



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 30, 2013

Mr. Jean-Marie Boudet
Chief Risk Officer
LCH.Clearnet SA
18, rue du Quatre Septembre
Paris, France 75002

Re: No-Action Relief for LCH.Clearnet SA and its U.S. Clearing Members to Provide Clearing Services for Certain Spun-Out Component Transactions of Broad-Based Index Credit Default Swaps for Customers of its U.S. Clearing Members

Dear Mr. Boudet:

In your letter dated December 27, 2013, you request advice that, based on the statement of facts and representations set out in your letter, the Division of Trading and Markets ("Division") will not recommend enforcement action to the Securities and Exchange Commission ("Commission") against:

- (1) *Banque Centrale de Compensation*, doing business as LCH.Clearnet SA ("LCH.C SA"), for failure to comply with the registration requirements of Section 17A(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") in connection with the provision of clearance and settlement services to customers of its clearing members that are U.S. persons ("U.S. Clearing Members") for component transactions that are spun out of certain broad-based index credit default swaps ("CDS") as a result of a Credit Event ("Spun-Out Component Transactions");
- (2) LCH.C SA's U.S. Clearing Members by reason of clearing security-based swaps on behalf of customers through an unregistered clearing agency if LCH.C SA provides clearance and settlement services to customers of its U.S. Clearing Members in respect of Spun-Out Component Transactions;
- (3) LCH.C SA for failure to comply with the provisions of Sections 3E(b), 3E(d) and 3E(e) of the Exchange Act in connection with the commingling of Spun-Out Component Transactions and index CDS that are customer positions and all associated money, securities, and property received to margin, secure or guarantee such customer positions in a segregated account established and maintained in accordance with Section 4d(f) of the Commodity Exchange Act ("CEA") and rules thereunder;

- (4) LCH.C SA's U.S. Clearing Members that are registered with the Commission as broker-dealers and with the Commodity Futures Trading Commission ("CFTC") as futures commission merchants ("BD/FCMs") for failure to comply with the provisions of Sections 3E(b), 3E(d) and 3E(e) of the Exchange Act, and Section 15(c)(3) of the Exchange Act and Rule 15c3-3 promulgated thereunder, in connection with commingling Spun-Out Component Transactions and index CDS that are customer positions and all associated money, securities, and property received to margin, secure or guarantee such customer positions in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and rules thereunder; and
- (5) LCH.C SA's U.S. Clearing Members that are BD/FCMs for failure to comply with any requirement to treat an affiliate (as defined in association with the definition of "Cleared Swaps Proprietary Account" pursuant to CFTC Regulation 22.1) as a customer for purposes of Exchange Act Rules 8c-1 and 15c2-1 in connection with commingling Spun-Out Component Transactions and index CDS that are customer positions and all associated money, securities, and property received to margin, secure or guarantee such customer positions in a Cleared Swaps Proprietary Account.

LCH.C SA is a French subsidiary of LCH.Clearnet Group Limited, a holding company incorporated in the United Kingdom, and operates as a clearinghouse subject to French law with its principal office in Paris. LCH.C SA also is a derivatives clearing organization ("DCO") registered with the CFTC authorized to provide clearing services for index CDS to U.S. Clearing Members and customers of its U.S. Clearing Members that are FCMs.¹ LCH.C SA currently operates a clearing service for CDS on certain broad-based iTraxx indices² and, from mid-2014, will also provide clearing services for certain broad-based CDX North American indices. LCH.C SA also provides clearing services for European corporate single-name CDS to its European clearing members and their customers only.³

As described in LCH.C SA's request for no-action relief dated September 27, 2013,⁴ upon the occurrence of a Credit Event in respect of a reference entity included in the index underlying an index CDS, such reference entity will be "spun out" of the index CDS and a separate CDS with a single underlying reference entity will be created.⁵ Single-name CDS are

¹ See In the Matter of the Application of LCH.Clearnet SA For Registration as a Derivatives Clearing Organization, Order of Registration (Dec. 17, 2013).

² See CDS Clear Products Cleared at <http://www.lchclearnet.com/cdsclear/>.

³ See Letter from Mr. Jean-Marie Boudet, CRO, LCH.Clearnet SA, to Mr. James Burns, Deputy Director, SEC, dated Dec. 27, 2013.

⁴ See Letter from Mr. Christophe Hemon, CEO, LCH.Clearnet SA, to Mr. James Burns, Deputy Director, SEC, dated Sep. 27 2013, available at <http://www.sec.gov/divisions/marketreg/mr-noaction/2013/lch-clearnet-sa-092713.pdf>.

⁵ See *id.* Section "2.3 Credit Event Management Process" with respect to the creation of Spun-Out Component Transactions.

“security-based swaps” for purposes of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) and are subject to regulation by the Commission under the U.S. federal securities laws, including the Exchange Act.⁶ Consequently, the clearing of such Spun-Out Component Transactions would subject LCH.C SA to the clearing agency registration requirements of Section 17A(b)(1) of the Exchange Act.⁷ If such Spun-Out Component Transactions are customer positions, LCH.C. SA and its U.S. Clearing Members that are BD/FCMs also would be subject to Sections 3E(b), (d) and (e) of the Exchange Act, which set forth the framework for the segregation of assets held as collateral in a cleared security-based swap transaction.⁸

In addition, the Dodd-Frank Act amended the definition of “security” in the Exchange Act to expressly include security-based swaps.⁹ Therefore, LCH.C SA’s U.S. Clearing Members that are BD/FCMs would also be subject to Section 15(c)(3)¹⁰ of the Exchange Act and Rule 15c3-3¹¹ thereunder, which provide for the protection of customer securities and funds by requiring segregation of customer funds and fully paid and excess margin securities held by broker-dealers for the accounts of customers. Moreover, such U.S. Clearing Members are also subject to Exchange Act Rule 8c-1¹² and 15c2-1,¹³ which prohibit, among other things, a broker-dealer from commingling customer securities (the term “customer” for this purpose generally includes affiliates of the broker-dealer) with its own proprietary securities under a lien for a loan made to such broker-dealer.

Accordingly, absent the relief from the Division requested by LCH.C SA, LCH.C SA would not be able to manage Credit Events for customers of its U.S. Clearing Members by

⁶ By contrast, CDS on a broad-based index of reference entities, such as the index CDS cleared by LCH.C SA, are “swaps” for purposes of the Dodd-Frank Act and are subject to regulation by the CFTC under the CEA.

⁷ See 15 U.S.C. 78q-1(b)(1). In connection with LCH.C SA’s expansion of the index CDS clearing business to U.S. Clearing Members, the Division also issued no-action relief from the clearing agency registration requirement in Section 17A of the Exchange Act, 15 U.S.C. 78q-1, with respect to Spun-Out Component Transactions that are proprietary positions; see Letter from James R. Burns, Deputy Director, Division of Trading and Markets, to Mr. Christophe Hemon, CEO, LCH.Clearnet SA, dated Sep. 27, 2013, available at <http://www.sec.gov/divisions/marketreg/mr-noaction/2013/lch-clearnet-sa-092713.pdf>. The no-action relief issued by the Division on September 27, 2013, is limited to LCH.C. SA’s clearing of Spun-Out Component Transactions that are proprietary positions and does not cover clearing of Spun-Out Component Transactions that are customer positions.

⁸ See 15 U.S.C. 78c-5(b), 15 U.S.C. 78c-5(d), and 15 U.S.C. 78c-5(e).

⁹ See Section 3(a)(10) of the Exchange Act, as amended by the Dodd-Frank Act.

¹⁰ 15 U.S.C. 78o(c)(3).

¹¹ 17 CFR 240.15c3-3.

¹² 17 CFR 240.8c-1.

¹³ 17 CFR 240.15c2-1.

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creating, maintaining and commingling cleared positions in Spun-Out Component Transactions and index CDS without potentially violating Sections 17A(b)(1), 3E(b), 3E(d), and 3E(e) of the Exchange Act, nor would LCH.C SA's U.S. Clearing Members that are BD/FCMs be able to commingle Spun-Out Component Transactions and index CDS as described in LCH.C SA's letter without potentially violating Sections 3E(b), 3E(d), 3E(e) and 15(c)(3) of the Exchange Act as well as Exchange Act Rules 8c-1, 15c2-1 and 15c3-3.

Response:

Based on the facts and representations set forth in your letter, and without necessarily agreeing with your conclusions and analysis, Division staff will not recommend enforcement action to the Commission against LCH.C SA or LCH.C SA's U.S. Clearing Members if LCH.C SA and its U.S. Clearing Members engage in the proposed activities described in your letter. The foregoing no-action position will expire in the event that LCH.C SA becomes registered as a clearing agency with the Commission, upon the effectiveness of such registration.

In taking this position, we note in particular your representations that as a DCO registered with the CFTC, LCH.C SA intends to offer to clear index CDS for customers of U.S. Clearing Members that are BD/FCMs, provided that, where any such BD/FCM holds Spun-Out Component Transaction positions for or on behalf of customers and accepts any money, securities or property from, for, or on behalf of customers to margin, guarantee, or secure these Spun-Out Component Transactions:

- (1) LCH.C.SA has obtained any other relief needed to permit such BD/FCM to maintain customer money, securities and property received by the BD/FCM to margin, guarantee, or secure customer Spun-Out Component Transactions in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and rules thereunder;
- (2) LCH.C SA has appropriate rules and operational practices to permit such BD/FCM to maintain customer money, securities and property received to margin, guarantee, or secure customer positions in Spun-Out Component Transactions in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and rules and regulations thereunder;
- (3) each customer whose money, securities or property is received by such BD/FCM to margin, guarantee, or secure the Spun-Out Component Transactions is an "eligible contract participant" as defined in Section 1a(18) of the CEA;
- (4) such BD/FCM must be at all times registered with the CFTC as an FCM and with the Commission as a broker or dealer;
- (5) such BD/FCM must hold all such money, securities or property received by such BD/FCM to margin, guarantee, or secure the Spun-Out Component Transactions:

- (i) of customers that are not affiliates in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and rules and regulations thereunder; and
 - (ii) of customers that are affiliates in a Cleared Swaps Proprietary Account;
- (6) such BD/FCM must enter into a non-conforming subordination agreement with each customer whose money, securities or property is received by such BD/FCM to margin, guarantee, or secure these Spun-Out Component Transactions, and the agreement must contain a specific acknowledgment by the customer that such money, securities or property will not receive customer treatment under the Exchange Act or Securities Investor Protection Act of 1970 (“SIPA”) or be treated as customer property as defined in 11 U.S.C. 741 in a liquidation of the BD/FMC and that such money, securities or property will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and rules and regulations thereunder; as well as an affirmation by the customer that all of its claims with respect to such money, securities, or property against the BD/FCM will be subordinated to the claims of other securities customers and security-based swap customers;
- (7) such BD/FCM must enter into a non-conforming subordination agreement with each affiliate whose money, securities or property is received by such BD/FCM to margin, guarantee, or secure these Spun-Out Component Transactions, and the agreement must contain a specific acknowledgment by the affiliate that such money, securities or property will not receive customer treatment under the Exchange Act or SIPA or be treated as customer property as defined in 11 U.S.C. 741 in a liquidation of the BD/FMC and that such money, securities or property will be held in a proprietary account in accordance with CFTC requirements and will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and rules and regulations thereunder; as well as an affirmation by the affiliate that all of its claims with respect to such money, securities, or property against the BD/FCM will be subordinated to the claims of other securities customers and security-based swap customers;
- (8) with respect to customers that are affiliates of such BD/FCM, such BD/FCM will obtain from the affiliate an opinion of counsel that the affiliate is legally authorized to subordinate all of its claims against the BD/FCM to those of customers;
- (9) as soon as practicable and in any event within one business day following the creation of a Spun-Out Component Transaction that is a customer position,¹⁴ such BD/FCM must furnish to each such customer a disclosure document containing the following

¹⁴ See note 4, *supra*, Section “2.3 Credit Event Management Process” for an explanation of applicable Credit Events, the creation of Spun-Out Component Transactions, and the Credit Event management process.

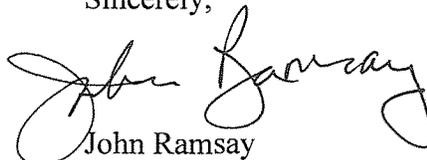
information: (i) a statement indicating that the customer's money, securities and property received by such BD/FCM to margin, guarantee, or secure the Spun-Out Component Transactions will be held in an account maintained in accordance with the segregation requirements of Section 4d(f) of the CEA and that the customer will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and the rules and regulations thereunder with respect to such money, securities, and property; and (ii) the broker-dealer segregation requirements of Section 15(c)(3) and Section 3E of the Exchange Act and the rules thereunder, and any customer protections under SIPA and the stockbroker liquidation provisions, will not apply to such customer money, securities, and property;

- (10) U.S. Clearing Members (including BD/FCMs) may not close out (other than through the Credit Event Management Process), increase, or otherwise affect the size of, a position in a Spun-Out Component Transaction, either for their proprietary or customer accounts; and
- (11) U.S. Clearing Members (including BD/FCMs) may not clear any security-based swaps with LCH.C SA, either for their proprietary or customer accounts, other than Spun-Out Component Transactions.

In addition, LCH.C SA will keep and preserve at least one copy of all documents (including correspondence, memoranda, papers, books, notices, accounts and other records) made or received by it in connection with its index CDS clearance and settlement services for its U.S. Clearing Members (including BD/FCMs) and will provide information on Spun-Out Component Transactions as may be reasonably requested by the Commission or the staff.

The position of the Division is based strictly on the facts and representations you have made in your letter, and any different facts or representations might require a different response. This position is subject to modification or revocation by the Division staff at any time. Furthermore, this response expresses the Division's position on enforcement action only and does not purport to express any legal conclusions on the questions presented. The Division expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws.

Sincerely,



John Ramsay
Acting Director



By Electronic Mail

December 27, 2013

Mr. James Burns
Deputy Director
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Request for No-Action Relief from Clearing Agency Registration Requirements and Other Provisions of the Exchange Act

Dear Mr. Burns:

Banque Centrale de Compensation, doing business as LCH.Clearnet SA (“**LCH.C SA**”), is a clearing organization located in Paris, France, that currently provides clearing services for equities, over-the-counter (“**OTC**”) derivatives and exchange-traded futures and options, as well as fixed income instruments and energy products traded on European exchanges and multilateral trading facilities.¹ LCH.C SA also is a derivatives clearing organization (“**DCO**”) registered with the Commodity Futures Trading Commission (“**CFTC**”) authorized to provide clearing services for index credit default swaps (“**CDS**”) to its members that are U.S. persons (each, a “**U.S. Clearing Member**”) and to customers of such U.S. Clearing Members that are registered with the CFTC as futures commission merchants (“**FCMs**”).³ LCH.C SA currently operates a clearing service for CDS on certain broad-based iTraxx indices and, from mid-2014, will also provide clearing services for certain broad-based CDX North American indices (each, an “**Index CDS**”). LCH.C SA also provides clearing services for European corporate single-name CDS to its European clearing members and their customers only.

¹ LCH.C SA is a member of LCH.Clearnet Group Limited, the financial market’s leading independent clearing house group, serving major international exchanges and platforms, as well as a range of OTC markets.

² The central characteristic of CDS is the agreement by the seller of the CDS (the “**protection seller**”) to compensate the buyer of the CDS (the “**protection buyer**”) upon the occurrence of a credit event in respect of one or more underlying reference entities, in exchange for regular payments by the protection buyer to the protection seller.

³ See, In the Matter of the Application of LCH.Clearnet SA For Registration as a Derivatives Clearing Organization, Order of Registration (December 17, 2013).

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As described in LCH.C SA's request for no-action relief dated September 27, 2013,⁴ upon the occurrence of a bankruptcy credit event, failure to pay credit event, or restructuring credit event (each, a "**Credit Event**") in respect of a reference entity included in the index underlying an Index CDS, such reference entity will be "spun out" of the Index CDS and a separate CDS with a single underlying reference entity will be created (each, a "**Spun-Out Component Transaction**").⁵ Single-name CDS are "**security-based swaps**" for purposes of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**") and are subject to regulation by the Securities and Exchange Commission (the "**SEC**") under the U.S. federal securities laws, including the Securities Exchange Act of 1934, as amended by Title VII of the Dodd-Frank Act (the "**Exchange Act**").⁶ In particular:

- Section 17A(b)(1) of the Exchange Act⁷ provides that "it shall be unlawful for a clearing agency, unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security)."⁸

⁴ See Letter from Mr. Christophe Hemon, CEO, LCH.Clearnet SA, to Mr. James Burns, Deputy Director, SEC, dated September 27, 2013, available at <http://www.sec.gov/divisions/marketreg/mr-noaction/2013/lch-clearnet-sa-092713.pdf>.

⁵ See *Id.* "2.3 Credit Event Management Process" with respect to the creation of Spun-Out Component Transactions.

⁶ By contrast, CDS on a broad-based index of reference entities, such as the Index CDS cleared by LCH.C SA, are "**swaps**" for purposes of the Dodd-Frank Act and are subject to regulation by the CFTC under the Commodity Exchange Act, as amended (the "**CEA**").

⁷ 15 U.S.C. 78q-1(b).

⁸ In connection with LCH.C SA's expansion of the index CDS clearing business to U.S. Clearing Members, the Division of Trading and Markets (the "**Division**") also issued no-action relief from the clearing agency registration requirement in Section 17A of the Exchange Act, 15 U.S.C. 78q-1, with respect to Spun-Out Component Transactions that are proprietary positions; see Letter from James R. Burns, Deputy Director, Division of Trading and Markets, to Mr. Christophe Hemon, CEO, LCH.Clearnet SA, dated September 27, 2013, available at <http://www.sec.gov/divisions/marketreg/mr-noaction/2013/lch-clearnet-sa-092713.pdf>. The no-action relief issued by the Division on September 27, 2013 is limited to LCH.C SA's clearing of Spun-Out Component Transactions that are proprietary positions and does not cover clearing of Spun-Out Component Transactions that are cleared swaps customer positions.

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- Section 3E⁹ of the Exchange Act sets for the framework for the segregation of assets held as collateral in security-based swap transactions.
 - Section 3E(b)(1) of the Exchange Act provides that a broker, dealer, or security-based swap dealer shall treat and deal with all money, securities, and property of any security-based swap customer received to margin, guarantee, or secure a cleared security-based swap transaction as belonging to the customer.¹⁰
 - Section 3E(b)(2) of the Exchange Act provides that the money, securities, and property shall be separately accounted for and shall not be commingled with the funds of the broker, dealer, or security-based swap dealer or used to margin, secure, or guarantee any trades or contracts of any security-based swap customer or person other than the person for whom the money, securities, or property are held.¹¹
 - Section 3E(e) of the Exchange Act places certain prohibitions on the disposition and use of customer money, securities, and property of a security-based swap customer by any person, including any clearing agency and any depository institution that has received any money, securities, or property for deposit in a separate account or accounts, as provided in Section 3E(b) of the Exchange Act.¹²
- The Dodd-Frank Act amended the definition of “security” in the Exchange Act to expressly include security-based swaps.¹³

⁹ 15 U.S.C. 78c-5.

¹⁰ See Section 3E(b)(1) of the Exchange Act, 15 U.S.C. 78c-5(b)(1).

¹¹ See Section 3E(b)(2) of the Exchange Act, 15 U.S.C. 78c-5(b)(2).

¹² See Section 3E(e) of the Exchange Act, 15 U.S.C. 78c-5(e).

¹³ See Section 3(a)(10) of the Exchange Act, as amended by the Dodd-Frank Act.

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- Section 15(c)(3)¹⁴ of the Exchange Act and Rule 15c3-3¹⁵ also provide for the protection of customer securities and funds. Unless an exemption or other relief is granted, a broker-dealer would be required to comply with applicable provisions of Section 15(c)(3) of the Exchange Act and Rule 15c3-3 thereunder as they relate to all securities, including security-based swaps.
- Exchange Act Rules 8c-1 and 15c2-1 prohibit, among other things, a broker-dealer from commingling customer securities (the term “customer” for this purpose generally includes affiliates of the broker-dealer) with its own proprietary securities under a lien for a loan made to such broker-dealer.¹⁶ Unless an exemption or other relief is granted, affiliates of a broker-dealer that are not excluded from the definition of customer in Rules 8c-1 and 15c2-1 are customers whose securities positions cannot be commingled with the broker-dealer’s proprietary securities.

Accordingly, absent the relief from the Division requested by LCH.C SA, LCH.C SA would not be able to manage Credit Events for cleared swaps customers of its U.S. Clearing Members by creating, maintaining and commingling cleared positions in Spun-Out Component and Index CDS Transactions without potentially violating Sections 17A(b)(1), 3E(b), 3E(d), and 3E(e) of the Exchange Act, nor would LCH.C SA’s U.S. Clearing Members that are registered with the SEC as broker-dealers and with the CFTC as futures commission merchants (each, a “BD/FCM”) be able to commingle Spun-Out Component Transactions and Index CDS as described herein without potentially violating Sections 3E(b), 3E(d), 3E(e) and 15(c)(3) of the Exchange Act as well as Exchange Act Rules 8c-1, 15c2-1 and 15c3-3.

1. RELIEF REQUESTED

LCH.C SA requests the following no-action relief from the Division, to be applicable until such time as LCH.C SA registers as a clearing agency with the SEC, based on the statement of facts and representations set out in Section 2 below:

- advice from the Division that it will not recommend enforcement action against LCH.C SA for failure to comply with the registration requirements of Section

¹⁴ 15 U.S.C. 78o(c)(3).

¹⁵ 17 CFR 240.15c3-3.

¹⁶ 17 CFR 240.8c-1 and 17 CFR 240.15c2-1.



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17A(b)(1) of the Exchange Act in connection with the provision of clearance and settlement services to customers of its U.S. Clearing Members in respect of Spun-Out Component Transactions as described herein;

- advice from the Division that it will not recommend enforcement action against LCH.C SA's U.S. Clearing Members by reason of clearing security-based swaps on behalf of customers through an unregistered clearing agency, if LCH.C SA provides clearance and settlement services to customers of its U.S. Clearing Members in respect of Spun-Out Component Transactions as described herein;
- advice from the Division that it will not recommend enforcement action against LCH.C SA for failure to comply with the provisions of Sections 3E(b), 3E(d) and 3E(e) of the Exchange Act in connection with the commingling of Spun-Out Component Transactions and Index CDS that are customer positions and all associated money, securities, and property received to margin, secure or guarantee such customer positions in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and the CFTC Rules thereunder;
- advice from the Division that it will not recommend enforcement action against LCH.C SA's U.S. Clearing Members that are BD/FCMs for failure to comply with the provisions of Sections 3E(b), 3E(d) and 3E(e) of the Exchange Act, and Section 15(c)(3) of the Exchange Act and Rule 15c3-3 promulgated thereunder, in connection with commingling Spun-Out Component Transactions and Index CDS that are customer positions and all associated money, securities, and property received to margin, secure or guarantee such customer positions in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and the CFTC Rules thereunder;
- advice from the Division that it will not recommend enforcement action against LCH.C SA's U.S. Clearing Members that are BD/FCMs for failure to comply with any requirement to treat an affiliate (as defined in association with the definition of **"Cleared Swaps Proprietary Account"** pursuant to CFTC Rule 22.1) as a customer for purposes of Exchange Act Rules 8c-1 and 15c2-1 in connection with commingling Spun-Out Component Transactions and Index CDS that are customer positions and all associated money, securities, and property received to margin, secure or guarantee such customer positions in a Cleared Swaps Proprietary Account.

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2. STATEMENT OF FACTS

2.1 Oversight by French Regulatory Authorities

LCH.C SA is a French subsidiary of LCH.Clearnet Group Limited, a holding company incorporated in the United Kingdom, and operates as a clearing house subject to French law with its principal office in Paris. LCH.C SA is regulated in France as a clearinghouse by the Financial Markets Authority (*Autorité des Marchés Financiers*) (the “**AMF**”) and must comply with applicable statutory and regulatory requirements, including conduct of business rules, membership rules, and rules governing the recording of trades and positions by a clearinghouse, the relationship between clearing members and their customers, the consequences of a default of a clearing member, and the collateral which may be called.

LCH.C SA is also regulated as a credit institution by the Prudential Control Authority (*Autorité de Contrôle Prudentiel et de Résolution*) (the “**ACPR**”) and must comply with minimum capital and ratio requirements, including maintaining a solvency ratio based on the standards published by the Basel Committee on Bank Supervision, as well as regulations relating to risk diversification and liquidity, restrictions on equity investments, money laundering, and internal control and reporting requirements. In addition, the clearing system managed and operated by LCH.C SA has been approved by the AMF and the *Banque de France* (the “**BdF**”) and designated to the European Commission by France’s Minister for the Economy as a securities settlement system for the purposes of the European Union’s Settlement Finality Directive, which governs the irrevocability of instructions and finality of settlement within the clearing system operated by LCH.C SA.¹⁷

In addition, LCH.C SA has submitted an application to the ACPR for authorisation as a central counterparty in accordance with Article 14(1) of the European Markets Infrastructure Directive (“**EMIR**”).¹⁸

2.2 LCH.C SA’s Index CDS Clearing Business

LCH.C SA launched its clearing services for Index CDS with the support of four major French banks on March 29, 2010.¹⁹ LCH.C SA currently accepts for clearing 3-, 5-, 7- and

¹⁷ Due to LCH.C SA’s non-CDS-related operations and affiliations in other European Union (“**EU**”) countries, LCH.C SA is also subject to oversight by the national regulators of other EU Member States.

¹⁸ 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.

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10-year maturity CDS on the iTraxx Europe Index, the iTraxx HiVol Index and the iTraxx Crossover index, from series 5 and above and from mid-2014 intends to expand its clearing services to include certain Markit “CDX” indices on North American reference entities (*e.g.*, the CDX Investment Grade Index, the CDX High Yield Index), each of which are administered by Markit Group Limited (“**Markit**”) in accordance with the relevant index rules in effect from time to time. The CFTC has adopted rules establishing a clearing requirement under Section 2(h)(1)(A) of the CEA in respect of certain classes of interest rate swaps and CDS, including the following Index CDS accepted for clearing by LCH.C SA: 5-year and 10-year iTraxx Europe index from series 10 and series 7 onwards; 5-year iTraxx Europe HiVol index from series 10 onwards; and 5-year iTraxx Europe Crossover index from series 10 onwards.²⁰

LCH.C SA has proposed to expand its Index CDS clearing services, with the aim of opening its clearing services to additional members, in particular U.S. financial institutions, to clear Index CDS.²¹ Further, as a DCO registered with the CFTC, LCH.C SA intends to offer U.S. Clearing Members that are BD/FCMs to clear such Index CDS for customers, provided that, where any such BD/FCM holds Spun-Out Component Transaction positions for or on behalf of customers and accepts any money, securities or property from, for, or on behalf of customers to margin, guarantee, or secure these Spun-Out Component Transactions:

(1) LCH.C.SA has obtained any other relief needed to permit such BD/FCM to maintain customer money, securities and property received by the BD/FCM to margin, guarantee, or secure customer Spun-Out Component Transactions in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and CFTC Rules thereunder.

(2) LCH.C SA has appropriate rules and operational practices to permit such BD/FCM to maintain customer money, securities and property received to margin, guarantee, or

¹⁹ BNP Paribas SA; Crédit Agricole Corporate & Investment Bank; Natixis SA; and Société Générale.

²⁰ See Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74284 (December 13, 2012). The CFTC also established a clearing requirement for: (1) certain CDX Investment Grade indices (3-year tenor from Series 15 onwards; 5-year tenor from Series 11 onwards; 7-year tenor from Series 8 onwards; and 10-year tenor from Series 8 onwards); and (2) the 5-year CDX High Yield index, from Series 11 onwards. *Id.*

²¹ The Index CDS processing and clearing services described herein will only be made available to US persons, including US Clearing Members, meeting the definition of “eligible contract participant,” as defined in Section 1a(18) of the CEA and CFTC Rule 1.3(m).

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secure customer positions in Spun-Out Component Transactions in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and the CFTC Rules thereunder;

(3) each customer whose money, securities or property is received by such BD/FCM to margin, guarantee, or secure the Spun-Out Component Transactions is an “**eligible contract participant**” as defined in Section 1a(18) of the CEA;

(4) such BD/FCM must be at all times registered with the CFTC as an FCM and with the SEC as a broker or dealer;

(5) such BD/FCM must hold all such money, securities or property received by such BD/FCM to margin, guarantee, or secure the Spun-Out Component Transactions:

(i) of customers that are not affiliates in a segregated account established and maintained in accordance with Section 4d(f) of the CEA and the CFTC Rules thereunder; and

(ii) of customers that are affiliates in a Cleared Swaps Proprietary Account;

(6) such BD/FCM must enter into a non-conforming subordination agreement with each customer whose money, securities or property is received by such BD/FCM to margin, guarantee, or secure these Spun-Out Component Transactions, and the agreement must contain a specific acknowledgment by the customer that such money, securities or property will not receive customer treatment under the Exchange Act or SIPA or be treated as customer property as defined in 11 U.S.C. 741 in a liquidation of the BD/FMC and that such money, securities or property will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and rules and regulations thereunder; as well as an affirmation by the customer that all of its claims with respect to such money, securities, or property against the BD/FCM will be subordinated to the claims of other securities customers and security-based swap customers;

(7) such BD/FCM must enter into a non-conforming subordination agreement with each affiliate whose money, securities or property is received by such BD/FCM to margin, guarantee, or secure these Spun-Out Component Transactions, and the agreement must contain a specific acknowledgment by the affiliate that such money, securities or property will not receive customer treatment under the Exchange Act or SIPA or be treated as customer property as defined in 11 U.S.C. 741 in a liquidation of the BD/FMC and that such

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money, securities or property will be held in a proprietary account in accordance with CFTC requirements and will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and rules and regulations thereunder; as well as an affirmation by the affiliate that all of its claims with respect to such money, securities, or property against the BD/FCM will be subordinated to the claims of other securities customers and security-based swap customers;

(8) with respect to customers that are affiliates of such BD/FCM, such BD/FCM will obtain from the affiliate an opinion of counsel that the affiliate is legally authorized to subordinate all of its claims against the BD/FCM to those of customers;

(9) as soon as practicable and in any event within one business day following the creation of a Spun-Out Component Transaction that is a customer position,²² such BD/FCM must furnish to each such customer a disclosure document containing the following information:

(i) a statement indicating that the customer's money, securities and property received by such BD/FCM to margin, guarantee, or secure the Spun-Out Component Transactions will be held in an account maintained in accordance with the segregation requirements of Section 4d(f) of the CEA and that the customer will be subject to any applicable protections under Subchapter IV of Chapter 7 of Title 11 of the United States Code and the rules and regulations thereunder with respect to such money, securities, and property; and

(ii) the broker-dealer segregation requirements of Section 15(c)(3) and Section 3E of the Exchange Act and the rules thereunder, and any customer protections under Securities Investor Protection Act of 1970 and the stockbroker liquidation provisions, will not apply to such customer money, securities, and property;

(10) U.S. Clearing Members (including BD/FCMs) may not close out (other than through the Credit Event Management Process), increase, or otherwise affect the size of, a position in a Spun-Out Component Transaction, either for their proprietary or customer accounts; and

²² See *supra*, note 4, Section 2.3 "Credit Event Management Process" for an explanation of applicable Credit Events, the creation of Spun-Out Component Transactions, and the Credit Event management process.

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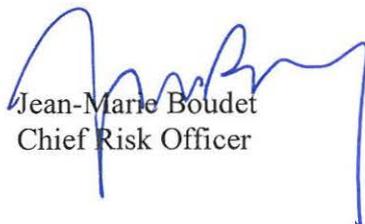
(11) U.S. Clearing Members (including BD/FCMs) may not clear any security-based swaps with LCH.C SA, either for their proprietary or customer accounts, other than Spun-Out Component Transactions.

Finally, LCH.C SA will keep and preserve at least one copy of all documents (including correspondence, memoranda, papers, books, notices, accounts and other records) made or received by it in connection with its Index CDS clearance and settlement services for its U.S. Clearing Members (including BD/FCMs) and will provide information on Spun-Out Component Transactions as may be reasonably requested by the Commission.

* * * * *

Thank you for your consideration of this request. To ask questions or to obtain additional information, members of the Division staff may contact me by phone at +33 1 70 37 67 60 or by email at jean-marie.boudet@lchclearnet.com or LCH.C SA's outside counsel, Kevin Foley, by phone at +1 312 902 5372 or by email at kevin.foley@kattenlaw.com.

Sincerely,


Jean-Marie Boudet
Chief Risk Officer