

LCH.Clearnet Limited

CLEARING HOUSE SETTLEMENT FINALITY REGULATIONS

Introduction

The Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999 No. 2979) (“the SF Regulations”) implement the Settlement Finality Directive (Directive 98/26/EC) of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (“the SF Directive”).

The SF Directive seeks to reduce the risks associated with participation in payment and securities settlement systems by minimizing the disruption caused by insolvency proceedings brought against a participant in such a system. The protection provided by the SF Regulations is given to any system which has been designated by the Financial Services Authority or the Bank of England as the “designating authority”.

In order to obtain such designation the Clearing House is required to satisfy the relevant designating authority that the requirements of the Schedule to the SF Regulations, and certain other matters, are satisfied in respect of the Clearing House.

These Settlement Finality Regulations (which form part of these Regulations) have been promulgated by the Clearing House in order to meet such of those requirements as are not addressed elsewhere in these Regulations.

1. Definitions

- 1.1 “**Concentration Bank**” means a bank or other credit institution which has a current agreement with the Clearing House to participate in the Clearing House Protected Payments System (as described in the Regulations) as a concentration bank.
- 1.2 “**Institution**” shall have the same meaning as in the SF Regulations.
- 1.3 “**The Clearing House System**” means the standardized formal arrangements, common rules, procedures as described in the Regulations, Procedures and service descriptions (each as amended from time to time) published from time to time by the Clearing House, or, if applicable, those rules of LIFFE pursuant to which LCH acts as clearing service provider, and related functionality which:
- (a) enable the Clearing House in operating its Clearing House Protected Payments System to give instructions to place at the disposal of its members (as set out in the Regulations) amounts of money on the accounts of certain banks or other credit institutions; and
 - (b) enable Members through the Clearing House Protected Payments System to give instructions to place at the disposal of the Clearing House (as set out in the Regulations) amounts of money on the accounts of certain banks or other credit institutions; and
 - (c) enable the Clearing House to give instructions to Securities Systems Operators to transfer title to, or interest in securities; and
 - (d) enable Members and Non Member Participants to give instructions to Securities Systems Operators to transfer title to or interest in securities; and
 - (e) enable the Clearing House to become central counterparty to Members in respect of eligible trades in certain derivative instruments, equities, repos, bonds GC and €GC and products, as described in the Regulations; and

- (f) enable the Clearing House and Members to fulfill the obligations they incur in respect of contracts registered by the Clearing House and in respect of which it has become central counterparty; and
 - (g) facilitate supplementary and incidental matters.
- 1.4 **“Member”** has the same meaning as in the Regulations.
- 1.5 **“Non Member Participant”** means a person:-
- (a) who is not a Member or an exchange, and who is party to any one or more of the following agreements as described in the Regulations:
 - (i) an EquityClear GCM/NCM Agreement (including an EquityClear GCM/NCM Agreement (virt-x);
 - (ii) a RepoClear Dealer Clearing Agreement;
 - (iii) a SwapClear Dealer Clearing Agreement;
 - (iv) an LCH EnClear OTC Third Party Clearing Agreement; or
 - (v) an EDX NCM-GCM Agreement; or
 - (b) who acts as settlement agent for any person described in section 1.5(a) above.
- 1.6 **“PPS Bank”** means a bank or other credit institution which has a current agreement with the Clearing House to participate, other than solely as a Concentration Bank, in the Clearing House Protected Payment System (including US PPS), as described in the Regulations.
- 1.7 **“Participant”** means of any of the following:
- (a) LCH.Clearnet Limited (“the Clearing House”);
 - (b) Any Member;
 - (c) Any Non-Member Participant;
 - (d) Any PPS Bank
- 1.8 **“Payment Transfer Order”** means
- (a) an instruction given by the Clearing House by means of a SWIFT message or other means to a PPS Bank to place at the disposal of a Member (by crediting a nominated account held by that Member at that bank) an amount of money to be debited from a nominated account held by the Clearing House at that bank (“a Credit Member/Debit LCH transfer order”); or
 - (b) an instruction given by the Clearing House by means of a SWIFT message or other means to a PPS Bank to place at the disposal of the Clearing House (by crediting a nominated account held by the Clearing House at that bank) an amount of money to be debited from a nominated account held by that Member at that bank (“a Credit LCH/Debit Member transfer order”); or
 - (c) an instruction given by the Clearing House to a Securities System Operator to place at the disposal of the Clearing House (by crediting a nominated cash account held by the Clearing House) an amount of money to be debited from a nominated account held by that Securities System Operator for a Member or Non-Member Participant, as the case may be (“an Inward Cash Account Transfer Order”); or
 - (d) an instruction given by the Clearing House to a Securities System Operator to place at the disposal of a Member or Non-Member Participant, as the case may be, (by crediting a nominated cash account held by such Member or Non-Member Participant) an amount of money to be debited from a nominated account held by that Securities System Operator for the Clearing House (“an Outward Cash Account Transfer Order”);
 - (e) an instruction in the form of an electronic message forwarded by or on behalf of a Member or Non-Member Participant to the Clearing House or its agent or contractor containing data constituting particulars of an Exchange Contract,

- SwapClear Transaction, RepoClear Transaction, Repo Trade or Bond Trade, ATP Match, ATP Match (virt-x), EDX Orderbook Match, Eligible GC Trade, LCH EnClear Transaction, or Eligible OTC Trade and submitted to the Clearing House for registration by the Clearing House in accordance with the Regulations (not including, for the avoidance of doubt, particulars in respect of any LIFFE exchange contract);
- (f) an open Cleared Exchange Contract, SwapClear Contract, RepoClear Contract, EquityClear Contract, EquityClear Contract (virt-x), EDX Cleared Exchange Contract, LCH EnClear Contract or LCH EnClear OTC Contract which has been registered by the Clearing House (but no including, for the avoidance of any doubt, any LIFFE exchange contract); or
 - (g) an instruction given by the Clearing House to a PPS Bank by means of a SWIFT message or other means to place at the disposal of the Clearing House (by crediting a nominated account of the Clearing House at a Concentration Bank) an amount of money to be debited from a nominated account held by the Clearing House at that PPS Bank; or
 - (h) an instruction given by the Clearing House to a Concentration Bank by means of a SWIFT message or other means to place at the disposal of the Clearing House (by crediting a nominated account of the Clearing House at a PPS Bank) an amount of money to be debited from a nominated account held by the Clearing House at that Concentration Bank.
- 1.9 **“Procedures”** means the practices and procedures of the Clearing House, as amended from time to time, including but not limited to the Procedures.
- 1.10 **“Regulations”** means the General Regulations, Default Rules and Procedures of the Clearing House as amended from time to time and **“the Procedures”** shall mean that part of the Regulations by that name.
- 1.11 **“Securities System Operator”** means:-
- (a) an operator of a securities depository and/or securities settlement system (including but not limited to Euroclear UK & Ireland Ltd, Euroclear Bank, Clearstream Frankfurt and Clearstream Luxemburg); or
 - (b) a bank or other credit institution (including but not limited to the National Bank of Belgium and Deutsche Bank AG) which provides securities holding and/or securities settlement services to the Clearing House as a nominee or otherwise through its participation in any securities settlement system or otherwise.
- 1.12 **“Securities Transfer Order”** means
- (a) an instruction, given by the Clearing House on its own behalf or on behalf of a Member or Non-Member Participant, to a Securities System Operator to transfer the title to or interest in securities to a Member, a Non-Member Participant, the Clearing House or other person by means of a book entry on the register maintained by that Securities System Operator, or otherwise; or
 - (b) an instruction given by a Member or Non-Member Participant to a Securities System Operator to transfer the title to or interest in securities to the Clearing House by means of a book entry on the register maintained by that Securities System Operator, or otherwise; or
 - (c) an instruction in the form of an electronic message forwarded by or on behalf of a Member or Non-Member Participant to the Clearing House containing data constituting particulars of an Exchange Contract for the transfer of Securities, RepoClear Transaction, Bond Trade, Repo Trade, ATP Match, ATP Match (virt-x), or EDX Orderbook Match, submitted for registration by the Clearing House in accordance with the provisions of the Regulations (not including, for the avoidance of doubt, particulars in respect of any LIFFE exchange contract); or

- (d) an open Cleared Exchange Contract for the transfer of Securities, a RepoClear Contract, an EquityClear Contract, EquityClear Contract (virt-x), or EDX Cleared Exchange Contract which has been registered by the Clearing House (but not including, for the avoidance of doubt, any LIFFE exchange contract).
- 1.13 **“Settlement Finality Directive”** means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems.
- 1.14 **“SF Regulations”** means The Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999 No. 2979).
- 1.15 **“Transfer Order”** includes a Payment Transfer Order or a Securities Transfer Order.

2. Transfer Orders – Specific Provisions

- 2.1 A Transfer Order takes effect and enters the Clearing House System in accordance with the following:
 - 2.1.1 Payment Transfer Orders
 - (a) A Payment Transfer Order of the type set out in sections 1.8(a), 1.8(b), 1.8(c), 1.8(d), 1.8(g) and 1.8(h) above takes effect and enters the Clearing House System when the relevant SWIFT message, or other electronic message or fax or other communication is sent by the Clearing House.
 - (b) A Payment Transfer Order of the type set out in section 1.8(e) takes effect and enters the Clearing House System when such particulars are received by the Clearing House or its agent or contractor.
 - (c) A Payment Transfer Order of the type set out in section 1.8(f) takes effect and enters the Clearing House System at the time of registration. Details of registration timings are given in the Procedures.
 - 2.1.2 Securities Transfer Orders:
 - (a) A Securities Transfer Order of the type set out in section 1.12(a) takes effect and enters the Clearing House System when the relevant SWIFT message, or other electronic message or fax is sent by the Clearing House.
 - (b) A Securities Transfer Order of the type set out in section 1.12(b) takes effect and enters the Clearing House system when the relevant SWIFT message, or other electronic message or fax is sent by the Member or Non-Member Participant.
 - (c) A Securities Transfer Order of the type set out in section 1.12(c) takes effect and enters the Clearing House system when the particulars thereof are received by the Clearing House or its agent or contractor.
 - (d) A Securities Transfer Order of the type set out in section 1.12(d) takes effect and enters the Clearing House system at the time of registration. Details of registration timings are given in the Procedures.
- 2.2 A Payment Transfer Order shall be irrevocable at the time specified below for that type of Payment Transfer Order.
 - 2.2.1 A Credit Member/Debit LCH transfer order shall be irrevocable at the time when the relevant PPS Bank sends a SWIFT confirmation message or otherwise confirms that such payment will be made.

- 2.2.2 A Credit LCH/Debit Member transfer order shall be irrevocable at the time when the relevant PPS Bank sends a SWIFT confirmation message or otherwise confirms that such payment will be made.
- 2.2.3 An Inward Cash Account Transfer Order shall be irrevocable from the time prescribed from time to time by the relevant Securities System Operator as being the time after which such instruction may not be revoked by a participant or other person.
- 2.2.4. An Outward Cash Account Transfer Order shall be irrevocable from the time prescribed from time to time by the relevant Securities System Operator as being the time after which such instruction may not be revoked by a participant or other person.
- 2.2.5 An instruction in the form of an electronic message forwarded by or on behalf of a Member or Non-Member Participant to the Clearing House or its agent or contractor containing data constituting particulars of an Exchange Contract, RepoClear Transaction, SwapClear Transaction, LCH EnClear Transaction or Eligible OTC Trade and submitted for registration by LCH in accordance with the Regulations shall be irrevocable from the time of its registration by the Clearing House.
- 2.2.6 An instruction in the form of an electronic message forwarded by or on behalf of a Member or Non-Member Participant to LCH, or its agent or contractor, containing data constituting particulars of a Bond Trade, Repo Trade, Eligible GC Trade, ATP Match, ATP Match (virt-x), or EDX Orderbook Match submitted to LCH for registration in accordance with the Regulations shall be irrevocable from the time when, having passed all relevant checks required by the Clearing House, it passes through the relevant Computer Gateway. For these purposes a relevant Computer Gateway shall mean a computer gateway of a system operated by LCH or by an agent or contractor of the Clearing House for the purposes, inter alia, of receiving such electronic messages and carrying out such checks.
- 2.2.7 An open Cleared Exchange Contract SwapClear Contract, RepoClear Contract, EquityClear Contract, EquityClear Contract (virt-x), EDX Cleared Exchange Contract, LCH EnClear Contract or LCH EnClear OTC Contract which has been registered by the Clearing House shall be irrevocable from the time of its registration by the Clearing House.
- 2.2.8 An instruction given by the Clearing House to a PPS Bank by means of a SWIFT message or other means to place at the disposal of the Clearing House (by crediting a nominated account of the Clearing House at a Concentration Bank) an amount of money to be debited from a nominated account held by the Clearing House at that PPS Bank shall be irrevocable at the time when the relevant PPS Bank confirms that such payment will be made.
- 2.2.9 An instruction given by the Clearing House to a Concentration Bank by means of a SWIFT message or other means to place at the disposal of the Clearing House (by crediting a nominated account of the Clearing House at a PPS Bank) an amount of money to be debited from a nominated account held by the Clearing House at that Concentration Bank shall be irrevocable at the time when the Concentration Bank confirms that such payment will be made.
- 2.3 Subject to section 2.5 below, a Securities Transfer Order shall be irrevocable at the time specified hereafter for the relevant type of Securities Transfer Order.

- 2.3.1 An instruction given by the Clearing House (on its own behalf or on behalf of a Member or Non-Member Participant) to a Securities System Operator of the kind referred to in section 1.11(a) to transfer the title to or interest in securities to a Member, Non-Member Participant, to the Clearing House or other person by means of a book entry on the register maintained by that Securities System Operator shall be irrevocable at the time prescribed from time to time by that Securities System Operator as being the time after which such instruction may not be revoked by a participant or other person.
- 2.3.2 An instruction given by the Clearing House (on its own behalf or on behalf of a Member or Non-Member Participant) to a Securities System Operator of the kind referred to in section 1.11(b) to transfer the title to or interest in securities to a Member, Non-Member Participant, to the Clearing House or other person by means of a book entry on the register maintained by another Securities System Operator shall be irrevocable at the time prescribed from time to time by that other Securities System Operator as being the time after which such instruction may not be revoked by a participant or other person.
- 2.3.3 An instruction given by a Member or, where permitted or required by the Regulations, a Non-Member Participant, to a Securities System Operator of the kind referred to in section 1.11(a) to transfer the title to or interest in securities to the Clearing House by means of a book entry on the register maintained by that Securities System Operator shall be irrevocable at the time prescribed from time to time by that Securities Settlement System Operator as being the time after which such instruction may not be revoked by a participant or other person.
- 2.3.4 An instruction given by a Member or, where permitted or required by the Regulations, a Non-Member Participant, to a Securities System Operator of the kind referred to in section 1.11(b) to transfer the title to or interest in securities to the Clearing House by means of a book entry on the register maintained by another Securities System Operator shall be irrevocable at the time prescribed from time to time by that other Securities Settlement System Operator as being the time after which such instruction may not be revoked by a participant or other person.
- 2.3.5 An instruction in the form of an electronic message forwarded by or on behalf of a Member or Non-Member Participant to the Clearing House or its agent or contractor containing data constituting particulars of an Exchange Contract, EDX Cleared Exchange Contract, or RepoClear Transaction for the transfer of securities, and submitted for registration by the Clearing House in accordance with the Regulations shall be irrevocable at the time of its registration by the Clearing House.
- 2.3.6 An instruction in the form of an electronic message forwarded by or on behalf of a Member or Non-Member Participant to the Clearing House, or its agent or contractor, containing data constituting particulars of a Bond Trade, Repo Trade, ATP Match, ATP Match (virt-x) or EDX Orderbook Match submitted to LCH for registration in accordance with the Regulations shall be irrevocable from the time when, having passed all relevant checks required by the Clearing House, it passes through the relevant Computer Gateway. For these purposes a relevant Computer Gateway shall mean a computer gateway of a system operated by the Clearing House or by an agent or contractor of the Clearing House for the purposes, inter alia, of receiving such electronic messages and carrying out such checks.

2.3.7 An open Cleared Exchange Contract a RepoClear Contract, an EquityClear Contract, EquityClear Contract (virt-x), or EDX Cleared Exchange Contract for the transfer of Securities which has been registered by the Clearing House shall be irrevocable from the moment of its registration by LCH.

2.4

2.4.1 Particulars of when registration occurs for exchange contracts are set out in section 2A.5.3 of section 2A (Exchange Clearing) of the Procedures.

2.4.2 Particulars of when registration occurs for RepoClear Transactions, are set out in Section 2B.3 of the Procedures.

2.4.3 Particulars of when registration occurs for SwapClear Transactions are set out in Section 2C of the Procedures.

2.4.4 Particulars of when registration occurs for ATP Matches and ATP Matches (virt-x) in EquityClear Eligible Securities are set out in Section 2D.

2.4.5 Particulars of when registration occurs for LCH EnClear Transactions and Eligible OTC Trades are set out in Section 2E.

2.4.6 Particulars of when registration occurs for EDX Orderbook Matches are set out in Section 2F.

2.5

2.5.1 For the purposes of this section 2.5 "Onward Instruction" shall mean any instruction to a securities settlement system, which is given by a Securities System Operator of the kind referred to in section 1.11(b) above, and through which that Securities System Operator gives effect to a Securities Transfer Order given to it by the Clearing House.

2.5.2 Where a Securities Transfer Order is given by LCH to a Securities Systems Operator of the kind referred to in section 1.11(b), that Securities Transfer Order shall be irrevocable from the time after which any Onward Instruction may not be revoked by that Securities Systems Operator as prescribed by the rules or other requirements of the securities settlement system to which such Onward Instruction is submitted.

3. Prohibition of Revocation of Transfer Orders

A Transfer Order shall not be revoked or purport to be revoked by a Participant (or by any liquidator or other insolvency office-holder appointed with regard to any undertaking operated by a Participant) after the time specified in section 2 above as being the time when such instruction becomes irrevocable.

4. Provision of information

- 4.1 A Participant shall, within 14 days of being requested to do so by any person (“the applicant”) and upon being paid such reasonable charge as the Participant may require, provide to the applicant the following information:-
- 4.1.1 details of the systems which are designated for the purposes of the Settlement Finality Directive in which the Participant, as the case may be, participates; and
- 4.1.2 information about the main rules governing the functioning of those systems.
- 4.2 Nothing in this section 4 shall require the Participant to provide any of the above information to an applicant where, or to the extent that, such request is frivolous or vexatious.
- 4.3 Each Participant shall promptly supply to the Clearing House such information as the Clearing House may require from time to time in order for LCH to meet its obligations as the operator of a system designated under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999.

5. Notification of certain insolvency events

- 5.1 Subject to section 5.2 below a Participant shall forthwith notify the Clearing House, the FSA and the Bank of England if:-
- 5.1.1 a resolution is passed for the voluntary winding up of the Participant; or
- 5.1.2 a trust deed granted by the Participant (as the case may be) becomes a protected trust deed.
- 5.2 If a Participant is required to give notice of any of the events set out in sections 5.1.1 and 5.1.2 above by any other provisions of the Regulations, then nothing in this section shall be taken to require the giving of a further notice to the Clearing House of the same event, providing always that such notice as is given under such other provision of the Regulations is given in writing and addresses to the person identified in section 5.3 below.
- 5.3 Any notice to be given to the Clearing House under this provision shall be given in writing, addressed to the General Counsel, and shall be sent by first class pre-paid post or hand delivered to the following address:

LCH.Cleernet Limited
Aldgate House,
33 Aldgate High Street
London EC3N 1EA

Or sent by fax (followed by postal confirmation) to the following fax number:
+44 (0)20 7426 7210

- 5.4 Any notice given to the FSA under this provision shall be sent by first class pre-paid post or hand delivered to:

Manager, Clearing/Settlement,
Financial Services Authority
Markets and Exchanges Division
25 The North Colonnade
London E14 5HS

Or sent by fax (followed by postal confirmation) to the following fax number:
+44 (0)20 7676 9735

- 5.5 Any notice given to the Bank of England under this provision shall be given by first class pre-paid post or hand delivered to:

The Senior Manager
Payment Systems Oversight
Market Infrastructure Division, HO-3
Bank of England
Threadneedle Street
London EC2R 8AH

Or sent by fax (followed by postal confirmation) to the following fax number:
+44 (0)20 7601 3561