



CDSClear

LCH SA CDS Clearing Procedures

Section 9 – Complaint Resolution

9 May 2012

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Capitalised terms used in this Complaint Resolution Procedure and not otherwise defined herein shall have the meaning given pursuant to the remainder of the CDS Clearing Documentation, as such term is defined in the document entitled "CDS Clearing Rule Book" published by LCH SA, as amended from time to time.

9.1 INTRODUCTION

This Section 9 of the Procedures describes how a Clearing Member (the "**Complainant**") who has a complaint arising in connection with the performance, or failure to perform, by LCH SA of any of its regulatory functions, may make a formal complaint in writing to LCH SA (a "**Complaint**") and the arrangements that are in place with regards to the investigation and resolution of such complaints.

LCH SA is a clearing house within the meaning of Article L. 440-1 of the French Monetary and Financial Code and has been notified to the European Commission as a securities settlement system pursuant to the Settlement Finality Directive. In accordance with the framework of its statutory and regulatory prerogatives, LCH SA, amongst other matters, clears Original Transactions, supervises the Cleared Transactions registered in the name of the Clearing Members, calculates the associated risk, calls Margin to cover this risk, ensures the proper settlement of the Cleared Transactions as central counterparty, and manages the CDS Default Management Process. Any formal complaint in writing, arising in connection with the performance or failure by LCH SA to fulfil any such regulatory function, will be a Complaint for the purpose of this Section 9 of the Procedures, save that a Complaint will not be eligible to be dealt with in accordance with this Section 9 if:

- (i) it relates to a decision made by LCH SA in accordance with Section 8 of the Procedures;
- (ii) it relates to LCH SA's relationship with its employees;
- (iii) it relates to the content of the CDS Clearing Documentation;
- (iv) it is in connection with a contractual or commercial dispute involving LCH SA and is not connected in any way with LCH SA's regulatory functions;
- (v) it is made three (3) months after the date on which the Complainant becomes aware or should have become aware of the circumstances giving rise to the Complaint (unless the Complainant can evidence reasonable grounds for the delay);
- (vi) the subject matter of the Complaint is something which has already been referred to arbitration or litigation, as applicable in accordance with the CDS Dispute Resolution Protocol; and/or
- (vii) it amounts, in LCH SA's reasonable opinion, to an abuse of rights by the Complainant.

9.2 HOW TO MAKE A COMPLAINT

A Complaint should be made in writing, being clearly identified as a Complaint made under Section 9 of the Procedures, dated and addressed to the Company Secretary and sent to the following address:

Banque Centrale de Compensation (“**LCH SA**”)
18, Rue du Quatre Septembre
75002 Paris

Or by e-mail to: Lchclearnetsa_Info@lchclearnet.com

The Complaint should be signed on behalf of the Complainant by a director or equivalent officer with appropriate authority.

The Complaint should include sufficient information to allow LCH SA to properly identify and assess the matters to which the Complaint relates, the activities complained of, and the basis for any alleged loss.

In the event LCH SA deems the provided information insufficient, it may request further information and the Complaint may not be investigated further until such information is received.

Upon receipt of a written Complaint (which, for the avoidance of doubt, shall include those Complaints transmitted by email) pursuant to these Procedures, LCH SA shall acknowledge receipt of the Complaint within 7 days.

The Complainant shall not be permitted to commence action pursuant to Section 1.2.15 of the CDS Clearing Rule Book concurrently with or subsequent to any Complaint made pursuant to these Procedures in respect of the same subject matter of the Complaint until a decision has been made by LCH SA in accordance with Paragraph 9.4 below.

After receiving the Complaint, LCH SA will conduct an internal investigation and review of such Complaint in accordance with the procedures set out below.

9.3 INVESTIGATION PROCEDURE

LCH SA will convene an “**Investigation Committee**” to investigate the Complaint. The Investigation Committee will be comprised of any three of the following persons:

- (a) the Chief Executive Officer of LCH SA or the CDS Business Unit Managing Director;
- (b) the Managing Director, Operations, of LCH SA;
- (c) the Managing Director, Risk, of LCH SA; or
- (d) any suitably senior representative of LCH SA.

No later than 7 days from the receipt of a Complaint, LCH SA shall notify the Complainant of the persons comprising the Investigation Committee.

Within 21 days of receiving any Complaint which LCH SA considers to be ineligible, LCH SA will inform the Complainant that it proposes not to investigate the Complaint and shall

communicate the ground on which it believes such Complaint to be ineligible, in accordance with Paragraph 9.1(i) to (vii).

LCH SA will deliver the Investigation Committee's report in relation to the eligible Complaint within eight weeks from the date of acknowledgement of receipt of the Complaint. However, where the scope of the Complaint reasonably demands further investigation, LCH SA will write to the Complainant, prior to the expiration of the eight week period, explaining why the report will not be finalised within eight weeks from the date of acknowledgement of receipt of the Complaint, and indicating when a final response is likely to be made. A final response must, in all cases, be delivered within twelve weeks (unless otherwise agreed between LCH SA and the Complainant).

If a Complaint has not been responded by LCH SA pursuant to Paragraph 9.4 below within twelve weeks from the date of acknowledgement of receipt of the Complaint and LCH SA and the Complainant have not agreed to extend the period for investigation, the Complaint shall be referred to the Chief Executive Officer of LCH SA. Following the referral to the Chief Executive Officer of LCH SA, a meeting should be convened within 14 days between the Complainant, the Chief Executive Officer of LCH SA and members of the Investigations Committee, as requested by either the Complainant or LCH SA, at the offices of LCH SA (or at the offices of the Complainant if agreed between the parties). The purpose of such meeting shall be for LCH SA to agree and communicate the outcome of the investigation to the Complainant, together with any proposed remedial action.

LCH SA may at any time obtain professional advice as appropriate.

The costs of the internal investigation and review shall be borne by LCH SA.

9.4 RESULT OF THE INVESTIGATION

Once the Investigation Committee has concluded its investigation in accordance with Paragraph 9.3, LCH SA will inform the Complainant of the outcome of the investigation, together with any remedial action proposed by LCH SA. The remedial action taken may include, but will not be limited to, offering an apology, taking steps to rectify the error, the offer of a compensatory payment or a combination of the above. If a Complaint is rejected, LCH SA will give its reason for doing so.

9.5 DISPUTES

Where a Complainant disputes the outcome of the investigation and/or the remedial actions proposed by LCH SA it may, within 14 days (or such longer period as LCH SA may, at his discretion, direct) of receiving notice of the Investigation Committee's findings and/or proposed remedial measures, refer the Dispute to be resolved by arbitration in accordance with the expedited procedure set out in the CDS Dispute Resolution Protocol.

9.6 RECORD KEEPING

A copy of all documents and materials relating to a Complaint shall be sent to LCH SA. LCH SA will retain all documents and materials for a minimum of three years from the conclusion of a Complaint.

9.7 **CONFIDENTIALITY**

LCH SA and the Complainant must each observe strict confidentiality in respect of the investigation of a Complaint and shall procure that all information provided in the course of the Complaint Resolution procedure is held in a confidential manner in accordance with Article 11 (*CONFIDENTIALITY*) of the CDS Admission Agreement and Section 1.2.12 of the CDS Clearing Rule Book.