

Via CFTC Portal

30 May 2023

**Mr Christopher J. Kirkpatrick**  
**Office of the Secretariat**  
**Commodity Futures Trading Commission**  
**Three Lafayette Centre**  
**1155 21<sup>st</sup> Street NW**  
**Washington, DC 20581**

**Re:** Proposed amendments to LCH SA CDS Clearing Rules – Triparty Collateral mechanism

Dear Mr. Kirkpatrick,

Pursuant to CFTC regulation §40.6(a), LCH SA (“**LCH SA**”), a derivatives clearing organization (“**DCO**”) registered with the Commodity Futures Trading Commission (the “**CFTC**”), is submitting for self-certification the proposed amendments to its (i) CDS Clearing Rule Book (“**Rule Book**”) and (ii) CDS Clearing Procedures (“**Procedures**”) to incorporate new terms and to make conforming, clarifying and clean-up changes to offer the triparty collateral solution to CDSClear clearing members (the “**Proposed Rule Change**”).<sup>1</sup>

The implementation of the Proposed Rule Change will be contingent on LCH SA’s receipt of all necessary regulatory approvals. The Proposed Rule Change is expected to be effective from mid-June, 2023 however, in no event, will either be implemented earlier than 10 business days after the proposed changes are filed with the CFTC.

The text of the Proposed Rule Change is attached hereto as Appendix.

**Part I: Explanation and Analysis**

In addition to the current currencies and securities that are eligible as Collateral to be posted on a bilateral basis, LCH SA is proposing to offer the triparty collateral solution to the clearing members of the CDSClear service (the “**Clearing Members**”).<sup>2</sup> Clearing Members have expressed interest in using this solution in respect of the CDSClear service as well so as to enable them to harmonize their

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meaning specified in LCH SA’s existing CDS Clearing Rule Book or Clearing Supplement.

<sup>2</sup> LCH SA already offers a tri-party collateral solution to members of its non-U.S. business lines. Indeed, when this triparty solution was launched for the LCH SA RepoClear and EquityClear & CommodityClear services, the CDSClear roadmap was busy with other initiatives such that it was decided to postpone the inclusion of CDSClear in the scope of services for which Clearing Members could use the triparty solution.

operational process across all clearing services of LCH SA and benefit from flexibility in their collateral management framework as well as the ability to transfer securities as collateral in a more efficient and automated way than on a bilateral basis. Pursuant to this triparty collateral solution, LCH SA and a Clearing Member may appoint Euroclear Bank and/or Euroclear France as a triparty agent and authorize such triparty agent to enter settlement instructions on their behalf into the securities settlement system to affect movements of securities between a giver account and a taker account opened with the relevant triparty agent on a full title transfer basis for the purposes of transferring Collateral to LCH SA or releasing such Collateral. The triparty collateral solution is an additional way of transferring Collateral to LCH SA by a Clearing Member which is under no obligation to use this solution. . Further, LCH SA is not proposing to change rules governing the composition of collateral that LCH SA accepts from its clearing members. LCH SA is not changing collateral eligibility or concentration limits, but rather, is merely providing for a different process for posting acceptable collateral.

## **Part II: Description of Rule Changes**

The Rule Book and Section 3 of the Procedures are proposed to be amended to offer this triparty collateral solution.

### **1. Rule Book**

LCH SA is proposing to modify Section 1.1.1 (Terms defined in the CDS Clearing Rule Book) to incorporate the defined term of "Triparty Documentation" to refer to the documentation entered into between LCH SA, the relevant triparty agent and a Clearing Member having exercised its option to transfer Eligible Collateral on a full title transfer basis to LCH SA through a triparty arrangement pursuant to Section 3 of the Procedures.

As a clarification regarding the collateral eligible to Triparty, it is a subset of the LCH SA list of eligible collateral, restricted to bonds that can settle in the Euroclear CSDs (i.e., does not include US Treasuries, UK Gilts, Non-Euro Non-Cash debts and Equities), are interoperable between Euroclear Bank and Euroclear France, and are eligible to 3G pool. A new indent (xxiv) is proposed to be added to Article 2.2.1.1 in order to provide for a new membership requirement pursuant to which the Applicant shall accept to comply with the performance of its obligations pursuant to a Triparty Documentation. As a consequence, the following indents would be renumbered.

Article 2.2.2.1 is also proposed to be amended to add the obligation to comply with the performance of the obligations pursuant to a Triparty Documentation in a new indent (vii) as a continuing obligation for a Clearing Member. Consequently, the following indents would need to be renumbered.

Since the Triparty Documentation will provide for the haircut that will apply to the relevant Eligible Collateral, a reference to the Triparty Documentation is proposed to be added in Article 4.2.6.4 which currently provides, among others, that LCH SA may apply haircuts to Eligible Collateral as set out on the Website.

The failure of a Clearing Member to perform its obligations in accordance with, or a breach of, any Triparty Documentation is proposed to be added to the list of Events provided for in Article 4.3.1.1, as an Event that might constitute an Event of Default in respect of a Clearing Member, as this is currently the case in respect of the CDS Clearing Documentation and the Pledge Agreement.

The Rule Book would be also amended to make the following conforming changes that are not related to the implementation of the triparty collateral solution for the CDS Clear service. The definition of “Pledged Eligible Collateral” in Section 1.1.1 (Terms defined in the CDS Clearing Rule Book) is proposed to be amended by removing a reference to a Clearing Notice since the list of Eligible Currencies and Eligible Collateral is set out in Section 3 of the Procedures in accordance with Article 4.2.6.1 and the proposed amended Section 3 of the Procedures would provide where the list of Eligible Collateral (including Pledged Eligible Collateral) could be found.

Article 2.2.2.1 would be amended to correct a cross-reference in indent (iv).

Finally, Article 4.2.6.1 is proposed to be amended by making a reference to Section 3 of the Procedures in respect of the conditions that will govern the notification of any change in Eligible Currencies and Eligible Collateral.

## **2. Procedures**

LCH SA also proposes to modify Section 3 of the Procedures to incorporate terms for implementing this triparty collateral solution.

Section 3.10 (Eligible Collateral transferred with full title) is proposed to be amended to include securities transferred pursuant to a triparty arrangement by adding a new paragraph 3.10.2 (Eligible Collateral provided pursuant to a triparty arrangement) and a new introductory paragraph.

Consequently, the current Section 3.10 will be moved under a paragraph 3.10.1 entitled “Eligible Collateral provided on a bilateral basis” and any reference to Eligible Collateral provided with full title transfer in this new paragraph 3.10.1 will be clarified by adding that such Eligible Collateral is provided on a bilateral basis. Any cross-reference to Section 3.10 in Section 3 of the Procedures is proposed to be replaced by a cross-reference to paragraph 3.10.1 where necessary.

As a result of the new paragraph 3.10.2, a cross-reference to this new paragraph, indent (d) in each section referring to the return of any type of Collateral in indent (f) of Section 3.7 (Euro denominated Cash Collateral), indent (f) of Section 3.8 (Non-Euro denominated Cash Collateral), indent (c) of Section 3.9 (Eligible Collateral), indent (b) of paragraph 3.10.1 (Eligible Collateral provided on a bilateral basis) and indent (a) of Section 3.15 (Eligible Collateral transfer pursuant to the Pledge Agreement).

New sub-paragraph 3.10.2, as further described in the next paragraph, will mainly replicate sub-paragraph 3.10.1 subject to the necessary amendments to be made to refer to the triparty arrangements. Such amendments would include the requirement for a Clearing Member to enter into the triparty documentation as set out in a new sub-paragraph (a) and the reference to triparty accounts to be used by LCH SA. However, there will be some differences in the timelines applicable to the Clearing Member for the purposes of transferring, or requesting return of, securities subject to the triparty arrangements, as described below, and mainly due to the use of a triparty agent for managing their Collateral posted with LCH SA. In new paragraph 3.10.2 (Eligible Collateral provided pursuant to a triparty arrangement), it is proposed to add a new sub-paragraph (a) (General information) pursuant to which the Clearing Member, a triparty agent which is either Euroclear Bank or Euroclear France and LCH SA may enter into the relevant triparty documentation available upon request to the CDS Clear Business

Development & Relationship Management team. Under the Triparty Documentation, the relevant triparty agent will be authorised by LCH SA and the Clearing Member to enter settlement instructions on their behalf into the relevant securities settlement system to transfer with full title securities as Eligible Collateral between LCH SA and the Clearing Member. Pursuant to the following sub-paragraph (b) (Securities accounts), LCH SA will hold such Collateral in a security account in each Euroclear Bank and Euroclear France for the Clearing member's house activity and in a security account in each Euroclear Bank and Euroclear France for the Clearing member's client activity (excluding any FCM Clients since the provision of securities pursuant to this triparty collateral solution will not be permitted for FCM Clients pursuant to new sub-paragraph (c) of new paragraph 3.1.0.2, indent (ii)). LCH SA may invest Eligible Collateral provided to LCH SA with full title pursuant to a triparty arrangement in accordance with Paragraph 3.11(b). Pursuant to a new sub-paragraph (c) included in new paragraph 3.10.2, the provisions on the transfer of Eligible Collateral pursuant to a triparty arrangement will be described; the purpose of such transfer is either for transferring additional Collateral or substituting such Collateral for any alternative Collateral recorded in its Collateral Accounts. The Clearing Member will need to notify LCH SA of its request to transfer such Eligible Collateral pursuant to a triparty arrangement by no later than 16:00 CET on a Business Day ("Day minus one") in order for the Clearing Member's request to be processed on the next following Business Day ("Day") and to enable the transfer to occur on Day in respect of the relevant Collateral Account. It is also specified that the Clearing Member shall notify to LCH SA which CCM Client Collateral Account shall record Eligible Collateral provided pursuant to a triparty arrangement, otherwise such request will not be accepted by LCH SA. The relevant instructions must be submitted, via Euroclear Bank or Euroclear France, as applicable, on Day minus one. Depending on the time when LCH SA receives the confirmation of settlement from Euroclear Bank or Euroclear France on Day, such Eligible Collateral provided pursuant to a triparty arrangement will form part of the relevant Margin Balance. The following paragraph (d) will deal with the applicable conditions for returning such Eligible Collateral. Such return will be subject to the notification of the Clearing Member's request to LCH SA by the Clearing Member by no later than 12:00 CET on a Business Day ("Day") in order for the Clearing Member's request to be processed on Day and to allow LCH SA to give instructions to make the transfer to occur on Day during the Additional Specific Collateral Slot. Any request received by LCH SA pursuant to this process shall be deemed firm and irrevocable. On Day, following the First Intraday Slot and, in any event, by 12:00 CET at the latest, LCH SA will re-calculate the value of the Eligible Collateral to be returned (the "Eligible Triparty Collateral Value"). If LCH SA holds sufficient Collateral (other than that which is to be returned) to cover the relevant Margin Requirement, it will return the Eligible Collateral. If LCH SA does not hold sufficient Collateral (other than that which is to be returned) to cover the relevant Margin Requirement, LCH SA will debit an amount of Euro-denominated Cash Collateral equal to the Eligible Triparty Collateral Value from the relevant TARGET2 Account(s) of the Clearing Member (or the relevant cash accounts of its TARGET2 Payment Agent) during the Additional Specific Collateral Slot. Provided an amount of Euro-denominated Cash Collateral equal to the Eligible Triparty Collateral Value is received by LCH SA, LCH SA will process the return of the Eligible Collateral to the Clearing Member, otherwise the Clearing Member's return request will be deemed void and no return will be processed. LCH SA's inability to debit Euro-denominated Cash Collateral equal to the Eligible Triparty Collateral Value intra-day through TARGET2 shall not constitute a Payment Failure in respect of the Clearing Member. When these conditions applicable to the Collateral's return are satisfied, the relevant instructions will be submitted via Euroclear Bank or Euroclear France, as applicable, on Day between 13:00 and 15:00 CET, in advance of the relevant Central Securities Depository/International Central Securities Depository cut-off time (except in exceptional circumstances, as determined in an objective and commercially reasonable manner). Last paragraph of

new paragraph 3.10.2 will provide for exceptional time limits for notification of transfer and return requests in case of atypical market conditions.

Section 3.9 (Eligible Collateral) which applies to any type of securities transferred on a full title transfer basis (including both securities transferred on a bilateral basis or pursuant to a triparty arrangement) or pursuant to the pledge agreement will be amended to clarify where the information on eligible securities, applicable haircuts and concentration limits can be found: on the Website and in respect of securities transferred in accordance with the triparty collateral solution, in the Triparty Documentation as well. In addition, the amendment process in respect of such eligible securities will be clarified in Section 3 of the Procedures by adding a reference to a notification by way of a Clearing Notice (that is proposed to be removed from the Rule Book as previously described). Additional eligibility criteria and concentration limits in respect of securities provided pursuant to a triparty arrangement will be subject to the prior consent of the relevant triparty agent as provided for in a new paragraph 3.10.2 (a) of Section 3 of the Procedures. As a result, the reference to a Clearing Notice mentioned in Section 3.13 applicable to Eligible Collateral pursuant to the Pledge Agreement will be removed as there will be no Clearing Notice which describes such Eligible Collateral, all relevant information will be found on the Website.

Section 3.9 will be also amended to clarify that Eligible Collateral transferred with full title may be provided on a bilateral basis or pursuant to a triparty arrangement, where necessary. Indent (c) (Events affecting the eligibility of Eligible Collateral) is proposed to be amended to exclude securities transferred pursuant to the triparty collateral solution from the current management process applicable to Collateral Events. Such Collateral Events will be managed by the relevant triparty agent in accordance with the Triparty Documentation. Consequently, the scope of Section 3.12 is reduced to Eligible Collateral transferred with full title on a bilateral basis.

Other amendments will be made to Section 3 of the Procedures in order to correct some cross-references or typographical errors.

With the exception of the above proposed CDS Clearing Rules changes, no other change are required.

### **Part III: Core Principle Compliance**

LCH SA has reviewed the Proposed Rule Changes against the requirements of Commission' regulations and DCO Core Principles, and finds that these changes will continue to comply with all the requirements and standards therein and in particular with the following principles and Commission's regulations including, but not limited to § 39.13 and 39.27.

**DCO Core Principle D – Risk management.** CFTC Regulation 39.13 requires a DCO to ensure that it possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures. The triparty collateral mechanism is also offering an optional solution that would reduce the number of manual actions necessary in the processing of non-cash collateral deposit/release for both the clearing agency and the Clearing Members. Indeed, there is only a single instruction required from the Clearing Member (i.e. the triparty ticket amount) to allocate a basket of securities in the system with an automatic process for the settlement of margin calls and handling of coupons. This contributes to reduce the operational

risk associated with the settlement of margin call and is thus consistent with the requirements of Core Principle D and § 39.13.

**DCO Core Principle R – Legal risk considerations.** LCH SA has determined that the Proposed Rule Changes are consistent with the requirements of CFTC Regulation 39.27 to remain in good standing at all times in the relevant jurisdictions and to operate pursuant to a well-founded, transparent, and enforceable legal framework that addresses each aspect of its activities. As described above, the Proposed Rule Change will be adding (i) a new membership requirement regarding the compliance of the Clearing Member with the triparty documentation; and (ii) the failure of a Clearing Member to perform its obligations in accordance with, or a breach of, any Triparty Documentation to the list of Events that might constitute an Event of Default in respect of a Clearing Member in order to operate pursuant to a well-founded, transparent, and enforceable legal framework which is consistent with the requirements of Core Principle R and § 39.27.

**Part IV: Public Information**

LCH SA has posted a notice of pending certifications with the CFTC and a copy of the submission on LCH's website at: <https://www.lch.com/resources/rulebooks/proposed-rule-changes>

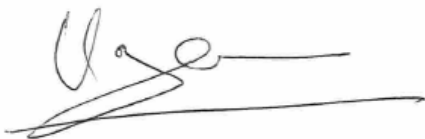
**Part V: Opposing Views**

There were no opposing views expressed to LCH SA by governing board or committee members, members of LCH SA that were not incorporated into the rule.

**Certification**

LCH SA hereby certifies to the CFTC, pursuant to the procedures set forth in the Commission regulation § 40.6, that attached changes submission complies with the Commodity Exchange Act, as amended, and the regulations promulgated there under.

Should you have any questions please contact me.



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## **APPENDIX**

Proposed Rule changes to LCH SA CDS Clearing Rules:

- CDS Clearing Rule Book
- CDS Clearing Procedures – Section 3