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Partner

CDSClear

LCH SA
FCM/BD CDS Clearing Regulations

~~03 August 2021~~ [●]

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FCM/BD CDS CLEARING REGULATIONS

Scope

FCM/BD Clearing Members are bound by these FCM/BD CDS Clearing Regulations and the remainder of the CDS Clearing Documentation applicable to FCM/BD Clearing Members, in connection with the clearing of FCM/BD Cleared Transactions by FCM/BD Clearing Members through LCH SA. These FCM/BD CDS Clearing Regulations do **not** govern any other clearing services provided by LCH SA (including, without limitation, the clearing of CCM Cleared Transactions in respect of the CDS Clearing Service) which are governed by a separate set of rules.

Any FCM/BD CDS Clearing Regulation or group of FCM/BD CDS Clearing Regulations expressly stated not to apply to a category, or categories, of FCM/BD Cleared Transactions shall not apply to such category, or categories, of FCM/BD Cleared Transactions.

LCH Cleared Swaps Client Segregated Depository Account

- Means the omnibus account (which will consist of one or more accounts at one or more Permitted Depositories which are commingled for purposes of the applicable provisions of the CEA and CFTC Regulations) maintained by LCH SA for the benefit of Cleared Swaps Customers of its FCM/BD Clearing Members with a Permitted Depository, which is segregated in accordance with the CEA and CFTC Regulations, is part of the cleared swaps derivatives account class under Part 190 of the CFTC Regulations and contains the Collateral deposited by such FCM/BD Clearing Members on behalf of their Cleared Swaps Customers ~~(other than, for the avoidance of doubt, Collateral provided to satisfy the Contribution Requirement of such FCM/BD Clearing Members)~~ in connection with FCM/BD Cleared Transactions that are Cleared Swaps (and, where relevant, FCM/BD Portfolio Margining Transactions) cleared for such Cleared Swaps Customers by such FCM/BD Clearing Members. ~~(but does not, for the avoidance of doubt, include any Collateral provided to satisfy the Contribution Requirement of such FCM/BD Clearing Members).~~

LCH Proprietary Depository Account

- Means the account (which may consist of one or more accounts) with a depository designated for such purpose by LCH SA which contains Collateral deposited by an FCM/BD Clearing Member for its own account and the account of its Affiliates (but never accounts of its FCM/BD Clients).

LCH SBS Client Segregated Depository Account

- Means an omnibus account (which will consist of one or more accounts at one or more Banks which are commingled for purposes of the applicable provisions of the Exchange Act and SEC Regulations) maintained by ~~an FCM/BD Clearing Member~~ LCH SA for ~~the benefit of its~~ SBS Customers of its FCM/BD Clearing Members with a Bank, which is segregated in accordance with the Exchange Act and SEC Regulations and contains Collateral deposited by such FCM/BD Clearing Members on behalf of their SBS Customers in connection with FCM/BD Cleared Transactions that are SBS cleared for such SBS Customers by such FCM/BD Clearing Members, ~~excluding any SBS (such as SBS held in the FCM/BD Swaps Client Account Structure) that are permitted to be held in an account with Cleared Swaps as defined in CFTC Regulation 22.1 under Applicable Law~~ FCM/BD Portfolio Margining Transactions.

Permitted Depository

Means "Permitted Depository" as such term is defined in CFTC Regulations 22.1 and 22.4.

Portfolio Margining Program

Has the meaning ascribed to it in FCM/BD CDS Clearing Regulation 7(a).

Proprietary Account

- Means, as the context requires, the House Trade Account of an FCM/BD Clearing Member or an FCM/BD House Collateral Account to which FCM/BD Cleared Transactions made by the FCM/BD Clearing Member for its own account or accounts of its Affiliates (but never accounts of its FCM/BD Clients) are registered and to which monies in respect of such FCM/BD Cleared Transactions are credited.

SEC Portfolio Margining Order

Means Exchange Act Release 34-93501 (Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With the Portfolio Margining of Cleared Swaps and Security-Based Swaps That Are Credit Default Swaps, 86 Fed. Reg. 61357 (November 5, 2021)).

SIPA

Means the U.S. Securities Investor Protection Act of 1970, as amended.

Regulation 1 Governing Law and Jurisdiction

- (a) These FCM/BD CDS Clearing Regulations shall be governed by and construed in accordance with the laws of the State of New York, without regard to any conflicts of laws principles, and the laws of the United States of America, including the CEA, Exchange Act, and applicable bankruptcy and insolvency laws.

- (b) All Disputes arising under these FCM/BD CDS Clearing Regulations and the Procedures shall be referred to and resolved in accordance with the CDS Dispute Resolution Protocol.

- (c) Notwithstanding any other provision of the CDS Clearing Rules, with respect to any FCM/BD Cleared Transaction involving an FCM/BD Client cleared by an FCM/BD Clearing Member, such FCM/BD Clearing Member shall act solely as agent of its FCM/BD Client in connection with the clearing of such FCM/BD Cleared Transaction, provided that such FCM/BD Clearing Member shall remain fully liable for all obligations owed to LCH SA arising in connection with such FCM/BD Cleared Transaction.

Regulation 2 Depository Accounts

- (a) Each FCM/BD Clearing Member shall establish and maintain (i) an FCM/BD Cleared Swaps Client Segregated Depository Account on behalf of its Cleared Swaps Customers in accordance with applicable provisions of the CEA and CFTC Regulations, including but not limited to Part 1, Part 22 and Part 190 of the CFTC Regulations, and as further set forth in FCM/BD CDS Clearing Regulation 6, and (ii) where required, an FCM/BD SBS Client Segregated Depository Account on behalf of its SBS Customers in accordance with applicable provisions of the Exchange Act and SEC regulations, including but not limited to Section 3E and Section 15(c) of the Exchange Act and Rule 15c3-3 of the SEC Regulation.

The FCM/BD Cleared Swaps Client Segregated Depository Account shall be maintained with a Permitted Depository in accordance with the CEA and CFTC Regulations and the FCM/BD Clearing Member may commingle assets of all of its Cleared Swaps Customers in such Account in a single omnibus account established and maintained in accordance with CFTC Regulations. The FCM/BD Cleared Swaps Client Segregated Depository Account maintained by each FCM/BD Clearing Member shall be designated as a “Cleared Swaps Customer Account” (as that term is defined in CFTC Regulation 22.1) for purposes of Part 22 of the CFTC regulations and Section 4d(f) of the CEA.

~~The~~ if established, the FCM/BD SBS Client Segregated Depository Account shall be maintained with a Bank in accordance with the Exchange Act and SEC Regulations and the FCM/BD Clearing Member may commingle assets of all of its SBS Customers in such Account in a single omnibus account established and maintained in accordance with SEC Regulations. The FCM/BD SBS Client Segregated Depository Account maintained by each FCM/BD Clearing Member shall be designated as a “Special Reserve Bank Account for the Exclusive Benefit of the Cleared Security-Based Swap Customers” of the FCM/BD Clearing Member as provided in Exchange Act Rule 15c3-3(p).

- (b) LCH SA shall establish and maintain:
- (i) an LCH Cleared Swaps Client Segregated Depository Account on behalf of the Cleared Swaps Customers of FCM/BD Clearing Members, in accordance with applicable provisions of the CEA and CFTC Regulations, including but not limited to Part 1, Part 22 and Part 190 of such CFTC Regulations;

(ii) an LCH Proprietary Depository Account; and

~~(ii)~~ upon request, an LCH SBS Client Segregated Depository Account on behalf of the SBS Customers of FCM/BD Clearing Members, in accordance with applicable provisions of the Exchange Act and SEC Regulations, including but not limited to Section 3E and Section 15(c) of the Exchange Act and Rule 15c3-3 of the SEC Regulation; ~~and~~

(iii) an LCH Proprietary Depository Account.

- (c) The LCH Cleared Swaps Client Segregated Depository Account shall be maintained with a Permitted Depository in accordance with the CEA and CFTC Regulations and LCH SA may commingle assets of all of the Cleared Swaps Customers in such Account in a single omnibus account established and maintained in accordance with CFTC Regulations. All Collateral deposited by FCM/BD Clearing Members in connection with Cleared Swaps

~~(including, for the avoidance of doubt, any FCM/BD Portfolio Margining Transactions)~~ cleared on behalf of Cleared Swaps Customers (other than, for the avoidance of doubt, Collateral provided to satisfy the Contribution Requirement of such FCM/BD Clearing Members) shall be held in such LCH Cleared Swaps Client Segregated Depository Account. The LCH Cleared Swaps Client Segregated Depository Account shall be maintained by LCH SA separately from any and all assets of the FCM/BD Clearing Members, or any other assets that LCH SA is holding for clients (other than Cleared Swaps Customers) and shall contain no assets other than Collateral deposited by FCM/BD Clearing Members in connection with the clearing of Cleared Swaps ~~(including, for the avoidance of doubt, any FCM/BD Portfolio Margining Transactions)~~ on behalf of their Cleared Swaps Customers. The LCH Cleared Swaps Client Segregated Depository Account maintained by LCH SA shall be designated as a “Cleared Swaps Customer Account” for purposes of Part 22 of the CFTC regulations and Section 4d(f) of the CEA.

~~If established, the~~ LCH SBS Client Segregated Depository Account shall be maintained with a Bank in accordance with the Exchange Act and SEC Regulation and LCH SA may commingle assets of all of the SBS Customers in such Account in a single omnibus account established and maintained in accordance with SEC Regulations. All Collateral deposited by FCM/BD Clearing Members in connection with SBS held in the FCM/BD SBS Client Account Structure cleared on behalf of SBS Customers (other than, for the avoidance of doubt, Collateral provided to satisfy the Contribution Requirement of such FCM/BD Clearing Members) shall be held in such LCH SBS Client Segregated Depository Account. The LCH SBS Client Segregated Depository Account shall be maintained by LCH SA separately from any and all assets of the FCM/BD Clearing Members, or any other assets that LCH SA is holding for clients (other than SBS Customers) and shall contain no assets other than Collateral deposited by FCM/BD Clearing Members in connection with the clearing of SBS held in the FCM/BD SBS Client Account Structure on behalf of their SBS Customers. The LCH SBS Client Segregated Depository Account maintained by LCH SA shall be designated as a “Special Clearing Account for the Exclusive Benefit of the Cleared Security-Based Swaps Customers” of the FCM/BD Clearing Member for purposes of the Exchange Act and SEC Regulations.

Regulation 3 Collateral

- (a) FCM/BD Clearing Members may deposit securities or cash with LCH SA as Collateral in respect of FCM/BD Cleared Transactions cleared on behalf of FCM/BD Clients, in accordance with Section 4.2.3 of the CDS Clearing Rule Book and Section 3 of the Procedures. Securities or cash deposited will be subject to a security interest in accordance with Regulation 5 and held in an LCH Cleared Swaps Client Segregated Depository Account or an LCH SBS Client Segregated Depository Account, as applicable.

- (b) Security Arrangements. FCM/BD Clearing Members wishing to deposit securities or cash with LCH SA as Collateral in respect of FCM/BD Cleared Transactions cleared on behalf of FCM/BD Clients must do so under the security arrangements set out in these FCM/BD CDS Clearing Regulations.

- (c) Collateral deposited in an FCM/BD Clearing Member's LCH Proprietary Depository Account may be applied by LCH SA towards the payment of any sum whatsoever due by the FCM/BD Clearing Member to LCH SA. No Collateral deposited in an FCM/BD Clearing Member's LCH Cleared Swaps Client Segregated Depository Account or LCH SBS Client Segregated Depository Account shall be applied on or in respect of payment or satisfaction of any of the FCM/BD Clearing Member's liabilities to LCH SA as recorded in any of the FCM/BD Clearing Member's Proprietary Accounts.

Regulation 4 Transfer

- (a) If an FCM/BD Clearing Member is a Defaulting Clearing Member, any action taken by LCH SA pursuant to the CDS Clearing Rule Book (including the CDS Default Management Process appended thereto), including but not limited to the disposal by LCH SA of FCM/BD Cleared Transactions held on behalf of FCM/BD Clients of the Defaulting Clearing Member, shall be taken in compliance with the CEA and CFTC Regulations or the Exchange Act and SEC Regulation, as applicable, and applicable bankruptcy laws regarding the liquidation or transfer of Cleared Swaps carried by an FCM on behalf of its Cleared Swaps Customers or SBS carried by a BD on behalf of its SBS Customers. LCH SA shall have no responsibility or liability whatsoever for any action taken or not taken with respect to the accounts and FCM/BD Cleared Transactions of FCM/BD Clients of the Defaulting Clearing Member in accordance with such laws or regulations or the directions of any Regulatory Body or bankruptcy trustee.
- (b) If and to the extent any transfer by an FCM/BD Clearing Member of open contracts between its Proprietary Account and accounts of its FCM/BD Clients, and vice versa, upon an FCM/BD Client default, is permitted pursuant to the CDS Clearing Rule Book (including the CDS Default Management Process appended thereto) and the Procedures, such transfer shall be made subject to applicable provisions of the CEA and CFTC Regulations or the Exchange Act and SEC Regulations, as applicable, regarding segregation of assets.

Regulation 5 Security Interest

Each FCM/BD Clearing Member hereby grants LCH SA a first security interest in and a first priority and unencumbered first lien upon any and all cash, securities, receivables, rights and intangibles and any other Collateral or assets deposited with or transferred to LCH SA, or otherwise held by LCH SA (including without limitation all property deposited in an LCH Proprietary Depository Account and in an LCH Cleared Swaps Client Segregated Depository Account and an LCH SBS Client Segregated Depository Account, or any amounts owing to an FCM/BD Clearing Member as recorded in a Proprietary Account), including all substitutions for and proceeds of, any such property, in connection with any FCM/BD Cleared Transaction cleared for such FCM/BD Clearing Member or on behalf of its FCM/BD Clients or Affiliates, as security for unconditional payment and satisfaction of the obligations and liabilities of the FCM/BD Clearing Member to LCH SA. The FCM/BD Clearing Member agrees to take any and all actions, including but not limited to the execution of any and all documents, requested by LCH SA in order to perfect, maintain or enforce the security interest granted to LCH SA hereunder. LCH SA may exercise any and all rights available to it with respect to the security interest granted hereunder, in accordance with the FCM/BD CDS Clearing Regulations and applicable laws. Notwithstanding the foregoing, in no event shall LCH SA's security interest in the Collateral in an LCH Cleared Swaps Client Segregated Depository Account or an LCH SBS Client Segregated Depository Account held on behalf of the FCM/BD Clearing Member's Clients be exercised to satisfy any obligations or liabilities of such FCM/BD Clearing Member other than in connection with obligations or liabilities relating to Cleared Swaps cleared by such FCM/BD Clearing Member on behalf of its Cleared Swaps Customers or relating to SBS cleared by such FCM/BD Clearing Member on behalf of its SBS Customers.

Regulation 6 **Rules Relating to FCM/BD Cleared Swaps Client Segregated Accounts**

- (a) Notice of Deficiency in FCM/BD Cleared Swaps Client Segregated Depository Account.
Whenever an FCM/BD Clearing Member knows or should know that the aggregate amount of funds on deposit in its FCM/BD Cleared Swaps Client Segregated Depository Account is less than the total amount of such funds required by the CEA, CFTC Regulations and/or the CDS Clearing Rule Book to be on deposit, the FCM/BD Clearing Member must report such deficiency immediately by telephone notice, confirmed immediately in writing by e-mail notice, to the LCH SA file notice with the CFTC in accordance with CFTC Regulation 1.12, and, if the FCM/BD Clearing Member is a BD, to the Securities and Exchange Commission, in accordance with 17 C.F.R. § 240.17a-11.
- (b) Segregation of Funds.
- (i) With respect to FCM/BD Client funds deposited in connection with Cleared Swaps:
- (A) all such funds shall be separately accounted for and segregated as belonging to Cleared Swaps Customers by the FCM/BD Clearing Member and, in the event of an FCM/BD Clearing Member's bankruptcy administered under the US bankruptcy laws, are intended to be part of a separate account class, treated as a Cleared Swaps Account Class;
- (B) all such funds must be held by the applicable FCM/BD Clearing Member or deposited with a Permitted Depository, and such funds shall be deposited under an account name which complies with the requirements of CFTC Regulation 22.6 and shows that they are segregated as required by the CDS Clearing Rule Book and Part 22 of the CFTC Regulations; and
- (C) each FCM/BD Clearing Member shall obtain and retain in its files for the period provided in CFTC Regulation 1.31 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 such funds deposited in the FCM/BD Cleared Swaps Client Segregated Depository Account maintained by such Permitted Depository for the FCM/BD Clearing Member are those of Cleared Swaps Customers and are being held in accordance with the provisions of the CEA, CFTC Regulations and the CDS Clearing Rule Book.

For the avoidance of doubt, the FCM/BD Cleared Swaps Client Segregated Depository Account maintained by an FCM/BD 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/BD Regulation 6, regardless of the location of any such account. Without limitation of the foregoing, under no circumstances shall any portion of Cleared Swaps Customers funds held in FCM/BD Cleared Swaps Client Segregated Depository Accounts be obligated to LCH SA, an FCM/BD Clearing Member, any Permitted Depository, or any other person except to purchase, margin, guarantee, secure,

transfer, adjust or settle trades, contracts or transactions of Cleared Swaps Customers. No person, including LCH SA or any Permitted Depository, that has received Cleared Swaps Customers funds for deposit in an FCM/BD Cleared Swaps Client Segregated Depository Account, as provided in this rule, may hold, dispose of, or use any such funds as belonging to any person other than the Cleared Swaps Customers of the FCM/BD Clearing Member which deposited such funds.

- (ii) All Cleared Swaps Customer funds received by LCH SA from an FCM/BD Clearing Member to purchase, margin guarantee, secure or settle Cleared Swaps cleared on behalf of Cleared Swaps Customers and all money accruing to such Cleared Swaps Customers as the result of trades, contracts or transactions so carried shall be separately accounted for and segregated as belonging to such Cleared Swaps Customers, and LCH SA shall not hold, use or dispose of such Cleared Swaps Customer funds except as belonging to such Cleared Swaps Customers. Such Cleared Swaps Customer funds, when deposited in a Permitted Depository, shall be deposited under an account name which complies with the requirements of CFTC Regulation 22.6 and shows that they are segregated as required by the CEA and the CFTC Regulations. LCH SA shall obtain and retain in its files for the period provided by CFTC Regulation 1.31, an acknowledgment from such Permitted Depository that it was informed that the funds deposited in any LCH Cleared Swaps Client Segregated Depository Accounts maintained by LCH SA are those of Cleared Swaps Customers of FCM/BD Clearing Members and are being held in accordance with the provisions of the CEA, CFTC Regulations and the CDS Clearing Rule Book.
- (iii) Each FCM/BD Clearing Member shall treat and deal with Cleared Swaps Customer funds as belonging to such Cleared Swaps Customers. All Cleared Swaps Customer funds shall be separately accounted for, and shall not be commingled with the money, securities or property of an FCM/BD 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 Cleared Swaps Customer funds of an FCM/BD Clearing Member may for convenience be physically commingled (although separately accounted for in accordance with the CDS Clearing Rule Book and these FCM/BD CDS Clearing Regulations), subject to and in accordance with the CEA, the CFTC Regulations and the CDS Clearing Rule Book; provided, further, that Cleared Swaps Customer funds may be invested in accordance with FCM/BD CDS Clearing Regulation 6(g).
- (iv) In accordance with CFTC Regulation 22.15 (and subject to CFTC Regulation 22.3(d)), LCH SA shall treat the value of all Collateral received on behalf of each Cleared Swaps Customer in connection with Cleared Swaps as belonging to each such individual Cleared Swaps Customer, and such amount shall be credited to such Cleared Swaps Customer's applicable FCM/BD Swaps Client Financial Account as provided in the CDS Clearing Rule Book and Procedures, and shall not be used to margin, guarantee, or secure the FCM/BD Cleared Transactions or other obligations of the applicable FCM/BD Clearing Member, other Cleared Swaps Customers or any other person, except as permitted under the CDS Clearing Rule Book (and not prohibited by the CEA or CFTC Regulations) or as permitted under Part 22 of the CFTC Regulations.

- (c) Care of Money and Securities Accruing to Cleared Swaps Customers. All money received directly or indirectly by, and all money and securities accruing to, an FCM/BD Clearing Member from LCH SA or from any FCM/BD Clearing Member or from any other person incident to or resulting from any Cleared Swaps made by or through such FCM/BD Clearing Member on behalf of any Cleared Swaps Customer shall be considered as accruing to such Cleared Swaps Customer within the meaning of the CDS Clearing Rule Book. Such money and securities shall be treated and dealt with as belonging to such Cleared Swaps Customer in accordance with the provisions of the CEA, CFTC Regulations and the CDS Clearing Rule Book. The value of money and securities accruing in connection with Cleared Swaps cleared on behalf of Cleared Swaps Customers shall be separately recorded in the relevant FCM/BD Swaps Client Financial Account of each Cleared Swaps Customer.
- (d) Use of Cleared Swaps Customer Funds Restricted. No FCM/BD Clearing Member shall use, or permit the use of, Cleared Swaps Customer 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 Cleared Swaps Customers. Cleared Swaps Customer funds shall not be used to carry trades or positions of the same Cleared Swaps Customer other than in connection with Cleared Swaps cleared through the facilities of a derivatives clearing organization that has established rules or bylaws which require Cleared Swaps, along with the money, securities and/or other property margining, guaranteeing or securing such derivatives, to be held in a separate account.
- (e) Interest of FCM/BD Clearing Members in Cleared Swaps Customer Funds; Additions and Withdrawals. FCM/BD CDS Clearing Regulation 6(b), which prohibits the commingling of Cleared Swaps Customer funds with the funds of an FCM/BD Clearing Member, shall not be construed to prevent an FCM/BD Clearing Member from having a residual financial interest in Cleared Swaps Customer funds, segregated as required by the CEA, CFTC Regulations and the CDS Clearing Rule Book and set apart for the benefit of Cleared Swaps Customers; nor shall such provisions be construed to prevent an FCM/BD Clearing Member from adding to the segregated Cleared Swaps Customer funds such amount or amounts of money, from its own funds or unencumbered securities from its own inventory, of the type permitted under FCM/BD CDS Clearing Regulation 6(g), as it may deem necessary to ensure that its FCM/BD Cleared Swaps Client Segregated Depository Account holds at all times, at a minimum, an aggregate amount equal to the amount required by the CEA, CFTC Regulations and the CDS Clearing Rule Book. The books and records of an FCM/BD Clearing Member shall at all times accurately reflect its interest in the segregated Cleared Swaps Customer funds. An FCM/BD Clearing Member may draw upon such Cleared Swaps Customer funds to its own order, to the extent of its actual interest therein, including the withdrawal of securities held FCM/BD Cleared Swaps Client Segregated Depository Accounts held by LCH SA or a Permitted Depository, provided that any such withdrawals do not result in any such account holding less in segregated Cleared Swaps Customer assets than such account is required to contain at such time. Such withdrawal shall not result in Cleared Swaps Customer funds being used to purchase, margin or carry the trades, contracts or transactions, or extend the credit of any other Cleared Swaps Customer or other person. For the purposes of this last sentence, references to "Cleared Swaps Customer" shall include all Cleared Swaps Customers for the same beneficial owner, unless the FCM/BD Clearing Member has written internal controls and procedures that require it to, and it in fact does, comply with all of the conditions set out in CFTC Letter No. 19-17 of July 10, 2019.

- (f) Assets Not Permitted to be Held in FCM/BD Cleared Swaps Client Segregated Depository Accounts. Money held in FCM/BD Cleared Swaps Client Segregated Depository Accounts by an FCM/BD 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 Cleared Swaps of the Cleared Swaps Customers of such FCM/BD Clearing Member.
- (g) Investments of Cleared Swaps Customer Funds. An FCM/BD Clearing Member or LCH SA may invest Cleared Swaps Customer 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 Regulation 22.2(e)(1) thereunder relating to transactions in Cleared Swaps.
- (h) Deposit of Instruments Purchased with Cleared Swaps Customer Funds.
- (i) Each FCM/BD Clearing Member that invests Cleared Swaps Customer funds in instruments permitted under FCM/BD CDS Clearing Regulation 6(g) shall separately account for such instruments and segregate such instruments as belonging to such Cleared Swaps Customers to the extent required under the CEA and CFTC Regulations. Such instruments, when deposited with LCH SA or a Permitted Depository, shall be deposited under an account name which clearly shows that they belong to Cleared Swaps Customers and are segregated as required by the CEA, CFTC Regulations and the CDS Clearing Rule Book. Upon opening any such account, an FCM/BD Clearing Member shall obtain and retain in its files an acknowledgment from such Permitted Depository that it was informed that the instruments belong to Cleared Swaps Customers 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 Permitted Depository shall allow inspection of the records of such assets at any reasonable time by representatives of LCH SA.
- (ii) When it invests money belonging or accruing to Cleared Swaps Customers of its FCM/BD Clearing Members in instruments permitted under FCM/BD CDS Clearing Regulation 6(g), LCH SA shall separately account for such instruments and segregate such instruments as belonging to such Cleared Swaps Customers (provided that any such instruments may be held in commingled accounts, on behalf of all Cleared Swaps Customers of all FCM/BD Clearing Members, at one or more Permitted Depositories). Such instruments, when deposited with a Permitted Depository, shall be deposited under an account name which will clearly show that they belong to Cleared Swaps Customers and are segregated as required by the CEA, CFTC Regulations and the CDS Clearing Rule Book. Upon opening any such account, LCH SA shall obtain and retain in its files a written acknowledgment from such bank or trust company that it was informed that the instruments belong to Cleared Swaps Customers of FCM/BD 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 Permitted Depository shall allow inspection of such instruments at any reasonable time by representatives of LCH SA.

- (i) Record of Investments.
- (i) Each FCM/BD Clearing Member that invests Cleared Swaps Customer funds shall keep a record showing the following:
- (A) The date on which such investments were made;
 - (B) The name of the person through whom such investments were made;
 - (C) The amount of money or current market value of securities so invested;
 - (D) A description of the instruments in which such investments were made, including the CUSIP or ISIN numbers;
 - (E) The identity of the depositories or other places where such instruments are held;
 - (F) The date on which such investments were liquidated or otherwise disposed of and the amount of money or current market value of securities received of such disposition, if any;
 - (G) The name of the person to or through whom such investments were disposed of; and
 - (H) Daily valuation for each instrument and readily available documentation supporting the daily valuation for each instrument. Such supporting documentation must be sufficient to enable auditors to verify the valuations and the accuracy of any information from external sources used in those valuations.
- (ii) When LCH SA receives documents from its FCM/BD Clearing Members representing or evidencing investment of Cleared Swaps Customer funds, LCH SA shall keep a record showing separately for each FCM/BD Clearing Member the following:
- (A) The date on which such documents were received from the FCM/BD Clearing Member;
 - (B) A description of such documents, including the CUSIP or ISIN numbers; and
 - (C) The date on which such documents were returned to the FCM/BD Clearing Member or the details of disposition by other means.
- (iii) Such records shall be retained in accordance with CFTC Regulation 1.31. No such investments shall be made except in instruments permitted under FCM/BD CDS Clearing Regulation 6(g).
- (j) Valuation of Instruments Purchased with Cleared Swaps Customer Funds. FCM/BD Clearing Members that invest Cleared Swaps Customer funds in instruments permitted under FCM/BD CDS Clearing Regulation 6(g) shall include such instruments in their FCM/BD

Cleared Swaps Client Segregated Depository Account records and reports at values which at no time exceed their then current market value, determined as of the close of the market on the date for which such computation is made.

- (k) Increment or Interest Resulting from Investment of Cleared Swaps Customer Funds. The investment of Cleared Swaps Customer funds in instruments permitted under FCM/BD CDS Clearing Regulation 6(g) shall not prevent the FCM/BD Clearing Member or LCH SA so investing such funds from receiving and retaining as its own any increment or interest resulting therefrom.
- (l) FCM/BD Cleared Swaps Client Segregated Depository Accounts; Daily Computation and Record.
- (i) Each FCM/BD Clearing Member must compute as of the close of the previous Business Day:
 - (A) the aggregate amount of Cleared Swaps Customer funds on deposit in its FCM/BD Cleared Swaps Client Segregated Depository Account on behalf of Cleared Swaps Customers;
 - (B) the amount of such Cleared Swaps Customer funds required by the CEA, CFTC Regulations and the CDS Clearing Rule Book to be on deposit in its FCM/BD Cleared Swaps Client Segregated Depository Account on behalf of such Cleared Swaps Customers, including the amount attributable to each individual Cleared Swaps Customer; and
 - (C) the amount of the FCM/BD Clearing Member's residual interest in such Cleared Swaps Customer funds.
 - (ii) In computing the aggregate amount of funds required to be in its FCM/BD Cleared Swaps Client Segregated Depository Account, an FCM/BD Clearing Member may offset any net deficit in a particular Cleared Swaps Customer'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/BD Clearing Member must maintain a security interest in the securities, including a written authorization to liquidate the securities at the FCM/BD Clearing Member's discretion, and must segregate the securities in a safekeeping account with LCH SA or a Permitted Depository. For purposes of this FCM/BD CDS Clearing Regulation 6(l), 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/BD CDS Clearing Regulation 6(l) must be completed by the FCM/BD 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/BD Clearing Member shall maintain, as provided in CFTC Regulation 1.31, a record of all securities and property received from Cleared Swaps Customers in lieu of money to purchase, margin, guarantee or settle the Cleared Swaps cleared on behalf of such Cleared Swaps Customers. Such record shall show separately for each Cleared Swaps Customer: a description of the securities or property received; the name and address of such Cleared Swaps Customer; the dates when the securities or property were received; the identity of the Permitted Depositories or other places where such securities or property are segregated; the dates of deposits and withdrawals from such Permitted Depositories; and the dates of return of such securities or property to such Cleared Swaps Customer, or other disposition thereof, together with the facts and circumstances of such other disposition.
- (n) Change in Law or Regulations. LCH SA shall enforce the rules set forth in this FCM/BD CDS Clearing Regulation 6 (and set forth in these FCM/BD CDS Clearing 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 CDS Clearing Rule Book, the CFTC Regulations (to the extent compliance therewith has become mandatory) and Applicable Law will prevail, the provisions of the CDS Clearing Rule Book shall be deemed to be modified accordingly and LCH SA will enforce these FCM/BD CDS Clearing Regulations in accordance with CFTC Regulations and applicable law.

Regulation 7 Portfolio Margining Program

- (a) In General. LCH SA is authorized, pursuant to the SEC Portfolio Margining Order and the CFTC Portfolio Margining Order, to offer FCM/BD Clearing Members, on behalf of their FCM/BD Clients, the ability to portfolio margin FCM/BD Cleared Transactions that are SBS with FCM/BD Cleared Transactions that are Cleared Swaps, as more fully set out in this FCM/BD CDS Clearing Regulation 7 (“Portfolio Margining Program”).
- (b) Participation.
- (i) An FCM/BD Clearing Member may participate in the Portfolio Margining Program on behalf of its FCM/BD Client(s), by providing such materials reasonably required by LCH SA for such purpose from time to time, including information in respect of its FCM/BD Client(s).
- (ii) In providing the materials referred to in (i), an FCM/BD Clearing Member shall be deemed to represent to LCH SA:
- (A) it is both an FCM and a BD and neither such status has been revoked;
- (B) it is in compliance with the applicable requirements of the SEC Portfolio Margining Order and the CFTC Portfolio Margining Order; and
- (C) each relevant FCM/BD Client is an “eligible contract participant” as defined in Section 1a(18) of the CEA.
- (iii) Where LCH SA has determined that an FCM/BD Clearing Member may participate in the Portfolio Margining Program on behalf of its FCM Client(s), it shall also communicate the date on which such participation shall begin (the “Portfolio Margining Start Date”).
- (c) Operation. Following the relevant Portfolio Margining Start Date:
- (i) all FCM/BD Cleared Transactions that are SBS for the relevant FCM/BD Client shall be treated as FCM/BD Portfolio Margining Transactions and shall be held (along with any associated Collateral) in the FCM/BD Swaps Client Account Structure on a commingled basis with FCM/BD Cleared Transactions that are Cleared Swaps for such FCM/BD Client;
- (ii) such FCM/BD Portfolio Margining Transactions shall constitute “Cleared Swaps” for purposes of the CDS Clearing Rules and the resulting combined positions shall be margined on a portfolio basis in respect of the relevant FCM/BD Client; and
- (iii) the relevant FCM/BD Client shall be deemed to acknowledge and agree that any property used to margin, guarantee or secure the FCM/BD Portfolio Margining Transactions shall not receive customer protection treatment under the Exchange Act or SIPA and will instead receive customer protection

treatment under the commodity broker liquidation provisions of the Code and the rules and regulations promulgated thereunder.