

Décision du 29 novembre 2016 relative aux modifications dans leur version anglaise des règles de fonctionnement de la chambre de compensation et du système de règlement-livraison d'instruments financiers LCH SA sur le segment des *Credit Default Swaps* (CDS) visant notamment les changements liés à la licence de *Clearing Agency* auprès de la *Securities and Exchange Commission* (SEC)

L'Autorité des marchés financiers,

Vu le code monétaire et financier, et notamment ses articles L. 440-1 et L. 621-7 ;

Vu le règlement général de l'Autorité des marchés financiers, et notamment ses articles 541-1, 560-2 et suivants ;

Vu la demande de LCH SA en date du 16 novembre 2016 ;

Décide :

Article 1^{er}

Sont approuvées, dans leur version en langue anglaise, les modifications des règles de fonctionnement de LCH SA en sa qualité de chambre de compensation et de système de règlement-livraison d'instruments financiers telles qu'annexées à la présente décision.

Elles entreront en vigueur à la date déterminée par LCH SA.

Article 2

La présente décision sera notifiée à LCH SA et publiée sur le site Internet de l'Autorité des marchés financiers.

Fait à Paris, le 29 novembre 2016

Le Président de l'AMF

Gérard RAMEIX

Extracts of the draft CDS Clearing Rule Book including the Clearing Agency licence related amendments

Amended provisions
CFTC Regulations: The rules and regulations promulgated by the CFTC and <u>any interpretive guidance issued by the CFTC or its staff.</u>
Clearing Agency: <u>A clearing agency as defined in Section 3(a)(23) of the Exchange Act and registered as such with the SEC.</u>
Competent Authority: Other than for LCH SA, any authority which: (i) is recognised as such by a Person’s home Member State under the terms of CRD or MiFID; or (i) has concluded a cooperation agreement with the French Competent Authorities in respect of exercising a regulatory or supervisory function under the laws of any jurisdiction to which a Person is subject, and for LCH SA, each of the AMF, the <i>Autorité de Contrôle Prudentiel et de Résolution</i> , the <i>Banque de France</i> , the CFTC, <u>the SEC</u> , any successor body of any of the foregoing and any other body which has concluded a cooperation agreement with the AMF, the <i>Autorité de Contrôle Prudentiel et de Résolution</i> , the <i>Banque de France</i> in respect of exercising a regulatory or supervisory function under the laws of any jurisdiction and designated as such by LCH SA from time to time.
Exchange Act: <u>The U.S. Securities Exchange Act of 1934, as amended.</u>
Non-U.S. CCM: <u>When used in the context of an Original Transaction that is an SBS, a “Non-U.S. CCM” shall mean a CCM that is not a U.S. Person as that term is defined under SEC Regulations. When used in the context of an Original Transaction that is not an SBS, a “Non-U.S. CCM” shall mean a CCM that is not a U.S. Person as that term is defined under CFTC Regulations.</u>
Non-U.S. CCM Client: <u>When used in the context of an Original Transaction that is an SBS, a “Non-U.S. CCM Client” shall mean a CCM Client that is not a U.S. Person as that term is defined under SEC Regulations. When used in the context of an Original Transaction that is not an SBS, a “Non-U.S. CCM Client” shall mean a CCM Client that is not a U.S. Person as that term is defined under CFTC Regulations.</u>
SBS: <u>Any security-based swap, as that term is defined in Section 3(a)(68) of the Exchange Act and the SEC Regulations thereunder.</u>
SEC: <u>The U.S. Securities and Exchange Commission.</u>

U.S. CCM: When used in the context of an Original Transaction that is an SBS, a “U.S. CCM” shall mean a CCM that is a U.S. Person as that term is defined under SEC Regulations. When used in the context of an Original Transaction that is not an SBS, a “U.S. CCM” shall mean a CCM that is a U.S. Person as that term is defined under CFTC Regulations.

U.S. CCM Client: When used in the context of an Original Transaction that is an SBS, a “U.S. CCM Client” shall mean a CCM Client that is a U.S. Person as that term is defined under SEC Regulations. When used in the context of an Original Transaction that is not an SBS, a “U.S. CCM Client” shall mean a CCM Client that is a U.S. Person as that term is defined under CFTC Regulations.

Article 2.3.5.1

Each Clearing Member shall maintain current written risk management policies and procedures that address the risks that it may pose to the CDS Clearing Service provided by LCH SA, including any policies and procedures that LCH SA may reasonably request be incorporated therein. Upon the request of LCH SA (or the CFTC, the SEC, the AMF or the *Autorité de Contrôle Prudentiel et de Résolution*, as applicable), a Clearing Member shall promptly provide LCH SA (or the CFTC, the SEC, the AMF or the *Autorité de Contrôle Prudentiel et de Résolution*, as applicable) with a copy of its current policies and procedures, along with relating information and documents including, without limitation, information and documents relating to the liquidity of the Clearing Member’s financial resources and its settlement procedures.

LCH SA shall periodically review the risk management policies, procedures, and practices of each Clearing Member, which address the risks that such Clearing Member may pose to LCH SA. All such reviews shall be documented and maintained in accordance with LCH SA’s recordkeeping policy.

Article 3.1.11.2

LCH SA shall submit any report required under Part 45 of the CFTC Regulations and/or applicable SEC Regulations for SBS trade reporting in respect of any Cleared Transactions, in accordance with Section 5 of the Procedures.

Article 4.3.3.5

To the extent that:

- (i) the porting of the Relevant Client Cleared Transactions of the Defaulting Clearing Member, pursuant to the CDS Default Management Process;
- (ii) liquidation of the Defaulting Clearing Member’s House Cleared Transactions, pursuant to the CDS Default Management Process; or
- (iii) liquidation of the Non-Ported Cleared Transactions, pursuant to the CDS Default Management Process;

requires new Cleared Transactions to be created in the TIW reflecting another Clearing Member as counterparty to the Cleared Transaction, LCH SA will have to submit these Cleared Transactions to DTCC in accordance with Article 3.1.10.2 (or Article 3.1.10.3, as the case may be), provided that LCH SA will submit any reports required under Part 45 of the CFTC Regulations and/or applicable SEC Regulations for SBS trade reporting in accordance with Section 5 of the Procedures.

Article 5.1.1.2

CDS Client Clearing Services may be provided by a CCM to its CCM Clients on whatever terms the CCM decides should apply provided, however, that:

- (i) if that CCM is a Select Member, it shall not provide CDS Client Clearing Services to any CCM Client;
- (ii) each CCM shall, before providing CDS Client Clearing Services to any client, ensure that it has entered into a CDS Client Clearing Agreement pursuant to which the CCM Client agrees, among others, to be bound by the Mandatory Client Clearing Provisions;
- (iii) Client Cleared Transactions, Collateral provided by a CCM to LCH SA in respect of Client Cleared Transactions and CCM Client Excess Collateral if any, shall always be separately identified by the CCM to LCH SA, in accordance with Section 3 of the Procedures; ~~and~~
- (iv) each CCM shall be obliged to provide LCH SA with any information that LCH SA may reasonably require in relation to the CDS Client Clearing Services provided by that CCM to its CCM Clients;
- (v) a Non-U.S. CCM shall not provide CDS Client Clearing Services to any U.S. CCM Client with respect to an Original Transaction that is an SBS, as set out in Section 4 of the Procedures, and a U.S. CCM shall not provide CDS Client Clearing Services to any CCM Client with respect to an Original Transaction that is an SBS, as set out in Section 4 of the Procedures; and
- (vi) a CCM shall not provide CDS Client Clearing Services to any U.S. CCM Client (other than a U.S. CCM Client that is an Affiliate of the CCM) with respect to an Original Transaction that is not an SBS, unless the CCM:
 - (a) is registered with the CFTC as an FCM; and
 - (b) has provided LCH SA with an opinion of counsel confirming that the provision of CDS CCM Client Clearing Services to any U.S. CCM Client would not be contrary to Applicable Law, in form and content acceptable to LCH SA.

Article 6.1.1.2

An FCM Clearing Member may provide CDS Clearing Services to a Client (or, if permitted pursuant to Article 6.1.1.1, an Affiliate) on any terms and conditions mutually agreed to by it and such Person; provided, however, that:

- (i) if that FCM Clearing Member is a Select Member, it shall not provide CDS Client Clearing Services to any FCM Client;
- (ii) an FCM Clearing Member shall, before providing CDS Clearing Services to any Client or Affiliate, ensure that it has entered into an agreement, or an addendum to an existing agreement, with such Person, that binds such Person to the applicable provisions of the CDS Clearing Rules (including the FCM CDS Clearing Regulations) by direct reference thereto or otherwise, and any other provisions as shall be agreed from time to time between LCH SA and FCM Clearing Members, or as may be prescribed by LCH SA;

~~(ii)~~(iii) an FCM Clearing Member shall notify LCH SA of each Affiliate for which it provides CDS Clearing Services;

~~(iii)~~(iv) an FCM Clearing Member shall provide, and separately identify, to LCH SA Client Cleared Transactions and Collateral in respect of Client Cleared Transactions (in the aggregate); ~~and~~

(v) an FCM Clearing Member may deliver, and shall separately identify, to LCH SA Collateral as FCM Client Collateral Buffer; and

(vi) an FCM Clearing Member shall not (1) provide CDS Client Clearing Services to any FCM Client or (2) submit for clearing any Original Transaction to be registered in its House Account Structure for any person other than itself, with respect to any Original Transaction that is an SBS, as set out in Section 4 of the Procedures.

Article 6.2.5.1

[...]

(iii) FCM Client Collateral Buffer. An FCM Clearing Member may deposit Collateral that is the property of such FCM Clearing Member (and not of any of its FCM Clients) with LCH SA as FCM Client Collateral Buffer for the benefit of all of its FCM Clients, subject to the following provisions and the provisions of Article 6.2.4.4 (ii):

(a) The FCM Clearing Member shall not, and represents to LCH SA that it shall not, deposit an amount of FCM Client Collateral Buffer with LCH SA that, in combination with any other money, securities or other property deposited by it with any other Derivatives Clearing Organization or Clearing Agency, in a manner whereby such FCM Clearing Member is assumed to be the sole legal and beneficial owner of such property, to meet the aggregate obligations of its Cleared Swaps Customers, exceeds its residual financial interest in its aggregate Cleared Swaps Customer Collateral. For purposes of this provision, the terms “Cleared Swaps Customer” and “Cleared Swaps Customer Collateral” have the meaning set out in CFTC Regulation 22.1 and the term “residual financial interest” has the meaning as contemplated in CFTC Regulation 22.2(e)(4) and (g).

Appendix 1

3.3 FCM Clearing Members

LCH SA and Clearing Members agree that, where an Event of Default as defined in Article 4.3.3.1 (v) or (vi) has been declared in respect of an FCM Clearing Member in accordance with the CDS Clearing Rule Book, this CDS Default Management Process shall be carried out:

- 3.3.1** in accordance with Regulation 4 of the FCM CDS Clearing Regulations, applicable US law and regulation (including but not limited to, as applicable, the requirements of the CEA, CFTC Regulations, the Exchange Act, SEC Regulations and applicable bankruptcy laws regarding the liquidation or transfer of FCM Cleared Transactions) and any directions issued by a Competent Authority and/or a duly appointed trustee for the liquidation of the Defaulting FCM Clearing Member; and
- 3.3.2** in a manner that ensures the segregation of Client Assets attributable to FCM Cleared Transactions cleared on behalf of FCM Clients as is required by the CEA and CFTC Regulations, in accordance with Regulation 6 of the FCM CDS Clearing Regulations.