



**London**  
Stock Exchange Group

*London Stock Exchange Group PLC*

*Proposed acquisition of*

*Refinitiv*

**REFINITIV** 

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**COMMITMENTS TO THE EUROPEAN COMMISSION SUBMITTED PURSUANT  
TO COUNCIL REGULATION (EC) NO. 139/2004**

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**Commitments in relation to OTC Interest Rate Derivatives**

**submitted by**

**London Stock Exchange Group plc**

**on**

**26 November 2020**

**COMP / M.9564**

**LSEG / REFINITIV BUSINESS**

Pursuant to Article 8(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), London Stock Exchange Group plc (“*LSEG*” or the “*Notifying Party*”) hereby enters into the following Commitments (the “*Commitments*”) vis-à-vis the European Commission (the “*Commission*”) with a view to rendering the acquisition by LSEG of sole control over the Refinitiv business (“*Refinitiv*”; together with LSEG the “*Parties*”) (the “*Concentration*”) compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission’s decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the “*Decision*”), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the “*Remedies Notice*”).

## Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

**Affiliated Undertakings** means undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

**Best efforts** obligations shall be interpreted in light of the Commission’s decision pursuant to Article 8(2) of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement, the Merger Regulation and the general principles of EU law. Any interpretation that may be given to this term under the law of other jurisdictions is not relevant solely for the purpose of interpreting and/or implementing the Commitments.

**CCP** means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

**Clearing** means the process of establishing positions, including the calculation of net obligations, and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from those positions.

**Clearing Fees** means all fixed and variable elements payable to LSEG by a Clearing Member or Client for Clearing of OTC IRD contracts, as well as any potential fees payable by Trading Venues and/or Middleware Providers, if applicable e.g., access fees. This includes, and is not necessarily limited to (i) LCH SwapClear Clearing Member fees (including any volume-based fee plans, product specific pricing plans, and new Clearing Member onboarding fees); (ii) LCH SwapClear Client Clearing fees (including any volume-based fee plans, booking fees, maintenance fees and account fees); and (iii) ICE Libor fees (where applicable), payable for the provision of services required for the Clearing of any OTC IRD contract.

**Clearing Member** means an undertaking which participates in a CCP and which is responsible for discharging the financial obligations arising from that participation.

**Client** means an undertaking with a contractual relationship with a Clearing Member of a CCP which enables that Clearing Member to clear on its behalf.

**Closing** means closing of the Concentration.

**Commitment Period** means ten years from the date of the Decision.

**Complainant** means any OTC IRD Trading Venue regardless of location or any Middleware Provider regardless of location which has submitted a written complaint to LSEG (with a copy to the Monitoring Trustee) pursuant to the process set out in Section E of these Commitments that LSEG is not complying with these Commitments.

**Confidential Information** means any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

**Conflict of Interest** means any conflict of interest that could impair the Monitoring Trustee's objectivity and independence in discharging its duties under the Commitments.

**Effective Date** means the date of adoption of the Decision.

**EMIR** means the European Market Infrastructure Regulation (Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories), as amended from time to time, as well as new legislation, which replaces this Regulation (EU) No 648/2012.

**LCH Ltd** means LCH's UK-registered Clearing house, incorporated in England and Wales (registered number 25932), whose principal office is at Aldgate House, 33 Aldgate High Street, London EC3N 1EA.

**LCH Rulebook** means the applicable rules of LCH Ltd as published at <https://www.lch.com/resources/rules-and-regulations/ltd-rulebooks> (or any replacement or successor websites), as amended from time to time (which shall include both the Rulebook and FCM Rulebook, as defined therein).

**LCH SwapClear (or SwapClear)** means LCH Ltd's Clearing business responsible for the Clearing of OTC IRDs (including any successor business under a different name and/or housed in a different LSEG entity, as well as new legal entities directly or indirectly controlled by LSEG to whom LCH SwapClear's clearing business is transferred in whole or in part).

**Middleware Provider** means a system or facility, such as an exchange, a clearing house, a swap execution facility, a designated contract market, trade confirmation or affirmation system or other similar venue or system, which is able to submit confirmed OTC IRD transactions for Clearing to any authorised or recognised CCP, such as MarkitWire and Traiana (and excludes, for the avoidance of doubt, Trading Venues directly connected to LCH SwapClear via the ClearLink API).

**Monitoring Trustee** means one or more natural or legal person(s) who is/are approved by the Commission and appointed by LSEG, and who has/have the duty to monitor LSEG's compliance with the conditions and obligations attached to the Decision.

**OTC IRD** means any derivative contract, which is a financial instrument based on a future exposure to an underlying benchmark rate, composite index, or reference basket of securities whose value is affected by changes in interest rates, and the execution of which does not take place on a regulated market within the meaning of Article 4(1)(14) of Directive 2004/39/EC or on a third-country market considered as equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC. For the avoidance of doubts, this includes, but is not limited to, interest rate swaps, overnight index swaps, forward rate agreements, and inflation swaps.

**OTC IRD Clearing Services** means services provided by LSEG's CCPs required for their Clearing of OTC IRDs. These services are currently provided by LCH SwapClear.

**Tradeweb** means Tradeweb Markets Inc., an independent US publicly-traded company, incorporated in Delaware, United States and whose principal office is at 1177 Avenue of the Americas New York, New York 10036, United States (including any successor business under a different name and/or housed in a different LSEG entity, as well as new legal entities directly or indirectly controlled by LSEG to whom Tradeweb's trading business is transferred in whole or in part).

**Trading Venue** means a 'trading venue' as defined under EMIR, i.e. a system operated by an investment firm or a market operator within the meaning of Article 4(1)(1) and 4(1)(13) of Directive 2004/39/EC other than a systematic internaliser within the meaning of Article 4(1)(7) thereof, which brings together buying or selling interests in OTC IRDs in the system (including dealer-to-customer, dealer-to-dealer and/or customer-to-customer), in a way that results in a contract in accordance with Title II or III of that Directive.

## **Section B. The Commitments**

### *Open access on non-discriminatory terms*

2. LSEG commits to offer its global OTC IRD Clearing Services on an open access basis and that it will not engage in commercial strategies that would have the object or effect of discriminating based on the source of the OTC IRD trade submitted to LSEG for Clearing (and in particular to LCH SwapClear). This commitment applies to all OTC IRD Trading Venues and Middleware Providers, including for the avoidance of doubt any Trading Venues and Middleware Providers which request to be connected to LSEG (and in particular to LCH SwapClear) for OTC IRDs in the future, and irrespective of their location. For the avoidance of doubt, this requirement is without prejudice to LSEG's ability to treat differently (i) Trading Venues on the one hand, and Middleware Providers on the other hand; and (ii) different Trading Venues or different Middleware Providers where the objective technical specificities of either justify it.
3. By these commitments LSEG commits to not engage in commercial strategies in relation to OTC IRD Clearing Services (including via LCH SwapClear or by LSEG, including via LCH SwapClear, coordinating its activities or strategies with Tradeweb<sup>1</sup>) that have the object or the effect of foreclosing Trading Venues and

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<sup>1</sup> While Tradeweb is not a signatory to these Commitments and so is not bound by them, they do apply to LSEG in its capacity as a majority shareholder of Tradeweb.

Middleware Providers by applying discriminatory conditions to, on the one hand, trades executed on or from Tradeweb, and on the other hand, trades executed on or from other Trading Venues than Tradeweb and/or Middleware Providers, including in terms of price (e.g. Clearing Fees), service level and service offering, technical, operational or service quality requirements, cooperation and innovation or new product launches. LSEG specifically makes the following commitments with respect to OTC IRD Clearing Services:

- (a) LSEG (and in particular LCH SwapClear) will continue to comply with all regulatory requirements set out in EMIR (as may be amended from time to time) to the extent applicable to the non-discriminatory and transparent Clearing of OTC IRDs, including the Article 7 EMIR provisions that would otherwise apply to EU-recognised CCPs only.<sup>2</sup> These Commitments will continue in full force and effect for the Commitment Period, irrespective of the nature and scope of any future trade agreement concluded between the European Union and the United Kingdom (or the absence thereof);
- (b) LSEG (and in particular LCH SwapClear) will apply all regulatory requirements set out in EMIR (as may be amended from time to time) to the extent applicable to the non-discriminatory and transparent Clearing of OTC IRDs to any Middleware Provider in the same manner as they are applicable to Trading Venues, again irrespective of the nature and scope of any future trade agreement concluded between the European Union and the United Kingdom (or the absence thereof);
- (c) LSEG (and in particular LCH SwapClear) will strengthen and enhance its existing open access model and non-discriminatory business practices in relation to any Trading Venues and Middleware Providers through which trades are submitted to LSEG (and in particular to LCH SwapClear) for Clearing and that are connected to LSEG (and in particular to LCH SwapClear) for Clearing from time to time. In particular, LSEG:
  - i. will:
    - (i) ensure that all current and future Clearing Fees and compression fees (if the Clearing Member uses a compression service of LSEG) will be set in a transparent manner and will be non-discriminatory between Trading Venues and Middleware Providers; and
    - (ii) in respect of its OTC IRD Clearing Services, not coordinate its pricing, including with Tradeweb, e.g. by way of cross-subsidization or bundling in relation to OTC IRD products cleared by LSEG (and in particular LCH SwapClear) and/or offered for trading by Tradeweb – in a way that could result in LSEG (and in particular LCH SwapClear) engaging in indirect price or cost discrimination between Tradeweb and other

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<sup>2</sup> For the purpose of these Commitments, “competent authority” of the CCP in Article 7 EMIR shall mean the UK Bank of England in respect of LCH SwapClear.

Trading Venues and Middleware Providers or otherwise based on a trade's route to Clearing;

- ii. will guarantee non-discriminatory treatment in respect of service levels (including but not limited to the time period within which LCH SwapClear will accept or not accept the OTC IRD trade for Clearing), technical specifications and operational standards (including interoperability requirements) that must be met by Trading Venues and Middleware Providers to maintain connectivity to LCH SwapClear, and functionalities offered by LCH SwapClear, including by:
  - (i) guaranteeing that the quality and/or service levels of its OTC IRD Clearing Services and related workflow functionality is provided on a non-discriminatory basis, i.e. irrespective of the Trading Venue or Middleware Provider from which that customer's trade has originated. This includes (but is not limited to):
    - (A) accepting all OTC IRDs trades for Clearing as quickly as technologically practicable and on a non-discriminatory basis; and
    - (B) making available new workflow functionality at the same time to all Trading Venues and Middleware Providers connected to LSEG for OTC IRDs Clearing on a non-discriminatory basis;
  - (ii) in order to ensure that all connected Trading Venues and Middleware Providers have an equal opportunity to adapt to any new processes or technical / operational requirements, LCH SwapClear will serve all connected Trading Venues and Middleware Providers notice of the nature and timing of any planned changes to technical or operational requirements as early as practicable under a best efforts obligation, and in any event no less than at least three months before such changes take effect, with technical specifications provided as early as practicable under a best efforts obligation, and in any event no less than at least one month before such changes take effect (unless otherwise approved by the Monitoring Trustee and then with as much advance notice as practicable),<sup>3</sup> and with notice on the nature, timing and technical requirements of such changes being served to all connected Trading Venues and Middleware Providers

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<sup>3</sup> Where it has not been reasonably practicable for LSEG to observe the three-month or the one-month period for regulatory and/or risk management reasons (e.g. in the event of a cyber-attack), LSEG will not be required to seek approval, but will in any event inform the Monitoring Trustee as soon as practicable.

on the same day in the same format, and with the same degree of substance and the same level of cooperation;

- (iii) LSEG (and in particular LCH SwapClear) will offer all existing and future key workflow functionalities for OTC IRD Clearing Services (to ensure consistent service levels) (i) on non-discriminatory commercial terms; (ii) subject to non-discriminatory technical and operational requirements; and (iii) no later than they are made available to Tradeweb; and
- iii. will cooperate on a non-discriminatory basis in relation to OTC IRD Clearing Services with Trading Venues that want to introduce new OTC IRD products for Clearing,<sup>4</sup> including by:
- (i) guaranteeing that LSEG (and in particular LCH SwapClear) will cooperate on a non-discriminatory basis with all Trading Venues and Middleware Providers for the launch of new or enhanced products for Clearing. This includes (but is not limited to):
    - (A) offering support with technical queries from Trading Venues and Middleware Providers on a non-discriminatory basis;
    - (B) ensuring specifications for new products (including margin requirements) are set in a non-discriminatory (i.e. Trading Venue- and Middleware Provider-agnostic) manner;
  - (ii) assessing, in good faith, under a best efforts obligation, and on a non-discriminatory basis, proposals from Trading Venues and Middleware Providers regarding new and enhanced products for Clearing, in particular by using the same analytical framework as applied to any proposals from Tradeweb;
  - (iii) updating all connected Trading Venues and Middleware Providers in respect of planned innovations and/or new product launches with respect to OTC IRD Clearing Services in the same manner, at the same time, via confidential quarterly updates (to the extent there are any such innovations or launches), which will be provided to all connected Trading Venues and Middleware Providers at the same time; and
  - (iv) guaranteeing that all new Clearing products adopted by LSEG (and in particular by LCH SwapClear) will be made available to all connected Trading Venues and Middleware Providers (i) on non-discriminatory commercial terms; (ii) subject to non-

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<sup>4</sup> In the unlikely event that a situation arises where LSEG considers that in order to bring a highly innovative product or service to market it needs to cooperate with an individual Trading Venue, where full compliance with the Commitments would otherwise prevent LSEG from doing so and therefore would prevent the innovative product or service from being developed, LSEG may raise this with the Monitoring Trustee who shall have the discretion to grant or refuse a dispensation from this paragraph 3(c)iii for such situation. The Monitoring Trustee will coordinate its decision with the Commission and inform LSEG of its decision.

discriminatory technical and operational requirements; and (iii) no later than they are made available to Tradeweb

unless this is prevented by the existence of third-party IP, confidentiality or other rights and, having used best efforts to obtain consent from the holder of such rights, consent to disclose this information is refused.<sup>5</sup>

4. LCH Ltd will use best efforts to incorporate into the LCH Rulebook LCH SwapClear's commitment to providing OTC IRD Clearing Services on an open access and non-discriminatory basis. The LCH Rulebook is subject to review by LCH's governance and regulators (including the Bank of England and United States Commodity Futures Trading Commission).
5. LSEG commits to establish appropriate ring-fencing and firewalls between its trading and clearing activities for OTC IRDs in order to ensure that any LSEG entities active in OTC IRD Clearing Services do not provide to LSEG's entities active in OTC IRD trading (and in particular Tradeweb for as long as LSEG holds a controlling shareholding in Tradeweb) any OTC IRD Clearing Services information about current and future: (i) prices (e.g. Clearing Fees and compression fees); (ii) technical, operational or service quality requirements; or (iii) innovation or new product launches, which other Trading Venues and Middleware Providers would not otherwise obtain at the same time. If Tradeweb obtains such information, the information will be communicated to other Trading Venues and Middleware Providers simultaneously, in the same format, and with the same degree of substance and the same level of cooperation.
6. For the sake of completeness, LSEG commits to ensure that any third-party suppliers that LSEG works with in relation to its OTC IRD Clearing Services will also be made aware of, and required to comply with, the ring-fencing and firewall obligations set out in paragraph 5 above.

### **Section C. Transparency in provision of OTC IRD Clearing Services**

7. LSEG will ensure that LCH SwapClear publishes, and makes easily accessible:
  - (a) standard terms of access for the provision of all OTC IRD Clearing Services on a secure website to any Trading Venue and Middleware Provider;<sup>6</sup>

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<sup>5</sup> This exception preserves third parties' (including but not limited to Trading Venues and Middleware Providers) incentives to innovate. LSEG (and in particular LCH SwapClear) commits to implement robust ring-fencing arrangements to ensure third-party confidential proposals would not be disclosed to Tradeweb. For the same reason, nothing in these Commitments shall force LSEG to share Tradeweb confidential proposals with other Trading Venues and Middleware Providers without Tradeweb's consent. This preserves Tradeweb's incentives to innovate and its ability to compete independently and on the merits with other Trading Venues and Middleware Providers.

<sup>6</sup> For cyber security reasons LCH SwapClear considers that these specifications cannot be published on its public website. However, LCH SwapClear commits to publish on its public website and make easily accessible to any Trading Venue or Middleware Provider the information explaining how the Trading Venues and Middleware Providers can get access to the secure website.



- (b) Clearing Fees and compression fees, including clear statements that no discriminatory pricing based on choice of Trading Venue or Middleware Provider is permitted, on its public website;
- (c) technical and operational connectivity requirements applicable to all connected Trading Venues and Middleware Providers, including in respect of existing and future key workflow functionalities, and details of any upcoming technical changes and/or upgrades, which will be published on a secure website which any connected Trading Venue and Middleware Provider can access;<sup>7</sup>
- (d) the terms of these Commitments, including the details of the fast track dispute resolution mechanism, including the timeframes within which LSEG will respond to any complaint received in connection with the Commitments, on its public website; and
- (e) the name and contact details of the Monitoring Trustee, on its public website.

**Section D. Monitoring Trustee**

**I. Appointment procedure**

- 8. LSEG shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee.
- 9. The Monitoring Trustee shall:
  - (i) at the time of appointment, be independent of the Parties and their Affiliated Undertakings;
  - (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience; and
  - (iii) neither have nor become exposed to a Conflict of Interest during the Commitment Period and for one year after the Commitment Period ends.
- 10. The Monitoring Trustee shall be remunerated by LSEG in a way that does not impede the independent and effective fulfilment of its mandate.

*Proposal by LSEG*

- 11. No later than two weeks after the Effective Date, LSEG shall submit the name or names of one or more natural or legal persons whom LSEG proposes to appoint as the Monitoring Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Monitoring Trustee fulfil the requirements set out in paragraph 9 and shall include:
  - (i) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments; and

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<sup>7</sup> Ibid.

- (ii) the outline of a work plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.

*Approval or rejection by the Commission*

- 12. The Commission shall have the discretion to approve or reject the proposed Monitoring Trustee and to approve the proposed mandate subject to any modifications it deems necessary for the Monitoring Trustee to fulfil its obligations. If only one name is approved, LSEG shall appoint or cause to be appointed the person or persons concerned as Monitoring Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, LSEG shall be free to choose the Monitoring Trustee to be appointed from among the names approved. The Monitoring Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

*New proposal by LSEG*

- 13. If all the proposed Monitoring Trustees are rejected, LSEG shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 8-12 of these Commitments.

*Trustee nominated by the Commission*

- 14. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Monitoring Trustee, whom LSEG shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

**II. Functions of the Monitoring Trustee**

- 15. The Monitoring Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Monitoring Trustee or LSEG, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.
- 16. The Monitoring Trustee shall:
  - (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision;
  - (ii) monitor the implementation of and compliance with the Commitments, by LSEG, as set out in Sections B and C above;
  - (iii) act as a contact point for any requests by third parties in relation to the Commitments;
  - (iv) propose to LSEG such measures as the Monitoring Trustee considers necessary to ensure LSEG's compliance with the Commitments;
  - (v) provide to the Commission, sending LSEG a non-confidential copy at the same time, a written report regarding the compliance by LSEG with the Commitments within 15 days after the end of every reporting period, each period being (i) one month for the first six months post-Closing; (ii) three months for the remainder of the first two years; (iii) six months in years three and four; and (iv) 12 months for the remainder of the Commitment Period.

The Commission can amend the frequency of these reports after consulting with the Monitoring Trustee;

- (vi) promptly report in writing to the Commission, sending LSEG a non-confidential copy at the same time, if it concludes on reasonable grounds that LSEG is failing to comply with the Commitments; and
- (vii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

### III. Duties and obligations of LSEG

- 17. LSEG shall provide and shall cause its advisors to provide the Monitoring Trustee with all such co-operation, assistance and information as the Monitoring Trustee may reasonably require to perform its tasks.
- 18. The Monitoring Trustee shall have full and complete access to any of LSEG's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments, and LSEG shall provide the Monitoring Trustee upon request with copies of any document. LSEG shall make available to the Monitoring Trustee one or more offices on their premises and shall be available for meetings in order to provide the Monitoring Trustee with all information necessary for the performance of its tasks.
- 19. LSEG shall indemnify the Monitoring Trustee and its employees and agents (each an "*Indemnified Party*") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to LSEG for, any liabilities arising out of the performance of the Monitoring Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Monitoring Trustee, its employees, agents or advisors.
- 20. At the expense of LSEG, the Monitoring Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to LSEG's approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. Should LSEG refuse to approve the advisors proposed by the Monitoring Trustee, the Commission may approve the appointment of such advisors instead, after having heard LSEG. Only the Monitoring Trustee shall be entitled to issue instructions to the advisors. Paragraph 19 of these Commitments shall apply *mutatis mutandis*.
- 21. LSEG agrees that the Commission may share Confidential Information proprietary to LSEG with the Monitoring Trustee. The Monitoring Trustee shall not disclose such information, and the principles contained in Article 17(1) and (2) of the Merger Regulation apply *mutatis mutandis*.
- 22. LSEG agrees that the contact details of the Monitoring Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties of the identity and the tasks of the Monitoring Trustee.
- 23. For a period of ten years from the Effective Date the Commission may request all information from LSEG that is reasonably necessary to monitor the effective implementation of these Commitments.

#### IV. Replacement, discharge and reappointment of the Monitoring Trustee

24. If the Monitoring Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:
- (i) the Commission may, after hearing the Monitoring Trustee and LSEG, require LSEG to replace the Monitoring Trustee; or
  - (ii) LSEG may, with the prior approval of the Commission, replace the Monitoring Trustee.
25. If the Monitoring Trustee is removed according to paragraph 24 of these Commitments, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the Monitoring Trustee has effected a full hand over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in paragraphs 8-14 of these Commitments.
26. Unless removed according to paragraph 24 of these Commitments, the Monitoring Trustee shall cease to act as Monitoring Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Monitoring Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

#### Section E. Fast-track dispute resolution procedure

27. In the event that a Complainant has reason to believe that LSEG has failed to comply with its obligations as set out in these Commitments, the fast-track dispute resolution procedure as described in this section will apply. Such fast-track dispute resolution mechanism will be an additional option to the benefit of the Complainant and not an obligation for it. LSEG commits not to suspend access to its global OTC IRD Clearing Services to the Complainant until the date of the final award of the Arbitral Tribunal or, in case a preliminary ruling is requested, until the date of this preliminary ruling (unless in each case such access suspension is necessary for regulatory and/or risk management reasons).
28. If the Complainant wishes to avail itself of the fast-track dispute resolution procedure, it shall send a written request to LSEG (with a copy to the Monitoring Trustee) setting out in detail the reasons leading that party to believe that LSEG is failing to comply with the requirements of these Commitments. The Complainant and LSEG will use best efforts to resolve all differences of opinion and to settle all disputes that may arise through co-operation and consultation within a reasonable period of time not exceeding 10 working days after receipt of the request, except where a complaint relates to a decision made by LSEG to ensure LCH Ltd's prudent risk management (in accordance with paragraph 29 below), in which case this period shall not exceed 25 working days (the "**Consultation Phase**").
29. In the event that a decision made by LSEG to ensure LCH Ltd's prudent risk management (in accordance with the laws and regulations applicable to LCH Ltd) attracts a complaint, the Monitoring Trustee shall request an opinion from the independent non-executive directors on the LCH Ltd Risk Committee on whether there was a bona fide reason for LSEG's risk decision. The Risk Committee will

report its findings to the Monitoring Trustee within 10 working days after receipt of the Monitoring Trustee's request (or such alternative period as agreed by the Monitoring Trustee).

30. The Monitoring Trustee shall be prepared, if requested, to facilitate the settlement of the dispute and shall present its own proposal (the "**Trustee Proposal**") for resolving the dispute, specifying in writing the action, if any, to be taken by LSEG in order to ensure compliance with the Commitments *vis-à-vis* the Complainant, within (i) 10 working days from the day that the Monitoring Trustee received LCH's Risk Committee report, when the Monitoring Trustee requested a report from LCH's Risk Committee and within (ii) five working days from the day that the Complainant sent the written request to LSEG, when the Monitoring Trustee did not request a report from LCH's Risk Committee.
31. The Monitoring Trustee will also have the ability to declare a complaint vexatious, frivolous or insufficiently substantiated, in which case LSEG will not need to comply with the obligations set out in paragraph 28, and the Arbitration process will not be available to the Complainant.
32. Without prejudice to paragraph 31, should the Complainant and LSEG (together the "**Parties to the Arbitration**") fail to resolve their differences of opinion in the consultation phase, the Complainant may serve a notice (the "**Notice**"), in the sense of a request for arbitration, to the International Chamber of Commerce (the "**ICC**") (the "**Arbitral Institution**"), with a copy of such Notice and request for arbitration to LSEG.
33. The Notice shall set out in detail the dispute, difference or claim (the "**Dispute**") and shall contain, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon shall be attached, e.g. documents, agreements, expert reports, and witness statements (without prejudice to the possibility for the Complainant to submit additional evidence and documents during the course of the Arbitration Procedure). The Notice shall also contain a detailed description of the action to be undertaken by LSEG (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal, including a comment as to its appropriateness.
34. LSEG shall, within 10 working days from receipt of the Notice, submit its answer (the "**Answer**"), which shall provide detailed reasons for its conduct and set out, inter alia, all issues of both fact and law, including any suggestions as to the procedure, and all documents relied upon, e.g. documents, agreements, expert reports, and witness statements. The Answer shall, if appropriate, contain a detailed description of the action which LSEG proposes to undertake *vis-à-vis* the Complainant (including, if appropriate, a draft contract comprising all relevant terms and conditions) and the Trustee Proposal (if not already submitted), including a comment as to its appropriateness.

#### **I. Appointment of the Arbitrators**

35. The Arbitral Tribunal shall consist of three persons. The Complainant shall nominate its arbitrator in the Notice; LSEG shall nominate its arbitrator in the Answer. The arbitrators nominated by the Complainant and by LSEG shall, within five working days of the nomination of the latter, nominate the chairman, making such nomination known to the parties and the Arbitral Institution which shall forthwith confirm the appointment of all three arbitrators.

36. Should the Complainant wish to have the Dispute decided by a sole arbitrator it shall indicate this in the Notice. In this case, the Complainant and LSEG shall agree on the nomination of a sole arbitrator within five working days from the communication of the Answer, communicating this to the Arbitral Institution.
37. Should (i) LSEG fail to nominate an arbitrator; (ii) the two arbitrators fail to agree on the chairman; or (iii) the Parties to the Arbitration fail to agree on a sole arbitrator, the default appointment(s) shall be made by the Arbitral Institution.
38. The three-person arbitral tribunal or, as the case may be, the sole arbitrator, are herein referred to as the *Arbitral Tribunal*.

## **II. Arbitration Procedure**

39. The Dispute shall be finally resolved by arbitration under the ICC rules, with such modifications or adaptations as foreseen herein or necessary under the circumstances (the “*Rules*”). The Arbitration shall be conducted in London, England in the English language.
40. The procedure shall be a fast-track procedure. For this purpose, the Arbitral Tribunal shall shorten all applicable procedural time-limits under the Rules as far as admissible and appropriate in the circumstances. The Parties to the Arbitration shall consent to the use of e-mail for the exchange of documents.
41. The Arbitral Tribunal shall, as soon as practical after the confirmation of the Arbitral Tribunal, hold an organisational conference to discuss any procedural issues with the Parties to the Arbitration. Terms of Reference shall be drawn up and signed by the Parties to the Arbitration and the Arbitration Tribunal at the organisational meeting or thereafter and a procedural time-table shall be established by the Arbitral Tribunal. An oral hearing shall, as a rule, be established within two months of the confirmation of the Arbitral Tribunal.
42. In order to enable the Arbitral Tribunal to reach a decision, it shall be entitled to request any relevant information from the Parties to the Arbitration, to appoint experts and to examine them at the hearing, and to establish the facts by all appropriate means. The Arbitral Tribunal is also entitled to ask for assistance by the Monitoring Trustee in all stages of the procedure if the Parties to the Arbitration agree.
43. The Arbitral Tribunal shall not disclose Confidential Information and shall apply the standards attributable to Confidential Information under the Merger Regulation. The Arbitral Tribunal may take the measures necessary for protecting Confidential Information in particular by restricting access to Confidential Information to the Arbitral Tribunal, the Monitoring Trustee, and outside counsel and experts of the opposing party.
44. The burden of proof in any dispute under these Rules shall be borne as follows: (i) the Complainant must produce evidence of a prima facie case; and (ii) if the Complainant produces evidence of a prima facie case, the Arbitral Tribunal must find in favour of the Complainant unless LSEG can produce evidence to the contrary.

### III. Involvement of the Commission

45. The Commission shall be allowed and enabled to participate in all stages of the procedure by:
- (i) receiving all written submissions (including documents and reports, etc.) made by the Parties to the Arbitration;
  - (ii) receiving all orders, interim and final awards and other documents exchanged by the Arbitral Tribunal with the Parties to the Arbitration (including Terms of Reference and procedural time-table);
  - (iii) giving the Commission the opportunity to file amicus curiae briefs; and
  - (iv) being present at the hearing(s) and being allowed to ask questions to parties, witnesses and experts.
46. The Arbitral Tribunal shall forward, or shall order the Parties to the Arbitration to forward, the documents mentioned to the Commission without delay.
47. In the event of disagreement between the Parties to the Arbitration regarding the interpretation of the Commitment, the Arbitral Tribunal may seek the Commission's interpretation of the Commitment before finding in favour of any Party to the Arbitration and shall be bound by the interpretation.

### IV. Decisions of the Arbitral Tribunal

48. The Arbitral Tribunal shall take all decisions by majority vote. The Arbitral Tribunal shall decide the Dispute on the basis of these Commitments and the Decision. Issues not covered by the Commitments and the Decision shall be decided (in the order as stated) by reference to the Merger Regulation, EU law and general principles of law common to the legal orders of the Member States as well as of England & Wales without a requirement to apply a particular national system.
49. In the event that a decision made by LSEG to ensure LCH Ltd's prudent risk management (in accordance with the laws and regulations applicable to LCH Ltd) attracts a complaint, the Arbitral Tribunal shall give due consideration to the evidence adduced by LSEG in relation to its prudent exercise of risk management, including but not limited to: (i) LCH SwapClear's historical practices for determining risk; (ii) any opinion, view or recommendation of the LCH Ltd Risk Committee (including where constituted in a manner consistent with paragraph 29 of these Commitments); (iii) any view or indication provided by any relevant regulatory authority; and (iv) any other regulatory guidance as to the regulatory or risk management question at issue.
50. Upon request of the Complainant or LSEG, the Arbitral Tribunal may make a preliminary ruling on the Dispute. The preliminary ruling shall be rendered within ten working days after the confirmation of the Arbitral Tribunal, shall be applicable immediately and, as a rule, remain in force until a final decision is rendered.
51. The final award shall, as a rule, be rendered within six months after the confirmation of the Arbitral Tribunal. The time-frame shall, in any case, be extended by the time the Commission takes to submit an interpretation of the Commitment if asked by the Arbitral Tribunal.
52. The Arbitral Tribunal shall, in the preliminary ruling as well as in the final award, specify the action, if any, to be taken by LSEG in order to comply with the

Commitments vis-à-vis the Complainant. The final award shall be final and binding on the Parties to the Arbitration and shall resolve the Dispute and determine any and all claims, motions or requests submitted to the Arbitral Tribunal. The arbitral award shall also determine the reimbursement of the costs of the successful party and the allocation of the arbitration costs. In case of granting a preliminary ruling or if otherwise appropriate, the Arbitral Tribunal shall specify that terms and conditions determined in the final award apply retroactively.

53. The Parties to the Arbitration shall prepare a non-confidential version of the final award, without business secrets. The Commission may publish the non-confidential version of the award.
54. Nothing in the arbitration procedure shall affect the power to the Commission to take decisions in relation to the Commitments in accordance with its powers under the Merger Regulation.

#### **Section F. General provisions**

55. These Commitments shall be effective worldwide.
56. These Commitments shall remain in effect for a period of ten years from the Effective Date.

#### **Section G. The review clause**

57. With the exception of the Commitment Period, the Commission may extend the time periods set out in the Commitments in response to a request from LSEG or, in appropriate cases, on its own initiative. Where LSEG requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to LSEG. Only in exceptional circumstances shall LSEG be entitled to request an extension within the last month of any period.
58. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

#### **Section H. Application**

59. These Commitments shall apply to the extent that LCH SwapClear is authorised or recognised to clear OTC IRD contracts under EMIR.
60. These Commitments shall not oblige LSEG to act in breach of any law or legally binding regulatory guidelines, industry codes, or other instructions issued by a regulator relevant to LSEG.

#### **Section I. Entry into force**

61. These Commitments shall take effect upon the date of adoption of the Decision.