

**SECTION 11**

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11.1 **INTRODUCTION**

These Procedures describe how a Member or, in certain cases, a RepoClear Dealer or SwapClear Dealer or other non-member, may appeal against a decision of the Clearing House (that is, LCH.Clearnet Limited).

It should be noted that no appeal may be lodged to the Clearing House in respect of any decision of any other member company of the LCH.Clearnet Group (including LCH.Clearnet SA).

**11.2 DECISIONS IN RESPECT OF WHICH AN APPEAL MAY BE LODGED**

11.2.1 A Member may appeal against any of the following decisions made by the Clearing House:

- A decision that the Member does not meet the criteria for extension of its clearing relationship with the Clearing House.
- A decision by the Clearing House to rescind that Member's eligibility to have contracts of a certain category or categories registered in its name.
- A decision by the Clearing House to terminate that Member's Clearing Membership Agreement other than when such decision occurs in connection with the operation by the Clearing House of its Default Rules and Procedures.

11.2.2 An undertaking which is not a Member may appeal to an Appeal Committee against any of the following decisions made by the Clearing House:

- A decision to decline to grant Member status to that person.
- A decision to decline to admit that undertaking to the register of RepoClear Dealers, providing that there is a Member willing and able to enter into a RepoClear Dealer Agreement with that undertaking and the Clearing House at the time of the decision.
- A decision to decline to admit that undertaking to the register of SwapClear Dealers providing that there is a Member willing and able to enter into a SwapClear Dealer Agreement with that undertaking and the Clearing House at the time of the decision.
- A decision to decline to admit that undertaking to the register of EquityClear NCM's (including EquityClear NCMs (virt-x)) providing always that there is a Member willing and able to enter into an EquityClear GCM/NCM Agreement or EquityClear GCM/LCH Agreement (virt-x), as the case may be, with that undertaking and the Clearing House at the time of the decision.
- A decision to refuse to enter into third party clearing agreement with a Member and a Designated Exchange (both of which must be willing and able to enter into such agreement at the time of the decision) and that person or undertaking. For the purposes of this Section 11 a Designated Exchange shall mean IPE, LIFFE, LME or the London Stock Exchange.
- A decision to suspend or remove a RepoClear Dealer from the register of RepoClear Dealers.
- A decision to suspend or remove a SwapClear Dealer from the register of SwapClear Dealers.
- A decision to suspend or remove an EquityClear NCM (including an EquityClear NCM (virt-x)) from the register of EquityClear NCMs.

11.2.3 From time to time the Clearing House may amend the lists in this section 11.2 of decisions in respect of which appeals may be lodged.

**11.3 INITIATING AN APPEAL**

- 11.3.1 An appeal to an Appeal Committee under this Section 11 shall be commenced by sending a copy of the APPEAL FORM in the form set out in Appendix 11A of these Procedures to the Company Secretary of LCH.Clearnet Limited (“the Company Secretary”) at the registered office of the Clearing House.
- 11.3.2 The APPEAL FORM must be fully completed in all material respects by the person lodging the appeal (“the appellant”).
- 11.3.3 The appellant must enclose with its APPEAL FORM payment of £500 which payment shall be returned if the appeal is subsequently upheld by the Appeal Committee or by the Appeal Tribunal.
- 11.3.4 An appeal may only be commenced under these Procedures within 28 days of the date upon which the decision to which it relates was notified to the appellant. The Chief Executive of the Clearing House has a discretion to waive this time limit if the appellant provides a satisfactory explanation for the delay and no prejudice would be caused to any person by proceeding with the appeal in the circumstances.
- 11.3.5 The Company Secretary shall acknowledge receipt of the APPEAL FORM no later than 7 days after receipt.
- 11.3.6 The Company Secretary may request further information or clarification relating to the subject matter or grounds of the appeal.

- 11.4 **THE FIRST TIER APPEAL**
- 11.4.1 No later than 28 days from receipt of any APPEAL FORM the Company Secretary shall:-
- 11.4.1.1 refer the appeal to an Appeal Committee comprising:
- the Chief Executive of LCH.Clearnet Limited or the Deputy Chief Executive; and
  - two directors of the Clearing House with relevant market experience, nominated by the Chairman of the Clearing House; and
  - in the event that the appeal concerns any activity or proposed activity of the appellant in respect of a Designated Exchange, a person nominated by that Designated Exchange. Where the appeal concerns any activity or proposed activity on more than one Designated Exchange, the Appellant shall be invited to nominate which Designated Exchange shall be invited to nominate a person to the Appeal Committee;
- 11.4.1.2 notify the appellant in writing of the identify of the persons constituting the Appeal Committee; and
- 11.4.1.3 provide to the appellant copies of such documents and written representations as the Clearing House intends to place before the Appeal Committee for its consideration.
- 11.4.2 Following notification to the appellant in accordance with 11.4.1 above, the appellant shall then have a period of 14 days to submit to the Appeal Committee such written representations and other documentation for the consideration of the Appeal Committee. All representations and documentation shall be submitted in sufficient copies so that each member of the Appeal Committee shall have a copy each.
- 11.4.3 The Appeal Committee shall decide upon its own procedure for considering and determining the appeal which will normally be done without an oral hearing but on the basis of the written representations and documents submitted by the appellant and such other information and documentation as the Appeal Committee considers appropriate.
- 11.4.4 The Appeal Committee may request further or other documentation and information from the appellant.
- 11.4.5 No later than 21 days from the date upon which the appellant is notified of the composition of the Appeal Committee, or 21 days from the receipt by the Appeal Committee of any further or other documentation or pursuant to 11.4.4 above, whichever is the later, the Appeal Committee shall consider and determine the appeal before it.
- 11.4.6 An Appeal Committee constituted pursuant to this paragraph 11.4 shall promptly, and in any event, no later than 7 days after coming to its determination, give notice of its determination to an appellant in writing together with its reasons.

- 11.5 **THE SECOND TIER APPEAL**
- 11.5.1 If an appellant, having received notice of a determination of an appeal pursuant to paragraph 11.4.6 above, is not satisfied by such determination, it may appeal lodge a second tier appeal to an Appeal Tribunal.
- 11.5.2 A second tier appeal may be commenced under this paragraph 11.5 by the submission of a NOTICE OF FURTHER APPEAL in the form set out in Appendix 11B hereto to the Company Secretary at its registered office, setting out the reasons for the appeal. Such NOTICE OF FURTHER APPEAL must be received by the Company Secretary no later than 14 days from the date upon which the notice of determination of the Appeal Committee was given to the appellant.
- 11.5.3 An appeal under this paragraph 11.5 shall be heard by an Appeal Tribunal within 3 months of the Notice of Appeal being received by the Company Secretary, or such longer time as the Chairman of the Appeal Tribunal shall determine in order to provide a full and fair determination of the appeal.
- 11.5.4 An Appeal Tribunal constituted under this paragraph 11.5 shall consist of 2 persons ("Tribunal Members"), with relevant knowledge and experience in the industry of matters in issue in the appeal, and a legally qualified Chairman. The appellant and the Clearing House may each select a Tribunal Member from a list of no less than 4 persons appropriately qualified persons nominated by The Centre for Dispute Resolution (CEDR), London, and the Chairman shall be nominated by CEDR. In the event that either the Clearing House or an appellant fails to nominate such a Tribunal Member before a date 2 weeks prior to the date fixed by the Chairman for the hearing of the appeal, then the Chairman shall nominate such Tribunal Member from the list referred to above. No person who served on the Appeal Committee which considered the appellant's first tier appeal shall be eligible to serve upon an Appeal Tribunal constituted in respect of that appellant's second tier appeal.
- 11.5.5 The Chairman of an Appeal Tribunal shall fix a date for the hearing of the appeal and shall give no less than 28 days notice in writing to the appellant and the Company Secretary of the time and place in London where such appeal shall be heard.
- 11.5.6 The appellant shall provide the Appeal Tribunal, with a copy to the Company Secretary, no less than 14 days before the date fixed for the hearing of the appeal, with written submissions setting out such representations as it wishes to put forward in support of its appeal, together with copies of all documentation and other material upon which it wishes to rely.
- 11.5.7 the Clearing House will submit written submissions, documentation and information with regard to the matters and issues relevant to the decision which is the subject of the appeal and provide a copy thereof to the appellant.

- 11.5.8 An Appeal Tribunal may invite any person (including the Clearing House) to provide written information or written opinion with regard to any matter which forms the subject matter of an appeal.
- 11.5.9 An Appeal Tribunal shall determine its own procedure for the hearing of an appeal and shall not be bound by the rules of evidence. It may adjourn a hearing to another date or dates if it so wishes. If prior to or at such hearing an appellant notifies the Appeal Tribunal that it wishes to make oral submissions an opportunity shall be given to the appellant to do so. A representative of the appellant (and the appellant himself, if the appellant is an individual) and a representative of the Clearing House may attend the hearing and the Appeal Tribunal may in its discretion invite further or other persons to attend the hearing.
- 11.5.10 At the hearing an appellant may conduct its case itself through an employee, officer or other agent, or be represented by legal counsel PROVIDED that if in any particular case an Appeal Tribunal is satisfied that there is good and sufficient reasons for doing so, it may refuse to permit a particular individual to represent an appellant at the hearing.
- 11.5.11 Neither the Clearing House nor an appellant shall have the right to call any witness or cross examine any person who shall have provided any information to an Appeal Tribunal, PROVIDED that an Appeal Tribunal may permit any such cross examination on such terms as it may determine, if it decides that it is appropriate in the particular circumstances of that appeal so to do.
- 11.5.12 An Appeal Tribunal may have regard to such further or other documents and information and matters as it considers fair and reasonable in the circumstances.
- 11.5.13 Where in this paragraph 11.5 any time is giving for the doing of any thing, the Chairman of the Tribunal shall have a discretion to extend such time if he determines that it is fair and reasonable in the circumstances so to do.
- 11.5.14 In considering an appeal, an Appeal Tribunal shall act fairly and impartially and shall take into consideration, inter alia, the following:
- The General Regulations, Default Rules and Procedures of the Clearing House; and
  - the Notice of Further Appeal; and
  - All documentation and information placed before it by an appellant or by the Clearing House; and
  - The role and concomitant obligations of the Clearing House ("LCH.Clearnet Limited") as a recognised clearing house under the Financial Services and Markets Act 2000.
- 11.5.15 An Appeal Tribunal may in its absolute discretion decline to entertain an appeal and shall dismiss such appeal where it considers the appeal to be frivolous or vexatious.

- 11.5.16 An appellant shall pay its own costs and expenses in relation to an appeal. The Clearing House shall meet its own costs, those of the Tribunal Members and those related to the hearing other than costs and expenses incurred by the appellant.
- 11.5.17 An Appeal Tribunal shall determine an appeal by majority vote although the voting of an Appeal Tribunal shall remain confidential and the result shall be presented as a unanimous view by that Appeal Tribunal. An Appeal Tribunal may
- dismiss the appeal; or
  - uphold the appeal.
- 11.5.18 An Appeal Tribunal shall deliver a written statement of its decision together its reasons to an appellant and the Clearing House within 28 days of the date of the hearing. Except in so far as an Appeal Tribunal may direct, information about proceedings before the Appeal Tribunal and the names of persons concerned in the proceedings shall not be made public.
- 11.5.19 In the event that an Appeal Tribunal determines to uphold the appeal then the Clearing House shall within 28 days of the receipt of the written decision, re-view and re-consider the decision upon which the appeal was based in the light of the conclusions of the Appeal Tribunal. The Clearing House agrees to be guided in reviewing its decision by the conclusions of the Appeal Tribunal.

- 11.6            **REQUESTS FOR REVIEW**
- 11.6.1        A Member who is aggrieved by any action taken by the Clearing House or decision of the Clearing House (other than any decision set out in 11.2 above or any decision taken under Regulation 26 in or under or in connection with the Clearing House's powers under the Default Rules and Procedures) may, no later than 14 days after the date of the decision or action, request a review of such action or decision by the Chief Executive of the Clearing House.
- 11.6.2        A Request for Review under this 11.6 shall be made in writing, addressed to the Chief Executive of the Clearing House at the registered office and shall set out details of the relevant decision or action, the reasons why the Member is aggrieved and details of such reasonable remedial or other action or monetary payment as that Member requests to be carried out in the circumstances.
- 11.6.3        The Chief Executive shall consider the Member's Request for Review and such further or other documents and information as he considers reasonably relevant and shall notify the Member in writing of the outcome of his review within a period of 28 days from receipt by him of the Request for Review. Where it is not possible to complete such review within such period of 28 days, the Chief Executive shall notify the Member accordingly and nominate a further period for the review, such period not to be longer than 3 months from the date of such notification to the Member.

11.7

**MARKET DISORDERS ETC AND DEFAULT**

For the avoidance of doubt, the Clearing House shall be under no obligation to consider any Request for Review under 11.6 above or otherwise, or comply with the provisions of this Section 11, and no appeal or Request for Review may be lodged under this Section 11 or otherwise, in respect of any decision or action taken by the Clearing House under the provisions of Regulation 26 or in respect of any decision, action or other matter arising out of or connected to the operation of the Default Rules and Default Procedures and the Clearing House's powers thereunder.

**APPENDIX 11A - APPEAL FORM**

## The Clearing House Appeal Procedures

Full Name of firm/company etc lodging the appeal ("the appellant"):	
Registered office address:	
Contact address and telephone number and email ( <i>if different from the above</i> ):	
Contact name:	
Position:	
Description of decision appealed against ( <i>see Section 11.2 of the Clearing House Procedures</i> ):	
Date decision notified to appellant:	
Set out here the grounds for appeal ( <i>if there is not enough space, please use additional sheets and staple to this form</i> )	
What action or remedy are you seeking?	

Pursuant to Section 11.3 of the Clearing House Procedures, we request that this appeal against the above mentioned decision of the Clearing House be referred to an Appeal Committee.

.....  
Signed for and on behalf of the appellant

.....  
(print name)

*Notes:*

*Please enclose a cheque payable to LCH.Clearnet Limited drawn on a UK branch, in the sum of £500 sterling. If your appeal is successful this sum will be refunded to you.*

*If there are any written representations, any documentation or further material which you would like the Appeal Committee to consider when determining your appeal, you may send it with this Appeal Form if you wish. Alternatively you may send it in later. However, please note that the Procedures put a time limit on the submission of such material. See Section 11.4.2 of the Clearing House Procedures.*

*For any inquiries or further information please contact the Company Secretary, LCH.Clearnet Limited on +44 (0)20 7426 7000*

**APPENDIX 11B - NOTICE OF FURTHER APPEAL**

## The Clearing House Appeal Procedures

*Note: This form should only be used if you have had a determination of an Appeal Committee and you are now commencing a Second Tier Appeal under Section 11.5 of the Clearing House Procedures.*

Full Name of firm/company etc lodging the appeal ("the appellant"):	
Registered office address:	
Contact address and telephone number and email ( <i>if different from the above</i> ):	
Contact name:	
Position:	
Details of determination of Appeal Committee appealed against (see <i>Section 11.5 of the Clearing House Procedures</i> ):	
<i>Please attach a copy of the Determination</i>	
Date of determination of the Appeal Committee:	

<p>Set out here the grounds for appeal <i>(if there is not enough space, please use additional sheets and staple to this form)</i></p>	
<p>What action or remedy are you seeking?</p>	

Pursuant to Section 11.5 of the Clearing House Procedures, we request that an Appeal Tribunal be constituted to determine this appeal against the above mentioned determination of the Appeal Committee.

.....  
Signed for and on behalf of the appellant

.....  
(print name)

Notes:

*If there are any written representations, any documentation or further material which you would like the Appeal Tribunal to consider when determining your appeal, you may send it with this Notice of Further Appeal Form you wish. Alternatively you may send it in later. However, please note that the Procedures put a time limit on the submission of such material. See Section 11.5.6 of the Clearing House Procedures.*

*For any inquiries or further information please contact the Company Secretary, LCH.Clearnet Limited on +44 (0)20 7426 7000.*