount of NPV in such currency from the previous day's COB multiplied by:

The relevant interest rate in effect for that day; divided by

360 or in the case of AUD, CAD, GBP, HKD, JPY, NZD, PLN, SGD and ZAR, 365

In the case of the currencies marked below with an asterisk, the Clearing House, as provided in Regulation 21(b), specifies that it will not change the PAI rate without the consent of all SwapClear Clearing Members holding open contracts in such currencies.

Currency	PAI Rate

#### 4.9.3 References

These procedures should be read in conjunction with the relevant user guides and/or manuals of the relevant CSD/custodian. Please also refer to each CSD/custodian for the relevant settlement deadlines in particular those for deliveries from local markets to Clearing House accounts.

#### 4.9.4 Contingency arrangements

In the event of an outage of the Collateral Management system FCM Clearing Members will be able to lodge and release securities by faxed instruction to the Clearing House.

FCM Clearing Member will be notified of a Collateral Management system outage via Member Circular that will notify FCM Clearing Members of the switch to contingency arrangements. FCM Clearing member should then revert to the fax forms for securities found in the appendices to this Section 4.

Normal service hours and deadlines will apply to faxed instructions

FCM Clearing Members will be notified via Member Circular when normal service resumes.

#### 4.10 Return of Unallocated Excess and FCM Buffer

Upon the request of an FCM Clearing Member, the Clearing House shall return all or a portion of such FCM Clearing Member's available Unallocated Excess or FCM Buffer (as requested) to such FCM Clearing Member; provided, that (i) FCM Clearing Members are not entitled to request the return of Applied FCM Buffer, and (ii) the Clearing House shall not be required to return FCM Buffer if the FCM Clearing Member is a defaulter. The FCM Clearing Member's request must contain the specific details of the amount of funds requested and whether such FCM Clearing Member is requesting the return of FCM Buffer or Unallocated Excess, and any other information reasonably requested by the Clearing House. The end of day report delivered to the FCM Clearing Member by the Clearing House shall constitute conclusive evidence of the amount of any FCM Buffer or Unallocated Excess returned to such FCM Clearing Member during that day, unless the Clearing House determines such report contained an error and subsequently delivers an amended report or other notice to the FCM Clearing Member in respect of such amounts.

**Exhibit A – 3  
Default Rules**

See Attached

**LCH.CLEARNET LIMITED****The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, Part IV****DEFAULT RULES**

1. Save where expressly stated to the contrary these Default Rules (“**Rules**”) have effect with regard to the provision of clearing services for all markets cleared by the Clearing House.
2.
  - (a) Words and expressions defined in the Clearing House’s Rulebook shall have the same meanings in these Rules, save that in relation to the provision of clearing services by an FCM Clearing Member, words and expressions defined in the Clearing House’s FCM Regulations shall have the same meanings in these Rules and such meanings shall prevail over any other meaning given to the relevant word or expression in the Clearing House’s Rulebook;
  - (a) A reference to a numbered Regulation in these Rules is a reference to the Regulation so numbered in the Regulations section of the Rulebook and a reference to a numbered FCM Regulation is a reference to the FCM Regulation so numbered in the FCM Regulations. A reference to a numbered Rule is a reference to the Rule so numbered in these Rules;
  - (b) The expression “relevant office-holder” in these Rules has the meaning given to it by section 189 of the Companies Act 1989 and a reference to the defaulter shall include where the context permits a reference to the relevant office-holder; ~~and~~
  - (c) A reference to an agreement in these Rules is a reference to that agreement as amended, modified or varied from time to time; ~~and~~
  - (d) References herein to “Contracts” shall be to Contracts (as defined in the Regulations) and/or to FCM Contracts (as defined in the FCM Regulations), as applicable.
3. In the event of a Clearing Member appearing to the Clearing House to be unable, or to be likely to become unable, to meet its obligations in respect of one or more Contracts, the Clearing House may (or upon the occurrence of an Automatic Early Termination Event, in which case such contracts will automatically terminate, the Clearing House will) take such steps listed in Rule 6 as in the circumstances appear to it best calculated:
  - (a) to discharge all the 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.

Before taking any such step the Clearing House shall have regard to the interests of the members of any market that the Clearing Member may belong to and shall, where in the circumstances it is reasonably practicable to do so without prejudice to those interests if applicable or the interests of the Clearing House, consult any relevant Exchange to whose Exchange Rules open contracts registered in the name of the Clearing Member are subject. As soon as practicable after the Clearing House has elected to take any

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~~ by or to a defaulter in respect of Contracts (other than FCM SwapClear 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; or (ii) ~~by~~ by or to a defaulter in respect of FCM SwapClear Contracts; 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; ~~and~~
  - (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~~ where an amount is payable by the Clearing House to the defaulter in respect of a balance on its Proprietary Account ~~or accounts,~~(s), and there are amounts due to the Clearing House in respect of any client account or any FCM Omnibus OTC Client Segregated Sub-Account with LCH (as the case may be) operated by it, the balance on the Proprietary Account ~~or accounts~~(s) may be applied to meet the shortfall ~~on the~~in any client ~~account or accounts~~ or ~~on the~~in any FCM Omnibus OTC Client Account ~~(s)~~ with LCH (including in any FCM OTC Client Segregated Sub-Accounts therein) (as the case may be) in any way which the Clearing House may determine; ~~and~~

(e) notwithstanding anything to the contrary in the foregoing, in the case where the defaulter is an FCM Clearing Member, a net sum shall be calculated in respect of each applicable FCM OTC Client Segregated Sub-Account, and with regards to any amount due to the Clearing House from the defaulter in respect of net sums attributable to FCM OTC Client Segregated Sub-Accounts where there is inadequate cover (on a sub-account by sub-account basis) to fully setoff 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.

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.

In the event that the Clearing House elects to close out and liquidate (in accordance with the SwapClear DMP Annex) any or all of the FCM Contracts attributable to FCM Clients of the defaulter, the Clearing House shall allocate any costs associated with such closing out and liquidation (including costs associated with hedging such positions to be liquidated) among the FCM OTC Client Segregated Sub-Accounts of the FCM Clients whose positions were liquidated as set out in the FCM Procedures and in accordance with Part 22.

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 payable by the defaulter in respect 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 (a) Where the defaulter is an FCM Clearing Member and an FCM Contract held on behalf of an FCM Client is transferred to a transferee FCM Clearing Member (in accordance with FCM Regulation 8(f) and these Default Rules) for such FCM Client, the Clearing House shall, subject to the limitations of Rule 9A(c) below, ensure that an amount equal to the Variation Margin that has accrued (as due and payable by the Clearing House) 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 by the Clearing House on its books (but not transferred to the defaulting FCM Clearing Member) 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 such FCM Client's FCM OTC Client Segregated Sub-Account 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 the defaulter is an FCM Clearing Member and an FCM Contract held on behalf of an FCM Client is closed out and liquidated (in accordance with the SwapClear DMP Annex), the Clearing House shall, subject to the limitations of Rule 9A(c) below, ensure that an amount equal to the Variation Margin that has accrued (as due and payable by the Clearing House) under such FCM Contract (including before and after the relevant default) through the time such FCM Contract is closed out and liquidated but which has not yet been paid by the Clearing House is credited (but not yet transferred or transferrable) 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 FCM OTC Client Segregated Sub-Account of an 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 OTC Client Segregated Sub-Account), 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 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) (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.

(i) For the avoidance of doubt, where FCM Contracts in respect of an FCM Client are closed out and liquidated and the costs associated with such closing out and liquidation (including costs associated with hedging such positions to be liquidated) that are allocated to such FCM Client's FCM OTC Client Segregated Sub-Account (as described in the last paragraph of Rule 8 above) exceed the amount of margin 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 liquidation costs.

(d) Notwithstanding anything to the contrary in the FCM Rulebook, 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.

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: ~~an account which~~

(i) where the defaulter is an FCM Omnibus Clearing Member, any accounts which are FCM OTC Client Account with LCH Segregated Sub-Accounts of the defaulter's same FCM Client may only be combined with other, but any FCM Omnibus OTC Client Accounts with of LCH of the such defaulter; shall not otherwise be combined except to extent permissible under applicable law (including Part 22 of the CFTC Regulations);

(ii) 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-

(iii) 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.

~~10.~~ 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.

~~(a)~~(b) For the purposes of this Rule 10, (i) each Individual Segregated Account of the defaulter and each Omnibus Net Segregated Account of the defaulter and (ii) each FCM OTC Client Segregated Sub-Account of the defaulter, 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.

~~(b)~~(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 any FCM ~~SwapClear~~ Contracts registered in one or more an FCM ~~Omnibus~~ OTC Client ~~Accounts with LCH Segregated Sub-Account~~ held in the name of an individual FCM Client, that FCM ~~Omnibus~~ OTC Client ~~Segregated Sub-Account with LCH, or (if there is more than one) all those and any other~~ FCM ~~Omnibus~~ OTC Client ~~Accounts with LCH Segregated Sub-Account of the defaulter that is held on behalf of the same individual FCM Client~~ combined;
- (iv) 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
- (v) 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.

~~(e)~~(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.

determined by the Clearing House in its sole discretion on the basis of Worst Case Loss.

### **3. Default Management in respect of SwapClear Clearing Client Business and FCM Client Business**

**3.1** The SwapClear DMP in respect of any contract which is a SwapClear Contract in respect of SwapClear Clearing Client Business shall involve the stages described in Regulation 52B.

**3.2** The SwapClear DMP in respect of any contract which is an FCM SwapClear Contract in respect of FCM Client Business shall be conducted in accordance with FCM Regulation ~~9(g)~~ 8(f). The provisions of Rule 9A of these Default Rules shall also apply.

### **4. Transfer of Cash Flows and Registration of Positions**

**4.1** Following the disposal of an Auction Portfolio by way of Auction (and notwithstanding that other Auction Portfolios of the Defaulting SCM may not yet have been auctioned) the Clearing House, will, with the co-operation of the SCMs, transfer to the SCM whose bid won that Auction Portfolio the rights and obligations, from the Defaulting SCM, arising out of the positions which that SCM has successfully bid for under the SwapClear Default Management Process. Such transfer may take place by way of registration of new positions with the Clearing House in the name of the relevant SCM, or novation of rights and obligations to the relevant SCM. All such registrations shall be made in a way that recognises the variation margin paid or received in relation to the SwapClear Contracts of the Defaulting SCM representing such new positions.

**4.2** In order to effect the transfer of positions, the Clearing House shall prescribe such procedures and timetable as it considers reasonably appropriate in the circumstances. SCMs will be required to exercise best endeavours to comply with such requirements as may be established by the Clearing House, after consultation with the SwapClear DMG, to effect the transfer of positions, including but not limited to the payment of any sums due as a result of the winning bid and the provision of cover in an amount required by the Clearing House for initial margin and variation margin in respect of positions which are to be registered in their names. The Clearing House agrees that in such procedures it shall make provision for set-off by the Clearing House of amounts owed by the Clearing House to the SCM as a result of the operation of the SwapClear DMP against sums owed by the SCM to the Clearing House in respect thereof.

**4.3** Where, as a result of an Auction, the Clearing House is required to make a payment to a SCM in respect of a winning bid, the Clearing House shall not be permitted to register any position, whether as a new position or as a novation of existing rights and obligations, to any such SCM if the Clearing House does not simultaneously credit that SCM with the requisite amount. If any position is so registered without such payment, such registration shall be deemed void *ab initio* and unenforceable against the relevant SCM. For the avoidance of doubt, the Clearing House will utilise the resources available to it pursuant to Rule 16 of the Default Fund Rules for the purposes of making such a payment notwithstanding that other Auction Portfolios of the Defaulting SCM may not yet have been auctioned and that the loss attribution process provided for by Rule 2.5 of this Annex has not yet occurred.

### **5. Information Regarding the SwapClear DMP**

Whenever the SwapClear DMP is implemented by the Clearing House in respect of a Defaulting SCM, the Clearing House will, with the assistance of the SwapClear DMG, provide such ongoing information to SCMs as the Clearing House deems reasonably appropriate in respect of the progress of the SwapClear DMP.

Nothing in this Rule 5 shall require the Clearing House to disclose information in respect of the SwapClear DMP which, in the reasonable opinion of the Clearing House, may be subject to obligations of confidentiality, may constitute market sensitive data or is, in the Clearing House's reasonable opinion, inappropriate for disclosure to SCMs.

## 6. **Bankruptcy Code and Related Issues**

Notwithstanding any other provision of this Annex in the event of a Default by an FCM Clearing Member, the completion of any and all actions, including but not limited to any transfers or transactions, permitted or required to be taken by the Clearing House hereunder shall be subject in all respects to the provisions of the Bankruptcy Code, Part 190 and Part 22 of the regulations of the CFTC, the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010, and the receipt of any approvals required under the Bankruptcy Code or such regulations.

## 7. **CEA Issues**

Notwithstanding any other provision of this Annex in the event of a Default by an FCM Clearing Member, the operation of this Annex shall in all respects be subject to applicable provisions of the CEA and CFTC regulations (including Part 22 thereof) regarding the handling, custody, liquidation, transfer and disposition of client positions and assets, including but not limited to those provisions requiring segregation of client assets and prohibiting application of the assets of non-defaulting clients to amounts owed by defaulting clients.

## 8. **Miscellaneous**

8.1 Subject to Rules 2.4 and 2.5 of this Annex, the resources available to the Clearing House and their order of use are defined in Rule 16 of the Default Fund Rules as modified and/or supplemented by the SwapClear Default Fund Supplement.

8.2 The Clearing House may from time to time supplement the details of any of the stages set out in Rule 2 of this Annex or any other aspects of the SwapClear DMP, in consultation with the SwapClear DMG, either by way of further Guidance or immediately on notice to SCMs on a case-by-case basis where the Clearing House deems it appropriate to do so in the circumstances of the Default, provided that the Clearing House may not take any such action that effects a material change to the terms of this Annex without the written consent of 50% of all SwapClear Clearing Members unless such change is invoked unilaterally against all SCMs and is necessary to manage the Clearing House's risk or otherwise to meet the Clearing House's continuing regulatory obligations including those applicable to it as a Recognised Clearing House and a Derivatives Clearing Organization. The Clearing House agrees that, in the ordinary course, it shall discuss any such Guidance with the SwapClear DMG prior to bringing the Guidance into effect except that it shall not be required to do so where (i) the Guidance is not material to the rights and obligations of the SCMs or (ii) the Clearing House deems it inappropriate to do so in the circumstances of the Default and it is not possible to convene the SwapClear DMG in timely fashion.

**Exhibit B**

See Attached



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AMENDED RULES SELF CERTIFICATION

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LCH.Clearnet Limited ("LCH.Clearnet") hereby certifies to the Commodity Futures Trading Commission ("CFTC"), pursuant to the procedures set forth in the Commission Regulations 40.6, that the following:

- Amendments to the rules in LCH.Clearnet's Default Rules, FCM Regulations and FCM Procedures in relation to the introduction of LSOC and Bunch Trade Registration for post registration allocation comply with the Commodity Exchange Act, as amended, and the regulations promulgated thereunder.

Signed as of October 18, 2012

By: \_\_\_\_\_

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

Name: Jay Iyer

Title: Chief Compliance Officer

LCH.Clearnet Limited