

**LCH DRAFT AMENDED RULES CHANGES**

**LCH GENERAL REGULATIONS**

**Definitions**

**Client Account**

A segregated account with the Clearing House opened in the name of a Member in which Contracts relating to contracts made by the Member with one or more segregated clients are registered and to which monies in respect of such Contracts are credited. Unless specified otherwise, the term “client account” shall include a U.S. Customer Account.

**Segregated Client**

A person whose monies are held by a Member separately from the Member’s own monies with whom the Member has agreed (or in respect of which the Member is required) not to use such person’s monies for the Member’s own account. Unless specified otherwise, the term “segregated client” shall include those customers of a Member who are U.S. Customers.

*[The following definitions are to be inserted alphabetically in the Definitions section of the LCH Rules (i.e., after “Trading Platform Particulars (virt-x)” and before “variation margin”).]*

**U.S. Customer**

Any person that is a customer (as defined in the U.S. Commodity Futures Trading Commission Regulation 1.3(k)) of a Member with respect to futures contracts and options on futures contracts traded on or subject to the rules of a U.S. designated contract market, derivatives transaction execution facility or exempt board of trade (as provided for in Sections 5, 5a or 5d, respectively, of the U.S. Commodity Exchange Act).

**U.S. Customer Account**

A segregated client account with the Clearing House, in its capacity as a registered U.S. derivatives clearing organization, opened in the name of the Member on behalf of the Member’s U.S. Customers that is required to be maintained in accordance with the segregation provisions of Section 4d of the U.S. Commodity Exchange Act, as amended, and the rules of the U.S. Commodity Futures Trading Commission as promulgated thereunder.

## **Regulation 5 (Accounts)**

- (a) Accounts (including, where requested or required, client accounts) shall be opened between each Member and the Clearing House in accordance with the Procedures. A Member shall be responsible for all obligations owed to the Clearing House in respect of every account opened in respect of such Member. The Clearing House shall maintain all money, securities and other property held in the U.S. Customer Accounts in accordance with all relevant provisions of the U.S. Commodity Exchange Act and the rules and orders promulgated thereunder.
- (b) This paragraph applies to a Member's accounts other than a Member's client accounts. In the event that more than one account is opened in respect of a Member, the Clearing House shall have the right to combine or consolidate the balances on any or all of the Member's accounts, and to 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 Member's liabilities to the Clearing House on any one or more of such accounts.
- (c) This paragraph applies to a Member's client accounts other than any U.S. Customer Account of a Member. In the event that more than one client account is opened in respect of a Member, the Clearing House shall have the right to combine or consolidate the balances on any or all of such client accounts of a Member, and to set off any amount or amounts standing to the credit of any one or more of such client accounts of a Member in or towards payment or satisfaction of all or any of the Member's liabilities to the Clearing House on any one or more of such client accounts.
- This paragraph applies to a Member's U.S. Customer Accounts. In the event that more than one U.S. Customer Account is opened in respect of a Member, the Clearing House shall have the right to combine or consolidate the balances on any or all of such U.S. Customer Accounts of a Member, and to set off any amount or amounts standing to the credit of any one or more of such U.S. Customer Accounts of a Member in or towards payment or satisfaction of all or any of the Member's liabilities to the Clearing House on any one or more of such U.S. Customer Accounts.
- (d) Amounts standing to the credit of a Member's accounts, other than, subject to paragraph (c) above, his client accounts, may be applied by the Clearing House towards the payment of any sum whatsoever due by the Member to the Clearing House whether or not arising under these Regulations, save that, subject to rule 27 of the Default Fund Rules, no amounts standing to the credit of such accounts shall be applied in or towards payment or satisfaction of all or any of the Member's liabilities to the Clearing House on any one or more of the Member's client accounts. Amounts standing to the credit of a 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 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 Procedures may at the Clearing House's discretion (but subject to the provisions of the Default Fund Rules and to Regulation 58(d)) be paid on amounts standing to the credit of any of the Member's accounts.
- (g) Debit balances due to the Clearing House on any account opened in respect of a Member are payable by such 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 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 Exchanges and to Members in accordance with the Procedures.
- (i) If a Member specifies a Termination Date under Regulation 39A, the 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 Member.

### **Regulation 29 (Currency Conversion)**

For the purpose of exercising any rights under these Regulations, the Clearing House shall be entitled in its discretion to convert monies standing to the debit or credit of a Member's accounts (including client accounts) into such other currency of currencies as it thinks fit and, with respect to the U.S. Customer Accounts, in accordance with the applicable rules of the U.S. Commodity Futures Trading Commission, such conversion to be effected at such reasonable rate or rates of exchange as the Clearing House may determine in accordance with the Procedures.

### **Regulation 39 (Exclusion of Liability)**

- (a) Without prejudice to the provisions of Regulations 1 and 22 and 39(e) or to the provisions of a Member Link Agreement, the Clearing House shall have no liability whatsoever to any Member or to any other person (including, without limitation, any client or U.S. Customer of a Member) 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 a Member or any other person, as the case may be, as a result of: any suspension, restriction or closure of the market administered by an

Exchange, an ATP, an Approved LCH EnClear Trading System or a Participating Exchange, whether for a temporary period or otherwise or as a result of a decision taken on the occurrence of a market emergency; any failure by the Clearing House or an Exchange or a Participating Exchange or an ATP or an Approved LCH EnClear Trading System or its operator or the relevant approved agent or the Approved EquityClear Settlement Provider to supply each other with data or information in accordance with arrangements from time to time established between any or all of such persons; the failure of any systems, communication facilities or technology supplied, operated or used by the Clearing House, an Exchange or the operator of an Approved LCH EnClear Trading System, or a Participating Exchange for the purposes of a Link; any event which is outside the control of the Clearing House; any act or omission of an Exchange, or an Approved LCH EnClear Trading System or its operator, or a Participating Exchange in connection with a Linked Exchange Contract or a Participating Exchange Contract or any contracts made on such terms, including, without limitation, any error in the establishment of a settlement price made by an Exchange or any error in the establishment of a Reference Price by an Approved LCH EnClear Trading System or its operator; or any act or omission of the Clearing House, an Exchange, Approved LCH EnClear Trading System or its operator or a Participating Exchange (as the case may be) in connection with the operation of a Link or the arrangements for the transfer of Contracts under a Link.

#### **Regulation 39A (Netting)**

- (a) If at any time the Clearing House fails to make a payment to a Member, other than a defaulter, under a Contract for a period of 30 days from the date when the obligation to pay fell due then that Member may exercise its rights under paragraph (c) below.
- (b) If at any time the Clearing House commences a voluntary case or other procedure seeking or proposing liquidation, administration, receivership, voluntary arrangement or a scheme of arrangement, or other similar relief with respect to itself or its debts under any bankruptcy, insolvency, regulatory, supervisory or similar law, or if any of the foregoing cases or procedures is commenced in relation to the Clearing House by any other person which results in liquidation or winding up of the Clearing House, or if the Clearing House takes corporate action to authorise any of the foregoing, in any such case other than for the purposes of corporate restructuring (including any consolidation, amalgamation or merger), then a Member, other than a defaulter, may exercise the right given to it under paragraph (c) below.
- (c) A Member entitled to exercise rights under this paragraph may, at any time whilst any of the circumstances referred to in paragraph (a) or (b) giving rise to such rights continue, by notice in writing to the Clearing House, specify a Termination Date for the termination and liquidation of all Contracts to which it is a party in accordance with paragraph (d) below.

- (d) Upon the occurrence of a Termination Date:
- (i) neither the Clearing House nor the Member shall be obliged to make any further payments or deliveries under any Contract between them which would, but for this Regulation 39A, have fallen due for performance on or after the Termination Date, and any obligations to make further payments or deliveries which would otherwise have fallen due shall be satisfied by settlement (whether by payment, set-off or otherwise) of the Termination Amount;
  - (ii) the Member shall (on, or as soon as reasonably practicable after, the Termination Date) determine (discounting if appropriate) in respect of each Contract its total loss, or as the case may be, gain, in each case expressed in the lawful currency of the United Kingdom (the “Base Currency”), (and, if appropriate, including any loss of bargain, cost of funding or, without duplication, loss or, as the case may be, gain as a result of the termination, liquidation, obtaining, performing or reestablishing of any hedge or related trading position), as a result of the termination, pursuant to this agreement, of each payment or delivery which would otherwise have been required to be made under such Contract (assuming satisfaction of each applicable condition precedent and having due regard to, if appropriate, such market quotations published on, or official settlement prices set by, a relevant exchange or clearing organisation, as may be available on, or immediately preceding, the date of calculation); and
  - (iii) the Member shall treat each loss to it, determined as above, as a positive amount and each gain by it, so determined, as a negative amount and, subject to paragraph (e), shall aggregate all of such amounts to produce a single, net positive or negative amount, denominated in the Base Currency the “Termination Amount”).
- (e) Where a Member has a house and one or more client accounts:
- (i) the Member shall determine ~~two~~up to three net amounts under paragraph (d)(iii); as follows: one net amount in respect of gains and losses arising on Contracts registered in the Member’s client account (or client accounts as combined) ~~and~~excluding any U.S. Customer Account; a second net amount in respect of gains and losses arising on Contracts registered in the Member’s U.S. Customer Account (or U.S. Customer Accounts as combined); and a third net amount in respect of gains and losses arising on all other Contracts; and
  - (ii) each of the ~~two~~ net amounts determined under paragraph (e)(i) shall constitute Termination Amounts.

- (f) If a Termination Amount determined pursuant to paragraph (d) or (e) above is a positive amount, the Clearing House shall pay it to the Member and if any such Termination Amount is a negative amount, the Member shall pay it to the Clearing House, in either case in accordance with paragraph (g). The Member shall notify the Clearing House of each such Termination Amount, and by which party it is payable, immediately after the calculation thereof.
- (g) A Termination Amount shall be paid in the Base Currency by the close of business on the business day following notification pursuant to paragraph (f) above (converted as required by applicable law into any other currency, any costs of such conversion to be borne by, and (if applicable) deducted from any payment to, the Clearing House). Any Termination Amount which is not paid on such day shall bear interest, at the average rate at which overnight deposits in the currency of such payment are offered by major banks in the London interbank market as of 11:00 a.m. (London time) (or, if no such rate is available, at such reasonable rate as the Member may select) plus 1% per annum, for each day for which any such sum remains unpaid.
- (h) For the purposes of any calculation required to be made under this Regulation, the Member may convert amounts denominated in any other currency into the Base Currency at such rate prevailing at the time of the calculation as it shall reasonably select.

The Member' rights under this Regulation 39A shall be in addition to, and not in limitation or exclusion of, any other rights which the Member may have (whether by agreement, operation of law or otherwise, including its rights under Regulation 5(i)).

## **LCH DEFAULT RULES**

### **Rule 8**

Upon the discharge of the defaulter's rights and liabilities under or in respect of all Contracts to which he is party the following process shall be completed by the Clearing House –

- ~~(a)~~ (a) there shall be brought into account all sums payable by or to the defaulter in respect of Contracts or otherwise under the Regulations and all sums payable 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;
- ~~(b)~~ (b) the sums so payable shall be aggregated or set off so as to produce a net sum or, where required by rule 10, two or three net sums; and
- ~~(c)~~ (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.

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 in such reasonable manner as it thinks fit.

### **Rule 10**

- (a) Subject to rule 27, where the defaulter has more than one account with the Clearing House an account which is a client account shall not be combined with an account which is not a client account and an account which is a U.S. Customer Account shall not be combined with any other client account, but subject to ~~that these~~ exception exceptions the defaulter's accounts shall be combined for the purpose of rules 8 and 9.
- (b) Where the defaulter has one or more client accounts and one or more other accounts with the Clearing House, the process set out in rule 8 shall, subject to rule 10(c) and rule 27, be separately completed in respect of the two kinds of account and the sums finally payable shall be separately certified under rule 9.
- (c) Where the defaulter has one or more U.S. Customer Accounts, one or more client accounts which are not U.S. Customer Accounts and one or more other accounts with the Clearing House, the process set out in rule 8 shall, subject to rule 27, be separately completed in respect of the three kinds of accounts and the sums finally payable shall be separately certified under rule 9.

~~(e)~~ (d) In rule 8(c) "the defaulter's account" means –

- (i) with regard to a net sum produced by reference to Contracts registered in one or more client accounts of the defaulter which are not U.S. Customer Accounts, that client account or those client accounts combined, together with such part of an account relating to the defaulter's Contribution under the Default Fund Rules as is to be treated as standing to the credit of such a client account ~~as provided for by rule 27; and~~ as provided for by rule 27;

(ii) with regard to a net sum produced by reference to Contracts registered in one or more U.S. Customer Accounts of the defaulter, that U.S. Customer Account or those U.S. Customer Accounts combined, together with such part of an account relating to the defaulter's Contribution under the Default Fund Rules as is to be treated as standing to the credit of such a U.S. Customer Account as provided for by rule 27; and

~~(ii)~~ (iii) subject to rule 27, with regard to a net sum produced by reference to Contracts registered in one or more accounts of the defaulter which are not client accounts, that account or those accounts combined.