



Mr David A Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

14 August 2012

Dear Mr Stawick

Please find enclosed a submission to the Commodity Futures Trading Commission by LCH.Clearnet Limited under the procedure set out in 17 CFR Section 39.5 in relation to mandatory clearing determinations.

Should you have any questions regarding this submission please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to be "Jay Iyer".

Jay Iyer
CCO, LCH.Clearnet Limited

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SUBMISSION OF SWAPS FOR COMMISSION CLEARING DETERMINATION

TO THE

COMMODITY FUTURES TRADING COMMISSION

SUBMITTED BY

LCH.Clearnet Limited

an English limited company

FILING AS A REGISTERED DERIVATIVES CLEARING ORGANIZATION

Pursuant to Commission Regulation § 39.5(b)

Submission of Swaps for mandatory clearing determination

- Non deliverable foreign exchange forwards

Submitted: August 14th, 2012

**LCH.CLEARNET LIMITED SUBMISSION OF SWAPS FOR COMMISSION MANDATORY
CLEARING DETERMINATION**

LCH.Clearnet Limited ("LCH.Clearnet"), a derivatives clearing organization registered with the Commodity Futures Trading Commission (the "CFTC"), is submitting for determination by the CFTC pursuant to CFTC Regulation §39.5(b), contracts being introduced to its service for non-deliverable foreign exchange forward contracts. The analysis also covers existing NDF contracts being cleared under the rules certified on November 22, 2011. LCH.Clearnet intends to begin accepting the new contracts for clearing from August 24th, 2012, subject also to UK regulatory approval.

This application follows the pattern set out in Regulation 39.5(b)(3)(i) – (ix).

Part (i): Eligibility to clear swaps and ability to maintain compliance under a mandatory clearing determination

LCH.Clearnet submitted rule changes to introduce non-deliverable foreign exchange forward contracts ("NDFs") on November 4, 2011 and these were certified on November 22, 2011. Following a further minor amendment to the rules certified on March 16, 2012, LCH.Clearnet commenced accepting NDFs in six currency pairs on March 19, 2012. On July 19, 2012, LCH.Clearnet filed further rule changes in relation to the introduction of five additional currency pairs and these were certified on August 3.

Under CFTC Regulation 39.5(a)(1), LCH.Clearnet is eligible to clear the additional currency pairs, because they are within the same class of swaps as those it already clears.

If the CFTC were to determine that NDFs were required to be cleared, LCH.Clearnet would be able to maintain compliance with section 5b(c)(2) of the Commodities Exchange Act (Core Principles for DCOs). In particular, the ForexClear system will have a tested capacity of 400,000 live trades by end Q3 2012, relative to an estimated market size of 100,000 open trades under mandatory clearing.

Part (ii): Information that will assist the CFTC in making a determination against the five factors

- A. "The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data"

According to data from the Bank of International Settlements, the entire FX market traded an average of \$4.3trn (2mn trades) daily in April 2011. Using the data published by the Bank of England every six months (as the only central bank to identify NDF volumes separately from Forwards and Swaps), FX NDFs account for approximately \$110bn notional per day (2.6% of the total). It is estimated that inter-bank participants in the FX NDF market represent around 30-50% of market activity, with buy-side participants representing the remaining activity.

The eleven NDF currency pairs chosen for clearing by LCH.Clearnet constitute the largest segment and provide the deepest liquidity in the present FX NDF market, accounting for approximately 95% of NDF trading activity, based on analysis of member trade portfolios.

ForexClear accepts trades with a remaining maturity between 3 business days and 2 years, reflecting the bulk of trading activity in the FX NDF market.

The price data used in the ForexClear service is provided in real-time directly by clearing members. Price data received includes FX spot rates and swap points for specified tenors for all currency pairs. Price data is automatically snapped and cleaned by LCH.Clearnet at least every twenty minutes, up to a maximum frequency of once every five minutes. The price data LCH.Clearnet receives for this market is therefore considered to be highly reliable.

LCH.Clearnet believes that trading volumes and liquidity in the FX NDF contracts that it currently clears, and plans to clear, are substantial and that pricing is robust and sufficiently standardised, providing a significant market for clearing. During the month of July 2012, ForexClear cleared an average total notional amount per day of approximately \$2.4bn. As at the end of July 2012, four months following the launch of ForexClear, more than 6,000 trades representing a total notional in excess of \$80bn had been cleared by ForexClear.

- B. "The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded"

In developing an OTC clearing service, LCH.Clearnet ensures that the contracts it clears are economically equivalent to the contracts with the same underlying attributes in the uncleared market. The FX NDF contracts currently cleared, and planned to be cleared, by LCH.Clearnet are done so under a rule framework and operational infrastructure accepted by its clearing members, currently the largest participants in the FX market.

LCH.Clearnet's clearing model seamlessly allows bilaterally traded FX NDF contracts to be cleared on identical terms to those defined by the Emerging Markets Trade Association (EMTA) with respect to OTC NDF products.

When considering the eligibility of a new product for clearing, a key question addressed by LCH.Clearnet is whether it has the appropriate risk management, operations, default management, and technology in place to be able to dispose of positions in that new product in a member default scenario. It is naturally only prudent for any DCO to clear a product where it possesses a high degree of confidence that it can exit a position in that product during a default.

In order to be able to securely risk manage, and technologically and operationally process OTC FX NDF trades, LCH.Clearnet has developed very sophisticated operational models, controls and risk algorithms to ensure that LCH.Clearnet can process trades rapidly, safely, and with minimal impact on day-to-day market activity.

- C. "The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract"

When appropriate clearable contracts are mandated for clearing, the inevitable result will be a less disparate marketplace from a risk perspective. Mandatory clearing will also remove a large portion of the interconnectedness of current OTC markets that leads to systemic risk.

However, it is important to acknowledge that central clearing, by its very nature, concentrates risk in a handful of entities. Thus, DCOs that clear swaps must have exceptional risk, default, operational, legal, liquidity, technology standards and processes, and regulatory oversight to ensure that the DCO does not itself pose a greater systemic risk than the systemic risk it is alleviating.

D. "The effect on competition, including appropriate fees and charges applied to clearing"

LCH.Clearnet believes that the CFTC should use the clearing mandate to spur competition between DCOs, and to encourage DCOs to be innovative in developing the capability to safely clear new types of swaps and ways to collateralise those swaps. However, it is important for the CFTC to recognise the potential pitfalls of rushing new clearing products and services to market in the name of competitiveness. We suggest that the CFTC remain vigilant in permitting new products to be cleared only when the DCO has appropriate processes, procedures, risk management, and default procedures in place for these products.

Additionally, the CFTC should not limit the clearing mandate to instances where a type of swap is cleared at multiple DCOs. Doing so will inhibit product development and innovation. Instead, innovation should be encouraged and the CFTC should be prepared to mandate clearing even where the swap is cleared at only one DCO. Otherwise, there could be an unnecessary delay to reducing systemic risk. Competition and reward naturally encourages innovation and we would recommend the CFTC embrace this notion consistent with the caveats discussed above.

E. "The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property"

LCH.Clearnet has obtained IOSCO compliant legal opinions which demonstrate the existence of such legal certainty in relation to the protection of customer and swap counterparty positions, funds, and property in the event of the insolvency of one or more clearing members.

LCH.Clearnet has obtained a legal opinion from US counsel regarding compliance with the protections afforded to FCM customers under New York law. Insofar as legal certainty in the event of the insolvency of the DCO is concerned, LCH.Clearnet would be wound up under English law and has provided opinions to the CFTC on this point.

Part (iii): Product specifications

Product specifications, including generally accepted terms and standard practices, for NDFs have been established by members of the Emerging Markets Traders Association (EMTA). EMTA publishes standard market documentation¹ and standard conventions and market

¹ Current recommended EMTA template terms for NDF Transactions, available at <http://www.emta.org/template.aspx?id=2275#current>

practices.² These EMTA recommendations and standards are widely adopted by participants in the FX NDF market.

All NDFs currently or prospectively eligible for clearing in ForexClear, making up 95% of market turnover, are capable of being confirmed electronically in the ForexClear Matcher.

Part (iv): Participant eligibility standards

In order to participate in the ForexClear service as a *clearing member*, applicants must meet the following eligibility requirements, which are set out in Section 1 of the Clearing House Procedures:

- have a net capital of US\$50 million or more;
- have evidenced the operational and technical capabilities required by LCH.Clearnet;
- successfully participate, or demonstrate that it has (i) an affiliated ForexClear Clearing Member that can successfully participate in a ForexClear firedrill, or (ii) an LCH.Clearnet Approved Outsourcing Party that can successfully participate in a ForexClear firedrill;
- be able to participate, or demonstrate that it has (i) an affiliated ForexClear Clearing Member that can successfully participate in the ForexClear Default Management Process (DMP), or (ii) an LCH.Clearnet Approved Outsourcing Party that can successfully participate in the ForexClear DMP;
- have, within its corporate group, at least one banking, credit or investment institution licensed in the US or an EU member state, or an equivalent in another jurisdiction;
- in the event of a default, be able to receive and process relevant contracts;
- complete all relevant documentation; and
- complete all necessary testing and training as required by LCH.Clearnet.

In addition, FCMs applying to join the FCM client clearing service must

- be registered with the CFTC as an FCM; and
- be incorporated or otherwise organized under the laws of a State within the United States.

ForexClear places no access criteria upon *clients* of FCMs. FCMs are free to take on the business of clients based on their own due diligence and analysis and become responsible for the performance of the trades upon registration.

Part (v): Pricing sources, models and procedures

As noted under (ii)(A) above, the price data used in the ForexClear service is provided in real-time directly by clearing members. Pricing sources, models and procedures for the ForexClear service are set out in Section 2K of the Clearing House Procedures (2K.4 – 2K.5).

The procedures stated above require all clearing members to provide FX spot rates and FX swap points for each currency pair up to a maximum rate of once every five minutes. Other data is obtained internally (for example, interest rate curves and the USD LIBOR curve are provided by LCH.Clearnet's SwapClear service).

² EMTA market practices <http://www.emta.org/template.aspx?id=100>

The reference indices used for pricing are the Settlement Rate Options for NDFs specified in Section 2K.4.3 of the Clearing House Procedures. The Procedures set out the name of the index and the time and location of publication. This information, including all 11 currency pairs, is reproduced below for reference.

Reference Currency	Settlement Rate Option (or as per the relevant EMTA Template as amended from time to time)	Settlement Rate Publication Local Time (or as per the relevant EMTA Template as amended from time to time)
BRL	BRL PTAX (BRL09)	13:15 (São Paolo)
RUB	RUB CME-EMTA (RUB03)	13:30 (Moscow)
INR	INR RBIB (INR01)	12:30 (Mumbai)
CLP	CLP DÓLAR OBS (CLP10)	10:30 (Santiago)
CNY	CNY SAEC (CNY01)	09:15 (Beijing)
KRW	KRW KFTC18 (KRW02)	15:30 (Seoul)
COP	COP TRM (COP02)	10.30 (Bogota)
IDR	IDR ABS (IDR01)	11:30 (Singapore)
MYR	MYR ABS (MYR01)	11:30 (Singapore)
PHP	PHP PDSPEO (PHP06)	11:30 (Manila)
TWD	TWD TAIFX1 (TWD03)	11:00 – 12:00 (Taipei)

On the fixing date with respect to each ForexClear Contract, the Settlement Rate will be retrieved from the Settlement Rate Option in accordance with the relevant EMTA Templates (as referenced in the Schedule to the ForexClear Regulations). These fixings are market standards; the definitions, methodologies and time and place of publication are as set out in the ISDA 1998 FX and Currency Options Definitions, Annex A, as amended.

Part (vi): Risk management procedures

ForexClear risk management policies and procedures adhere to the principles adopted within LCH.Clearnet based on its extensive experience in OTC clearing.

Initial Margin (IM) is collected from each clearing member to cover potential losses in the event of that member's default, assuming a five-day holding period (seven days for client positions) and a confidence level of 99.7%. The ForexClear IM methodology, *FxPAR (Foreign Exchange Portfolio Analysis and Risk)*, is a value-at-risk model based on filtered historical simulation. ForexClear also calculates and applies additional margin add-ons in relation to each clearing member's credit risk, liquidity risk and sovereign risk exposures.

Variation Margin (VM) and Price Alignment Interest (PAI) are calculated every day through a trade's life up to settlement day for all cleared trades. VM is payable/receivable in cash in the settlement currency. PAI adjustments are made in order to equalise the economic effects between identical cleared and uncleared trades.

The ForexClear Default Fund is a segregated fund whereby member contributions cannot be utilised for meeting losses other than those relating to the ForexClear service. The ForexClear Supplement to LCH.Clearnet's Default Fund Rules sets out rules for determining the size of the ForexClear default fund and how it is funded by members.

Similar to LCH.Clearnet's other OTC clearing services, ForexClear operates a Default Management Group consisting of senior representatives from its clearing members and LCH.Clearnet senior management who are responsible for defining and executing the default management process in the event of a member default.

Detailed risk management procedures for the ForexClear service are set out in Section 2K of the Clearing House Procedures (2K.5).

Part (vii): Applicable rules, manuals, policies and procedures

The applicable rules, manuals, policies and procedures that currently apply are available publicly on LCH.Clearnet's website at http://www.lchclearnet.com/rules_and_regulations/ltd/default.asp

The main provisions relating specifically to the ForexClear service are:

- General Regulations, 103-109 and the ForexClear Schedule
- Clearing House Procedures, Section 1 (membership), subsections 1.2.4 and 1.9.3
- Clearing House Procedures, Section 2K (ForexClear)
- Default Rules, ForexClear DMP Annex
- Default Fund Rules, ForexClear Default Fund Supplement

In addition, the following amendments (already certified with the CFTC) will be put into effect once UK regulatory approval is granted:

- Amendments to introduce client clearing (see http://www.lchclearnet.com/Images/ForexClear%20Self%20Certification%20-%20Introduction%20of%20ForexClear%20FCM%20Client%20Clearing_tcm6-61503.pdf)
- Amendments to introduce five new currency pairs (see http://www.lchclearnet.com/Images/ForexClear%20Self%20Certification%20-%20New%20Currencies_tcm6-61638.pdf)

Part (viii): Notice of the submission to members

Notice of LCH.Clearnet's analysis of factors (A) to (E), as set out in section (ii) above, was sent to all members of the ForexClear service on July 11, 2012, in a circular from the Head of Risk for the ForexClear service. No comments were received from the members on this analysis.

A copy of the notice is attached as Exhibit A.

Exhibit A

Notice of mandatory clearing determination submission to members

PRIVATE AND CONFIDENTIAL

Date: 11 July 2012

To: All ForexClear Clearing Members

Re: DCO submission for determination of clearing requirement

In accordance with Section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank" or "the Act"), and §39.5 of the Commodity Futures Trading Commission ("CFTC") regulations, LCH.Clearnet Limited ("LCH.Clearnet") is submitting for clearing determination those foreign exchange contracts that it currently accepts, and plans to accept, for clearing as at June 27, 2012.

As per CFTC Regulation §39.5(b)(viii) of the CFTC regulations, LCH.Clearnet is required to provide notice to members of its submission such that members have suitable opportunity to comment. A summary of views expressed by members will subsequently be included in LCH.Clearnet's formal submission to the CFTC.

This letter includes the information required by CFTC Regulation §39.5 with respect to the foreign exchange contracts being submitted for clearing determination. LCH.Clearnet requests that member comments are received no later than five business days from the date of this letter.

LCH.Clearnet's ForexClear Service

Launched in March 2012, LCH.Clearnet's ForexClear service provides a clearing service for the registration of OTC Foreign Exchange Non-Deliverable Forward ("FX NDF") contracts. The terms of the cleared NDFs replicate as far as possible those defined by the Emerging Markets Trade Association (EMTA) with respect to OTC NDF products.

ForexClear currently clears six NDF currency pairs: USD/BRL, USD/CLP, USD/CNY, USD/INR, USD/KRW, and USD/RUB. Further to this, ForexClear plans to accept for clearing an additional five NDF currency pairs: USD/COP, USD/IDR, USD/MYR, USD/PHP, and USD/TWD.³

The contracts chosen to be cleared reflect demand by market participants and LCH.Clearnet's consideration of the risk management aspects related to these contracts. The ForexClear service has been designed by LCH.Clearnet with advice from some of the most active participants in the FX market.

Information Related to the Five Factors

The CFTC's regulations implementing Section 723(a)(3) of Dodd-Frank require a DCO to submit "information that will assist the Commission in making a quantitative and qualitative assessment" of five factors. The following responses conform to the information requirements of CFTC Regulation § 39.5(b)(ii):

- A. "The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data"

³ Contract terms are contained in the LCH.Clearnet Rulebook:
http://www.lchclearnet.com/Images/General%20Regulations_tcm6-43737.pdf

According to data from the Bank of International Settlements, the entire FX market traded an average of \$4.3trn (2mm trades) daily in April 2011. Using the data published by the Bank of England every six months, as the only central bank to identify NDF volumes separately from Forwards and Swaps, FX NDFs account for approximately \$110bn notional per day (2.6% of the total). It is estimated that inter-bank participants in the FX NDF market represent around 30-50% of market activity, with buy-side participants representing the remaining activity.

The eleven NDF currency pairs chosen for clearing by LCH.Clearnet constitute the largest segment and provide the deepest liquidity in the present FX NDF market, accounting for approximately 95% of NDF trading activity, based on analysis of member trade portfolios. ForexClear accepts trades with a remaining maturity between 3 business days and 2 years, reflecting the bulk of trading activity in the FX NDF market.

The price data used in the ForexClear service is provided in real-time directly by clearing members. Price data received includes FX spot rates and swap points for specified tenors for all currency pairs. Price data is automatically snapped by LCH.Clearnet at least every twenty minutes, up to a maximum frequency of once every five minutes. The price data we receive for this market is therefore considered to be highly reliable.

LCH.Clearnet believes that trading volumes and liquidity in the FX NDF contracts that it currently clears, and plans to clear, is substantial and that pricing is robust and sufficiently standardised, providing a significant market for clearing. During the month of June, ForexClear cleared an average total notional amount per day of approximately \$850m.

- B. "The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded"

In developing an OTC clearing service, LCH.Clearnet ensures that the contracts it clears are economically equivalent to the contracts with the same underlying attributes in the uncleared market. The FX NDF contracts currently cleared, and planned to be cleared, by LCH.Clearnet are done so under a rule framework and operational infrastructure accepted by its clearing members, currently the largest market participants.

LCH.Clearnet's clearing model seamlessly allows bilaterally traded FX NDF contracts to be cleared on identical terms to those defined by the Emerging Markets Trade Association (EMTA) with respect to OTC NDF products.

When considering the eligibility of a new product for clearing, a key question addressed by LCH.Clearnet is whether it has the appropriate risk management, operations, default management, and technology in place to be able to dispose of positions in that new product in a default scenario. It is extremely imprudent for any DCO to clear a product without possessing a high degree of confidence that it can exit a position in that product during a default.

In order to be able to securely risk manage, and technologically and operationally process OTC FX NDF trades, we have developed very sophisticated operational models, controls and risk algorithms to ensure that we can process trades rapidly, safely, and with minimal impact on day-to-day market activity.

- C. "The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization available to clear the contract"

When appropriate clearable contracts are mandated for clearing, the inevitable result will be a less disparate marketplace from a risk perspective. Mandatory clearing will also remove a large portion of the interconnectedness of current OTC markets that leads to systemic risk. However, it is important to acknowledge that central clearing, by its very nature, concentrates risk in a handful of entities. Thus, DCOs that clear swaps must have exceptional risk, default, operational, legal, liquidity, technology standards and processes, and regulatory oversight to ensure that the DCO does not itself pose a greater systemic risk than the systemic risk it is alleviating.

- D. "The effect on competition, including appropriate fees and charges applied to clearing"

We believe that the CFTC should use the clearing mandate to spur competition between DCOs, and to encourage DCOs to be innovative in developing the capability to safely clear new types of swaps and ways to collateralise those swaps. However, it is important for the CFTC to recognise the potential pitfalls of rushing new clearing products and services to market in the name of competitiveness. We suggest that the CFTC remain vigilant in permitting new products to be cleared only when the DCO has appropriate processes, procedures, risk management, and default procedures in place for these products.

Additionally, the CFTC should not limit the clearing mandate to instances where a type of swap is cleared at multiple DCOs. Doing so will inhibit product development and innovation. Instead, innovation should be encouraged and the CFTC should be prepared to mandate clearing even where the swap is cleared at only one DCO. Otherwise, there could be an unnecessary delay to reducing systemic risk. Competition and reward naturally encourages innovation and we would recommend the CFTC embrace this notion consistent with the caveats discussed above.

- E. "The existence of reasonable legal certainty in the event of the insolvency of the relevant derivatives clearing organization or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property"

LCH.Clearnet has obtained IOSCO compliant legal opinions which demonstrate the existence of such legal certainty in relation to the protection of customer and swap counterparty positions, funds, and property in the event of the insolvency of one or more clearing members.

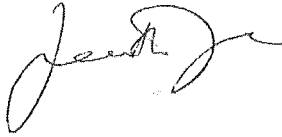
LCH.Clearnet has obtained a legal opinion from US counsel regarding compliance with the protections afforded to FCM customers under New York law. Insofar as legal certainty in the event of the insolvency of the DCO is concerned, LCH.Clearnet would be wound up under English law and has provided opinions to the CFTC on this point.

Further information requested under § 39.5(b)(iii)-(vii) is publicly available in LCH.Clearnet Limited's rulebook and will form part of the full §39.5 filing.

Conclusion

LCH.Clearnet looks forward to working with Clearing Members and the CFTC in the determination of clearing requirements for the foreign exchange market. Please do not hesitate to contact me regarding any questions raised by this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Tran', with a stylized, cursive script.

Jonathan Tran
Director, Head of Risk
ForexClear, LCH.Clearnet