

 <b>LCH</b> The Markets' Partner	<b>N°</b>	<b>Title</b>
	<b>IV.5-6</b>	<b>AGENT CLOSE-OUT MANAGEMENT PROCESS</b>

*Pursuant to Chapter 6 of Title IV of the Clearing Rule Book.*

## **CHAPTER 1      DEFINITIONS AND INTERPRETATION**

### **Article 1**

For the purposes of this Instruction, the following definitions will apply:

**Acceptance Notification:** The notification sent by the relevant Replacement Services Provider as defined in Article 4 below.

**Affected Sponsored Member Back-up Agent Services Provider (or Affected SM BAS Provider):** The Affected Sponsored Member as defined in Article 4 below.

**Back-up Agent Services Provider:** The Non-Affected Agent Member as defined in Article 4 below.

**Default Agent Member Portfolio Information (or Default AM Portfolio Information):** The information to be circulated by LCH SA pursuant to Article 3 below.

### **Article 2**

LCH SA has an obligation to ensure the on-going integrity of the services made available to Sponsored Members and Agent Members. Each Sponsored Member and each Agent Member to whom this Instruction applies shall take all steps and execute all documents necessary or required by LCH SA to comply with its obligations arising out of this Instruction.

## **CHAPTER 2      AGENT CLOSE-OUT EVENT**

### **Article 3**

On or as soon as practicable after (i) LCH SA having determined that no agreement has been reached and/or that the situation has not been resolved before the relevant date and time limit pursuant to Article 4.6.2.1 of the Clearing Rule Book, or (ii) the occurrence of any of the circumstances mentioned in Article 4.6.2.3 of the Clearing Rule Book in relation to an Agent Member, LCH SA shall be entitled to take any measure it deems necessary in the circumstances, including without limitation:

- (i) to suspend the Affected Agent Member's ability to provide its consent to the registration of any new Transactions for any of its Sponsored Members (except for these Transactions that would be Transactions specifically approved by LCH SA to reduce its exposure as part of the Agent Close-out MP);
- (ii) to send an Agent Close-out Notice to the Affected Agent Member, each Affected Sponsored Member and the relevant potential Replacement Services Provider (as defined in Article 4 below) and publish a copy of such Agent Close-out Notice on its website;
- (iii) to specify in the Agent Close-out Notice the expiration time of the Affected Portfolio Acceptance Window with respect to the Agent Close-out Event by which Acceptance Notifications (as defined in Article 4 below) must be received;

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- (iv) to determine the SM/AM Current Collateral Balance of each SM/AM Account associated with the Affected Agent Member;
- (v) to send details of the Affected Portfolio and SM/AM Current Collateral Balance (the "**Default AM Portfolio Information**") of each Affected Sponsored Member to such Sponsored Member and its relevant potential Replacement Services Providers;
- (vi) to isolate all resources of the Affected Agent Member (including any Agent Buffer, Agent Resource Contributions and Contributions) and of its Affected Sponsored Members (including any Margin) in connection with the Affected Portfolios until: (i) the maturity of the Open Positions comprised in the relevant Affected Portfolios; or (ii) a Replacement Services Provider has been elected; or (iii) for as long as LCH SA deems necessary; and
- (vii) to apply any available Agent Buffer to meet in full or in part any unpaid liabilities in respect of the SM/AM Accounts of an Affected Sponsored Member associated with the Affected Agent Member and to satisfy any liabilities of an Affected Sponsored Member to LCH SA.

#### **Article 4**

On receipt of the Default AM Portfolio Information, the relevant Replacement Services Provider may, prior to the expiry of the Affected Portfolio Acceptance Window send a notification in writing (including by facsimile and e-mail) to LCH SA (an "**Acceptance Notification**"), confirming that:

- (i) where the Affected Sponsored Member has specified another Agent Member to be appointed to perform the Back-up Agent Services in the case of an Agent Close-out Event, such Non-Affected Agent Member agrees to perform the Back-up Agent Services in connection with the Affected Portfolios of the Affected Sponsored Member (the "**Back-up Agent Services Provider**"); or
- (ii) where the Affected Sponsored Member has specified itself to be appointed to perform the Back-up Agent Services in the case of an Agent Close-out Event, it agrees to perform its own Back-up Agent Services in connection with its Affected Portfolios (the "**Affected SM BAS Provider**", and each of the Back-up Agent Services Provider and Affected SM BAS Provider, a "**Replacement Services Provider**").

#### **Article 5**

The Affected Agent Member, the relevant Replacement Services Provider and the Affected Sponsored Members shall all cooperate with LCH SA and respond to any request as LCH SA may deem necessary for any matter arising out of, or in connection with, an Agent Close-out Event, and shall cooperate with LCH SA in order to process the Agent Close-out Event.

### **CHAPTER 3 LCH SA STEPS**

#### **Article 6**

Where LCH SA has received an Acceptance Notification prior to the expiry of the Affected Portfolio Acceptance Window pursuant to Article 4 above, confirming the appointment of a Replacement Services Provider, LCH SA shall update the payment and account details in respect of each Affected Sponsored Member to include the payment and account details of the relevant Replacement Services Provider and during the Agent Close-out MP Window:

- (i) LCH SA:
  - (A) may call from the Replacement Services Provider any Margin required in respect of any shortfall relating to the relevant Affected Sponsored Member's Open Positions;
  - (B) may, in its sole discretion, require that the relevant Affected Sponsored Member undertake risk-reducing Transactions, in order to close-out or offset the Affected Portfolios;

- (C) will not accept Transactions from the Affected Sponsored Member which LCH SA deems risk-increasing; and
  - (D) may take any other step determined by LCH SA to complete the Agent Close-out MP, including the steps set out in Article 7 below; and
- (ii) the Replacement Services Provider:
- (A) will perform the Back-up Agent Services in connection with the Affected Portfolios, in accordance with Section 2.2.6 of the Clearing Rule Book; and
  - (B) may take such steps as may be permitted to preserve as far as possible the position of any Affected Sponsored Member.

#### **Article 7**

During the Agent Close-out MP Window, LCH SA may take any of the following steps with respect to the Affected Portfolios (including in the case where LCH SA has not received an Acceptance Notification prior to the expiry of the Affected Portfolio Acceptance Window):

- (i) apply any available Agent Buffer to meet in full or in part any unpaid liabilities in connection with the SM/AM Accounts of an Affected Sponsored Member associated with the Affected Agent Member and to satisfy any liabilities of an Affected Sponsored Member to LCH SA;
- (ii) apply any Agent Resource Contribution in accordance with Article 4.5.2.7 of the Clearing Rule Book;
- (iii) in connection with Affected Open Positions attributed to the Affected Agent Member, to charge to its account the amount (or, if the amount is not finally known, the estimated amount) of any expenses incurred or to be incurred by LCH SA with regard to or in consequence of the circumstances mentioned in Article 4.6.2.1 or Article 4.6.2.3 of the Clearing Rule Book or the steps which are or may be taken under this paragraph and any expenses incurred with regard thereto;
- (iv) call from the Replacement Services Provider additional Margin in an amount determined by LCH SA;
- (v) any other step determined by LCH SA to complete the Agent Close-out MP; and
- (vi) obtain such advice or assistance, whether legal or otherwise, as LCH SA may deem necessary and at the expense of the Affected Agent Member, as applicable, for any matter arising out of or in connection with the Agent Close-out Event,

provided that, following the expiry of the Agent Close-out MP Window, LCH SA may:

- (i) exercise its rights under the Clearing Rules, including its right to issue a notice of default in accordance with Article 4.5.1.1 of the Clearing Rule Book with respect to the Affected Portfolio of the Affected Sponsored Member where the Agent Close-out MP has not been completed;
- (ii) continue at its sole discretion to take any actions it deems necessary to mitigate the exposures of the Affected Portfolios;
- (iii) call from the Replacement Services Provider additional Margin in an amount determined by LCH SA.

#### **Article 8**

Where LCH SA has not received an Acceptance Notification prior to the expiry of the Affected Portfolio Acceptance Window, and the Affected Sponsored Member has not specified itself to be appointed to perform the Back-up Agent Services, all Margin obligations that have arisen following the issuance of an Agent Close-out Notice will be discharged by the Affected Sponsored Member who will be required to discharge its Margin obligations via its contingency payment arrangements.

### **Article 9**

Measures taken by LCH SA upon the occurrence of an Agent Close-out Event shall be notified by LCH SA to the Affected Agent Member and to any appropriate third parties (including its Affected Sponsored Members and the relevant Replacement Services Provider) as LCH SA may deem necessary.

## **CHAPTER 4 DETERMINATION OF AMOUNTS PAYABLE**

### **Article 10**

Upon the determination of the outstanding rights and liabilities of the Affected Agent Member, in connection with all Affected Open Positions attributed to it in accordance with Chapter 3 above, the following Agent Close-out MP shall be completed by LCH SA in order to determine any net amounts which remain payable between the Affected Agent Member and LCH SA, in respect of each SM/AM Account of such Affected Agent Member's corresponding Affected Sponsored Members:

- (i) there shall be brought into account all Contributions, Agent Buffer and Agent Resource Contributions (as applicable), payable by or to the Affected Agent Member;
- (ii) the sums so payable shall be aggregated or set off so as to produce a net sum with respect to each of the following accounts related to the Affected Agent Member: (i) each SM/AM Account; (ii) its Agent Buffer Account; and (iii) its ARC Account; and
- (iii) where there is inadequate Collateral (on an SM/AM Account) to satisfy an Affected Sponsored Member's Margin obligations to LCH SA, LCH SA shall have the sole discretion with respect to the allocation of any available Agent Buffer of the Affected Agent Member to satisfy the Margin obligations of the Affected Sponsored Member under Affected Open Positions. In addition, upon termination or maturity of Affected Open Positions with a related Sponsored Member, a net sum shall be calculated in respect of such SM/AM Account and with regards to any amount due to LCH SA from such Sponsored Member in respect of net sums attributable to such SM/AM Account where there is inadequate Collateral (on a sub-account by sub-account basis) to fully set off such amount payable, LCH SA shall have sole discretion with respect to the allocation of any available Agent Buffer of the relevant Affected Agent Member in setting off any such amounts payable to LCH SA. In addition, amounts on the ARC Account can be set-off against liabilities of the Affected Agent Member in connection with the relevant Affected Sponsored Member and any excess returned to the Affected Agent Member, provided that such amounts are not required with respect to any default management process that is ongoing at the time.

### **Article 11**

LCH SA will retain all Collateral posted by the Affected Agent Member in relation to any of its Affected Sponsored Members, including, for the avoidance of doubt, any excess of Collateral which would otherwise have to be returned by LCH SA to the Affected Agent Member, and such Collateral will remain credited to the relevant Agent Collateral Account of the Affected Agent Member and available to be applied by LCH SA in accordance with the Clearing Rules, until all of the Transactions of such Affected Sponsored Members have matured and are being duly settled, closed or have been unwound, reversed or otherwise terminated or, if an Event of Default has occurred with respect to one or more of such Affected Sponsored Members, after the completion of the default management process of such Affected Sponsored Member(s).

LCH SA shall return to the Affected Agent Member any Collateral posted by the Affected Agent Member which remains available after such date, after deduction of any losses, costs and expenses of whatsoever nature incurred by LCH SA in connection with the Agent Close-out Event or the default management process in relation to any of its Affected Sponsored Member(s).

## **CHAPTER 5      CONSEQUENCES FOR SPONSORED MEMBERS**

### **Article 12**

A Sponsored Member shall act and provide the Back-up Agent Services in accordance with the Clearing Rules, only where there has been an Agent Close-out Event with respect to Open Positions registered in the name of such Sponsored Member and attributed to such Affected Agent Member.

### **Article 13**

An Affected Sponsored Member shall have the right to request at any time its Replacement Services Provider to agree to assume, in its own name and in addition to the Back-up Agent Services, the following obligations:

- (i) pay, in lieu of the Affected Agent Member, any increase in the contribution to the relevant Default Fund calculated by LCH SA in relation to the Affected Open Positions of such Affected Sponsored Member;
- (ii) pay, in lieu of the Affected Agent Member, all Other Mutualised Contributions that may arise, and which are to be calculated in respect of such Affected Sponsored Member's Affected Open Positions

in each case, to the extent not covered by the Affected Agent Member's Agent Buffer.

### **Article 14**

If the Replacement Services Provider agrees to assume the additional obligations set out in Article 13 above, the Replacement Services Provider shall immediately confirm such acceptance to LCH SA by signing the relevant acceptance form provided by LCH SA and sending it to LCH SA.

### **Article 15**

Notwithstanding any other provision of the Clearing Rules to the contrary, where, during the period starting on the day the Agent Close-out Notice was sent by LCH SA and at any time thereafter:

- (i) an amount is required to be paid in the case of an increase in the contribution to a Default Fund calculated by LCH SA in relation to the Open Positions of an Affected Sponsored Member;
- (ii) a payment is required to be made pursuant to Article 4.5.2.7 (vi) (a), (b) and (d) of the Clearing Rule Book in respect of the Affected Open Positions of an Affected Sponsored Member following any Event of Default ;

and is not covered by the Affected Agent Member's Agent Buffer, and if such payment is not made in due time by the Replacement Services Provider (including as a result of the absence of a Replacement Services Provider agreeing to assume the additional obligations set out in Article 13 above), such non-payment shall immediately constitute a Contractual Event of Default in respect of the Affected Sponsored Member concerned and LCH SA shall apply the provisions of Title IV Chapter 5 of the Clearing Rule Book and any other relevant provision of the Clearing Rules in relation to such Contractual Event of Default.