

**VIA EMAIL TO: SECRETARY@CFTC.GOV**

14 November 2012

Ms. Sauntia Warfield  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street NW  
Three Lafayette Centre  
Washington DC 20581

Dear Ms. Warfield,

LCH.Clearnet Limited (“LCH.Clearnet”), a derivatives clearing organization registered with the Commodity Futures Trading Commission (the “CFTC”), is submitting for self-certification, pursuant to CFTC regulation §40.6(a)(6), which provides for emergency rule certifications, amendments to LCH.Clearnet’s Rulebook. The amended Rulebook was implemented and became effective on 14 November 2012 in order to render LCH.Clearnet compliant with Part 22 of the Commission’s Rules. .

The submission cover sheet and amended rules (with deletions and additions) are attached as Appendix I.

### **Explanation and Analysis**

The amendments to the post default rules alter the methodology used by LCH.Clearnet to attribute the gains or losses that may exist as a result of the liquidation of non-porting clients at auction. This change does not impact the operational implementation of LSOC for Members of LCH.Clearnet and does not affect LCH.Clearnet’s compliance with Part 22 of the CFTC Rules and the protection provided there under.

Specifically, the rule changes provide that in the event of a default, non-porting clients shall each bear a portion of the liquidation costs on a pro-rata basis determined on a value-based position by position assignment of the liquidation price, as outlined in the rules and determined by the Clearing House.

The rule amendment addresses issues impacted by *Core Principle F* (Treatment of Funds - § 39.15) and *Core Principle G* (Default Rules and Procedures - § 39.16).

### **Public Information**

LCH.Clearnet has posted a notice of pending certification with the CFTC and a copy of the submission on LCH.Clearnet’s website at: [http://www.lchclearnet.com/rules\\_and\\_regulations/ltc/proposed\\_rules.asp](http://www.lchclearnet.com/rules_and_regulations/ltc/proposed_rules.asp)

### **Opposing Views**

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

**LCH.Clearnet Limited**

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LCH.Clearnet Group Limited | LCH.Clearnet Limited | LCH.Clearnet LLC | LCH.Clearnet SA



**Certification**

LCH.Clearnet Limited hereby certifies to the Commodity Futures Trading Commission, pursuant to the procedures set forth in the Commission regulation § 40.6, that attached rule submission complies with the Commodity Exchange Act, as amended, and the regulations promulgated there under.

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

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Jay Iyer', enclosed within a blue oval scribble.

*pp*

**Jay Iyer, CCO**  
**LCH.Clearnet Limited**

Appendix I

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shall be based on the amount of Initial Margin associated with the Hedged Account with respect to all positions (including all FCM SwapClear Contracts, hedges or other positions) held in the Hedged Account, at the beginning of the day on which New Non-Porting Clients are included in the Hedged Account (*i.e.*, at a time prior to the transfer of the FCM SwapClear Contracts of New Non-Porting Clients into the Hedged Account). For the avoidance of doubt, the Existing Non-Porting Clients Combined Risk Factor is calculated without respect to the Initial Margin requirements applicable to the transferred FCM SwapClear Contracts of the New Non-Porting Clients.

- (iv) On any day on which New Non-Porting Clients are included in the Hedged Account, gains and losses in the Hedged Account that are incurred on that day will be allocated among the Existing Non-Porting Clients (as a group) and the New Non-Porting Clients (individually) on a pro rata basis based on the Existing Non-Porting Clients Combined Risk Factor (with respect to the Existing Non-Porting Clients as a group) and the individual Risk Factors of each New Non-Porting Client (with respect to each such New Non-Porting Client individually). The gains and losses allocated in such manner to the Existing Non-Porting Clients as a group shall be further allocated to each individual Existing Non-Porting Client on a pro rata basis based on the Risk Factor of each such Existing Non-Porting Client. The allocation of gains and losses on subsequent days shall occur in the same manner as set forth in this paragraph (iv) until the occurrence of a day (if applicable) in which additional Non-Porting Clients are included in the Hedged Account and thus become the New Non-Porting Clients. In such a case, (A) the Existing Non-Porting Clients shall continue to be treated as Existing Non-Porting Clients, (B) the Non-Porting Clients previously constituting the New Non-Porting Clients shall then constitute Existing Non-Porting Clients (in accordance with the definition of New Non-Porting Clients in paragraph (ii) above), (C) the additional Non-Porting Clients included in the Hedged Account constitute the New Non-Porting Clients (in accordance with the definition of New Non-Porting Clients in paragraph (ii) above), and (D) the Clearing House shall recalculate the Existing Non-Porting Clients Combined Risk Factor and the allocation of gains and losses shall be in accordance with paragraph (iii) above and this paragraph (iv).
- (v) Upon the liquidation of the Hedged Account and all FCM SwapClear Contracts and other positions therein, by auction or otherwise, any gains or losses associated with such auction/liquidation shall be allocated among all Non-Porting Clients on a pro rata basis based on the ~~Risk Factor of each Non-Porting Client, without regard to any~~ “unit value” of each FCM SwapClear Contract of each Non-Porting Client transferred into the Hedged Account, as adjusted by a “auction value adjustment”. For purposes of this clause (v), (1) “unit value” means the value applied to each FCM SwapClear Contract, based on the net present value and outstanding notional value associated with each such FCM SwapClear Contract, and (2) “auction value adjustment” means a ratio applied to an FCM SwapClear Contract based on the aggregate auction/liquidation costs incurred in auctioning/liquidating the Hedged Account and the

aggregate notional value of all FCM SwapClear Contracts in the Hedged Account, each of clauses (1) and (2) as determined by the Clearing House. The allocations described in this clause (v) are without reference to any Risk Factor or Existing Non-Porting Clients Combined Risk Factor.

*Settlement of Non-Porting Clients Following Liquidation of Hedged Account.* Following the liquidation of a Hedged Account, the Clearing House shall allocate the appropriate gains and losses (as determined in accordance with the above provisions) to each Non-Porting Client's relevant FCM Client Segregated Sub-Account.

## **2A.16 Payment of Stamp Tax**

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

## **2A.17 Section 168, Finance Act 1994**

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

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

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

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

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

Any contract must not be submitted to the Clearing House by FCM Clearing Members for clearing where one or more of the conditions in section 697 CTA 2009 are not satisfied, thereby bringing the contract within section 696 CTA 2009, nor should any FCM Clearing Member knowingly permit any such contract to be submitted by a SwapClear Participant. Should this occur the SwapClear FCM Clearing Member in whose name the contract is to be or has been registered must promptly notify the Clearing House and, in any event, within 30 days of that FCM

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New Non-Porting Client (with respect to each such New Non-Porting Client individually). The gains and losses allocated in such manner to the Existing Non-Porting Clients as a group shall be further allocated to each individual Existing Non-Porting Client on a pro rata basis based on the Risk Factor of each such Existing Non-Porting Client. The allocation of gains and losses on subsequent days shall occur in the same manner as set forth in this paragraph (iv) until the occurrence of a day (if applicable) in which additional Non-Porting Clients are included in the Hedged Account and thus become the New Non-Porting Clients. In such a case, (A) the Existing Non-Porting Clients shall continue to be treated as Existing Non-Porting Clients, (B) the Non-Porting Clients previously constituting the New Non-Porting Clients shall then constitute Existing Non-Porting Clients (in accordance with the definition of New Non-Porting Clients in paragraph (ii) above), (C) the additional Non-Porting Clients included in the Hedged Account constitute the New Non-Porting Clients (in accordance with the definition of New Non-Porting Clients in paragraph (ii) above), and (D) the Clearing House shall recalculate the Existing Non-Porting Clients Combined Risk Factor and the allocation of gains and losses shall be in accordance with paragraph (iii) above and this paragraph (iv).

- (v) Upon the liquidation of the Hedged Account and all FCM ForexClear Contracts and other positions therein, by auction or otherwise, any gains or losses associated with such auction/liquidation shall be allocated among all Non-Porting Clients on a pro rata basis based on the ~~Risk Factor of each Non-Porting Client, without regard to any~~ “unit value” of each FCM ForexClear Contract of each Non-Porting Client transferred into the Hedged Account, as adjusted by a “auction value adjustment”. For purposes of this clause (v), (1) “unit value” means the value applied to each FCM ForexClear Contract, based on the net present value and outstanding notional value associated with each such FCM ForexClear Contract, and (2) “auction value adjustment” means a ratio applied to an FCM ForexClear Contract based on the aggregate auction/liquidation costs incurred in auctioning/liquidating the Hedged Account and the aggregate notional value of all FCM ForexClear Contracts in the Hedged Account, each of clauses (1) and (2) as determined by the Clearing House. The allocations described in this clause (v) are without reference to any Risk Factor or Existing Non-Porting Clients Combined Risk Factor.

*Settlement of Non-Porting Clients Following Liquidation of Hedged Account.* Following the liquidation of a Hedged Account, the Clearing House shall allocate the appropriate gains and losses (as determined in accordance with the above provisions) to each Non-Porting Client's FCM Client Segregated Sub-Account.

## **2B.24 Payment of Stamp Tax**

Each FCM Clearing Member shall pay any stamp tax or duty levied or imposed upon it or in respect of its execution or performance of the FCM Clearing Membership Agreement, the FCM Default Fund Agreement, the FCM Regulations and the FCM Procedures (including any registration of an FCM ForexClear Contract) by a jurisdiction in which it is incorporated, organized, managed and controlled, or considered to have its seat, or in which a branch or office through

Clients into the Hedged Account). For the avoidance of doubt, the Existing Non-Porting Clients Combined Risk Factor is calculated without respect to the Initial Margin requirements applicable to the transferred FCM EnClear Contracts of the New Non-Porting Clients.

- (iv) On any day on which New Non-Porting Clients are included in the Hedged Account, gains and losses in the Hedged Account that are incurred on that day will be allocated among the Existing Non-Porting Clients (as a group) and the New Non-Porting Clients (individually) on a pro rata basis based on the Existing Non-Porting Clients Combined Risk Factor (with respect to the Existing Non-Porting Clients as a group) and the individual Risk Factors of each New Non-Porting Client (with respect to each such New Non-Porting Client individually). The gains and losses allocated in such manner to the Existing Non-Porting Clients as a group shall be further allocated to each individual Existing Non-Porting Client on a pro rata basis based on the Risk Factor of each such Existing Non-Porting Client. The allocation of gains and losses on subsequent days shall occur in the same manner as set forth in this paragraph (iv) until the occurrence of a day (if applicable) in which additional Non-Porting Clients are included in the Hedged Account and thus become the New Non-Porting Clients. In such a case, (A) the Existing Non-Porting Clients shall continue to be treated as Existing Non-Porting Clients, (B) the Non-Porting Clients previously constituting the New Non-Porting Clients shall then constitute Existing Non-Porting Clients (in accordance with the definition of New Non-Porting Clients in paragraph (ii) above), (C) the additional Non-Porting Clients included in the Hedged Account constitute the New Non-Porting Clients (in accordance with the definition of New Non-Porting Clients in paragraph (ii) above), and (D) the Clearing House shall recalculate the Existing Non-Porting Clients Combined Risk Factor and the allocation of gains and losses shall be in accordance with paragraph (iii) above and this paragraph (iv).
- (v) Upon the liquidation of the Hedged Account and all FCM EnClear Contracts and other positions therein, by auction or otherwise, any gains or losses associated with such auction/liquidation shall be allocated among all Non-Porting Clients on a pro rata basis based on the ~~Risk Factor of each Non-Porting Client, without regard to any~~ “unit value” of each FCM EnClear Contract of each Non-Porting Client transferred into the Hedged Account, as adjusted by a “liquidation adjustment factor”. For purposes of this clause (v), (1) “unit value” means the value applied to each FCM EnClear Contract, based on the net present value and outstanding notional value associated with each such FCM EnClear Contract, and (2) “liquidation adjustment factor” means a ratio applied to an FCM EnClear Contract based on the aggregate auction/liquidation costs incurred in auctioning/liquidating the Hedged Account and the aggregate notional value of all FCM EnClear Contracts in the Hedged Account, each of clauses (1) and (2) as determined by the Clearing House. The allocations described in this clause (v) are without reference to any Risk Factor or Existing Non-Porting Clients Combined Risk Factor.