

## **EXECUTION VERSION**

### **Multilateral Arrangement for Regulatory, Supervisory and Oversight Cooperation on LCH.Clearnet Ltd**

#### **Amended Terms of Reference for Framework Arrangement dated 17 November 2016**

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### A. Background and Rationale for Framework Arrangement

1. LCH.Clearnet Ltd (“LCH.Ltd”) is a Recognised Clearing House under sections 285 and 290 of the Financial Services and Markets Act 2000 (FSMA) and is authorised as a central counterparty in accordance with Regulation (EU) No. 648/2012 (“EMIR”). LCH.Ltd has also been recognised as an operator of a payment system under section 184 of the Banking Act 2009. LCH.Ltd provides clearing services for exchange traded and OTC financial, equity and commodity derivative instruments, government bond repo transactions and cash equity products.
2. The Bank of England<sup>1</sup> is responsible for the supervision of providers of clearing services operating in the United Kingdom (UK), and is LCH.Ltd’s competent authority under EMIR. The Bank of England is also responsible for oversight of recognised payment systems operating in the UK through its regulation of payment systems under the Banking Act 2009.
3. LCH.Ltd is registered as a Derivatives Clearing Organisation by the U.S. Commodity Futures Trading Commission. LCH.Ltd is also registered, licensed or authorised to provide clearing services in certain other non-EU jurisdictions.
4. In view of the values cleared through LCH.Ltd, the range of countries of incorporation of LCH.Ltd’s clearing membership and the currencies of denomination and settlement of LCH.Ltd’s products, a number of financial regulatory, supervisory or oversight authorities in jurisdictions not otherwise included in EMIR college arrangements for LCH.Ltd have expressed interest in the establishment of a framework for international regulatory co-operation with regard to LCH.Ltd.
5. The establishment of such a framework for cooperation is in line with Responsibility E of the CPMI-IOSCO Principles for Financial Market Infrastructures (“Responsibility E”), which requires central banks, market regulators and other relevant authorities to co-operate in order to promote the safety and efficiency of financial market infrastructures (“FMIs”), to support each other in fulfilling their respective regulatory, supervisory, or oversight mandates, to facilitate the comprehensive regulation, supervision, and oversight and to provide a mechanism whereby the responsibilities of multiple authorities can be fulfilled efficiently and effectively taking into consideration the statutory responsibilities of the authorities, the systemic importance of the FMI for the respective jurisdictions, the FMI’s comprehensive risk profile and the FMI’s participants. It is also in line with the Financial Stability Board’s (FSB’s) four safeguards for a resilient and efficient global framework for central clearing.
6. The Bank of England has accepted responsibility for facilitating the development of terms of reference to govern the creation and operation of a framework for regulatory cooperation (“the Framework Arrangement” or “Arrangement”) to enhance international

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<sup>1</sup> For the purposes of this document, the “Bank of England” should be read as the Bank of England or any successor organisation responsible for the supervision of LCH.Ltd.

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regulatory<sup>2</sup> co-operation between the authorities participating in the Arrangement (“the Participating Authorities”) with regard to LCH.Ltd. That Framework Arrangement was established on 1 October 2012 in respect of LCH.Ltd’s Swapclear service specifically.

7. In 2016 the Participating Authorities agreed to amend the terms of the Framework Arrangement in order to expand the range of clearing services which fall within its scope and to increase flexibility in respect of membership criteria, among other things. This document sets out the amended and restated Terms of Reference (“Terms”). This framework is in addition to, and without prejudice to the terms of arrangement of, the college of supervisors established under EMIR in respect of LCH.Ltd (the “EMIR College”).

### **B. Objectives of Framework Arrangement**

8. The Bank of England and other authorities with a regulatory interest in LCH.Ltd wish to create a Framework Arrangement to enhance, through discussion, consultation and disclosure of information between authorities, the regulation of LCH.Ltd. The authorities will seek to promote and facilitate the effective and consistent application of international standards, including the CPMI-IOSCO Principles for Financial Market Infrastructure, facilitate the implementation of Responsibility E and the implementation of the safeguard for international cooperative oversight which has been identified by the FSB as one of the four safeguards for a global framework to establish a safe environment for the clearing of OTC derivatives.
9. In particular, the Participating Authorities, including the Bank of England, seek to promote a consistent regulatory approach that:
  - a) leverages the expertise and experiences of the Bank of England from their day-to-day supervision and oversight of LCH.Ltd, and the perspectives, expertise and experience of the other Participating Authorities to foster comprehensive regulation, supervision and oversight of LCH.Ltd under these Terms;
  - b) enhances oversight efficiency by minimising the burden on LCH.Ltd and the duplication of effort by Participating Authorities in line with their respective responsibilities;
  - c) fosters consistent and transparent communication among the Participating Authorities and with LCH.Ltd;
  - d) fosters transparency among the Participating Authorities regarding the development and implementation of applicable policies; and
  - e) supports fully informed judgments when Participating Authorities make their independent assessments and decisions regarding LCH.Ltd, while recognising

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<sup>2</sup> For the purposes of this document, references to “authorities” or “financial regulatory authorities” should be read as including authorities with regulatory, supervisory or oversight responsibilities. Similarly references to “regulation” or “regulatory” should be read as including regulatory, supervisory and oversight activities.

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that individual assessments and decisions by a Participating Authority could have implications for other Participating Authorities.

10. These Terms will govern the Framework Arrangement and set out the necessary bases for the interaction between the Bank of England and non-UK authorities regarding LCH.Ltd.
11. These Terms will also provide a governance process for the Framework Arrangement, including:
  - a) the structure of the Framework Arrangement;
  - b) the criteria for participation in the Framework Arrangement;
  - c) the scope of activities of the Framework Arrangement;
  - d) information security arrangements;
  - e) the process for managing any changes to the Framework Arrangement;
  - f) the process for participating authorities (the Participating Authorities) to adopt these Terms; and
  - g) the organisation and practical matters of operation of the Framework Arrangement.

### **C. Scope of Framework Arrangement and Status of Terms of Reference**

12. The scope of the Framework Arrangement covers all clearing services provided by LCH.Ltd and LCH.Ltd's governance, controls, structure, arrangements and processes implemented or provided by LCH.Ltd to facilitate, enable and risk manage the provision of clearing services.
13. These Terms, and the operation of the Framework Arrangement arising from their adoption, do not affect any other arrangements between two or more Participating Authorities or any arrangements between a Participating Authority and any other third party or parties, including any bilateral or multilateral arrangements between the Bank of England and another authority or authorities that may be put in place with regard to the supervision and oversight of LCH.Ltd as mandated by relevant legislation, regulatory development or otherwise, either at the time of signature of these terms or at a future date. Nothing in these Terms will prescribe, mandate or limit the ability of the authorities with statutory responsibility for the supervision or oversight of LCH.Ltd to develop and operate other arrangements for regulatory co-operation with regard to LCH.Ltd. For the avoidance of doubt, such bilateral or multilateral arrangements will operate independently of and in parallel to the Framework Arrangement governed by these Terms.
14. It will be a required precondition for participation in the Framework Arrangement that the authority acknowledge and support the establishment of this Arrangement and that its participation in it is consistent with these Terms.
15. These Terms, and any participation in the Framework Arrangement resulting from an authority's adoption of these Terms, do not modify or supersede any laws, rulemaking or regulatory requirements in force in, applying to or due to apply to the UK or any other

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jurisdiction. These Terms are not intended to constrain the discretion of the Bank of England or any other authority in any way in the discharge of its functions nor prejudice the individual responsibilities or autonomy of any authority with regards to LCH.Ltd.

16. These Terms do not create any binding legal obligations.
17. These Terms will be treated as coming into effect as at the date stipulated by the Bank of England on the first page of this document and notified to the Participating Authorities. A new authority wishing to join this Framework Arrangement shall observe these Terms as from the date on which they sign a letter acknowledging acceptance of these Terms in accordance with paragraph 40.

### **D. Organising Authority**

18. The Bank of England will take primary responsibility to facilitate the operation and further development of the Framework Arrangement.

### **E. Participation of Authorities in the Framework Arrangement**

19. An authority participating in the Framework Arrangement is referred to in these Terms as a Participating Authority. In order to act as a Participating Authority, an authority must satisfy the criteria for participation in the Framework Arrangement at the point of adoption and on an ongoing basis. The Bank of England will assess an authority's eligibility against the qualification criteria.
20. Should changing conditions result in a Participating Authority no longer meeting the criteria for participation in this Framework Arrangement the Participating Authority shall discuss with the Bank of England a timeline for it to cease participation in this Framework Arrangement.
21. Each Participating Authority must provide the Bank of England with contact details for two members of staff to act as its representatives for the purpose of this Framework Arrangement. The nominated representatives of a Participating Authority should be sufficiently senior to be able to express the position of the Participating Authority but should also have an appreciation of the detailed points regarding the operation and regulation of LCH.Ltd. One representative will be nominated as the primary representative, the other as the secondary representative. These representatives will participate in the Framework Arrangement and will act as the contact point for the provision of information, information requests and crisis information sharing under the Framework Arrangement and for any administrative purposes related to the operation of these Terms.
22. The Bank of England will use these designated contacts for the sending of all information under this Framework Arrangement. Such contact details must be communicated to the Bank of England in writing, and should include:
  - a) the name of the contact person;
  - b) the telephone number of the contact person;
  - c) an email address for the contact person; and

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d) a mailing address for the contact person.

23. An authority may amend the details of its representatives by notifying the Bank of England by email.

### **F. Participation requirements for the Framework Arrangement**

24. The Framework Arrangement will comprise authorities that wish to engage in regulatory cooperation with regard to LCH.Ltd and which are:

- i) central banks of issuance of currencies for which LCH.Ltd's settlements are systemically important against the PFMI; or
- ii) central banks providing standing account facilities to LCH.Ltd; or
- iii) authorities that have statutory responsibility, under national or supra-national law, for the supervision or oversight of LCH.Ltd, clearing services operated by LCH.Ltd, LCH.Ltd's significant clearing members and/or other FMIs with which LCH.Ltd has a significant relationship or interdependency.

25. All authorities which form part of the EMIR College will be entitled to attend meetings of the Participating Authorities and will be provided with any information shared between Participating Authorities under this Framework Arrangement. Members of the EMIR College shall be subject to the obligations of professional secrecy set out in Article 83 of EMIR received by them in this context.

26. In line with Responsibility E, the Bank will consider requests from authorities with a relevant interest in LCH.Ltd, as specified in paragraph 24. The Bank will inform all Participating Authorities if any new Authority joins the Framework Arrangement. The Bank of England will carry out periodic reviews of the membership of the Framework Arrangement and of these Terms.

### **G. Activities of the Framework Arrangement**

27. Co-operation in the Framework Arrangement will encompass the reciprocal exchange of regulatory information, regulatory perspectives and opinions related to LCH.Ltd between the Participating Authorities. A Participating Authority shall consider discussing with the other Participating Authorities any forthcoming regulatory interaction with LCH.Ltd if it considers that this may be of interest and relevance to the other Participating Authorities.

28. Except where regular intervals are specified below, information will be shared on a quarterly basis with summary reports given in in-person meetings or as otherwise discussed by Participating Authorities. Information sharing and related discussions between Participating Authorities regarding member defaults and market emergencies will take place as soon as is practical taking into consideration operational arrangements

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- and any need for a Participating Authority to gain approval for the disclosure of information.
29. Co-operation in the Framework Arrangement will include mutual discussion of Participating Authorities' views and regulatory assessments of LCH.Ltd, primarily through discussion of regulatory assessments and material risk issues raised by LCH.Ltd's business and risk management practices and/or proposed changes to these practices.
- (a) All Participating Authorities, including the Bank of England, maintain the right to prepare their own independent analyses and assessments of LCH.Ltd. The Bank of England will regularly assess LCH.Ltd against the CPMI-IOSCO Principles for Financial Market Infrastructures and in this regard consider the views of the Participating Authorities. If a Participating Authority conducts its own assessment of LCH.Ltd, it will consider the views of the Bank of England before finalising its analysis and conclusions. Any Participating Authority which conducts an assessment of LCH.Ltd will consult the other Participating Authorities, where practicable. Consultations conducted under this Paragraph may be either bilateral between the two relevant Participating Authorities or multilateral, involving other Participating Authorities, as appropriate.
  - (b) A Participating Authority, including the Bank of England, which conducts an assessment of LCH.Ltd against the CPMI-IOSCO Principles for Financial Market Infrastructure will, when assessing procedures for any currency for which LCH.Ltd's payment and settlement arrangements and its related liquidity risk-management procedures are systemically important, consult the relevant central bank of issue and will consider the views expressed by the central bank before finalising its analysis.
  - (c) An assessment of LCH.Ltd conducted by a Participating Authority (including results and related reports) will not be disclosed to the public unless the Participating Authorities agree otherwise. Where disclosure is required by statutory responsibilities, charters, or publically stated policy, the Participating Authority required to disclose the assessment (the 'Disclosing Authority') will share its assessments with the other Participating Authorities before the assessment is made publicly available, and will provide an opportunity for other Participating Authorities to raise any concerns. The Disclosing Authority will not attribute or imply any views, participation, or approval of another Participating Authority in assessments publicly disclosed without the consent of such party.
30. If the Participating Authorities identify areas in which LCH.Ltd could strengthen its compliance with the CPMI-IOSCO Principles for Financial Market Infrastructure, then the Participating Authorities may seek to induce positive change at LCH.Ltd through either discussions with LCH.Ltd representatives or through the Bank of England. This would include the comprehensive and timely reaction by the Bank of England to any such concerns.

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31. A Participating Authority should provide the other Participating Authorities with details of the authorisation or licenses issued by that Participating Authority to LCH.Ltd in its respective jurisdiction and the requirements that attach to such regulatory status. A Participating Authority should also notify the other Participating Authorities as soon as practical of changes to regulatory, supervisory or oversight requirements in its jurisdiction, which it considers may have material implications for the oversight of LCH.Ltd in other jurisdictions.
32. It is envisaged that regulatory cooperation in the Framework Arrangement will include the following areas, unless such information is already made available to the Participating Authorities through alternative channels:
  - a) Monthly data reports covering all relevant services of LCH.Ltd, to be distributed by the Bank of England by email, containing data on margin, collateral and other key indicators, the content and format of which will be developed by the Bank of England in consultation with the other Participating Authorities and reviewed periodically;
  - b) information on any events of member default that have occurred, including details of use of LCH.Ltd's default protections and default management processes that have occurred and which impact the operation or resilience of LCH.Ltd and the total level of financial resources remaining at LCH.Ltd for default management purposes;
  - c) discussion of regulatory assessments against international standards, such as the CPMI-IOSCO Principles for Financial Market Infrastructure or, where each Participating Authority deems it appropriate, other standards or requirements that a Participating Authority implements, or self-assessments of LCH.Ltd against international standards, when such assessments have been made;
  - d) where each Participating Authority deems it appropriate, Participating Authorities' regulatory opinions and priorities;
  - e) in accordance with Annex 1, information in the event of a business continuity event, member default, force majeure, market emergency or other non-business as usual event and which impact the operation or resilience of LCH.Ltd;
  - f) details of any material changes to the ownership, regulatory status, senior management, product or service offering, risk management or control processes or operational methodology implemented or proposed by LCH.Ltd;
  - g) where a Participating Authority deems it appropriate, notice of any action (including enforcement) proposed or undertaken by that Participating Authority with regard to LCH.Ltd; and
  - h) information about discussions and developments in the LCH.Ltd Crisis Management Group, also chaired by the Bank of England.
33. The Bank of England may also distribute such other information as it judges appropriate, which may include information with regards to the governance, controls, arrangements and processes that LCH.Ltd maintains should such information be required by a Participating Authority to inform that authority's regulatory assessment of LCH.Ltd or its



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- assessment of LCH.Ltd's systemic importance in the Participating Authority's jurisdiction.
34. The Bank of England will facilitate the notification, without undue delay, by LCH.Ltd to Participating Authorities of proposed new business or material changes related to LCH.Ltd's services so that Participating Authorities may identify any questions or concerns. The home supervisory authority would consider these questions and concerns and arrange appropriate follow up to address these. For the avoidance of doubt, this notification provision does not override or replace any requirements on LCH.Ltd to meet any regulatory requirements placed on them by any Participating Authority that has statutory oversight of LCH.Ltd outside of this arrangement.
  35. An in-person meeting of Participating Authorities will be held on at least an annual basis, although Participating Authorities will endeavour to meet on a semi-annual basis. The Bank of England will organise and Chair this meeting, but it may be hosted by another authority, subject to the mutual decision of that authority and the Bank of England. Meetings of Participating Authorities will be subject to an agenda, to be set by the Bank of England in consultation with the other Participating Authorities and distributed no later than one week before the meeting. The Bank of England will endeavour to provide written documentation to support discussion at the meeting no later than one week before the meeting. The Bank of England will produce a formal minute of a meeting of Participating Authorities and provide the Participating Authorities with the opportunity for comment before this minute is finalised. The minutes are for the benefit of the Participating Authorities and will not be made publically available. Additional in-person meetings may be held subject to the support of the Participating Authorities. Each Participating Authority, other than the Bank of England, will be represented at in-person meetings of Participating Authorities by only one member of its staff, unless the Bank of England, acting at its discretion, permits one or more Participating Authorities to be represented by more than one member of staff. Generally this member of staff will be the person designated by the Participating Authority as its primary representative, but the Participating Authority may be represented by an alternative person at the discretion of the Participating Authority in question. To facilitate the effectiveness of the in-person meetings, the Bank of England may be represented by more than one member of staff. The Bank of England may, on notification to Participating Authorities, invite authorities qualifying under paragraph 24 which are not yet signatories to this Framework Agreement to participate in meetings and discussions as observers, subject to relevant confidentiality agreements being in place.
  36. In light of the absence of a cap on the number of authorities that may participate in this Framework Arrangement, the Bank of England reserves the right to limit in-person attendance at meetings to a sub-set of authorities where it considers that it would be impossible or impracticable to accommodate representatives from each Participating Authority. In such cases, precedence will be given to central banks of issuance of the most material currencies, authorities with responsibility for supervision or oversight of LCH.Ltd's most material clearing members, and authorities with statutory responsibility for the supervision or oversight of LCH.Ltd or clearing services offered by LCH.Ltd. All authorities will receive papers and minutes of meetings and will be able to participate in meetings via conference call.

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37. The Bank of England may direct a conference call to be held between the Participating Authorities, either on its own initiative or following a request by any Participating Authority. Where practical, notice of ten business days will be given before such a conference call is held, and such conference calls will be subject to an agenda and will be formally minuted, following the arrangements for in-person meetings of the Participating Authorities.
38. Should the Bank of England assess it to be appropriate and practical, representatives from LCH.Ltd may be invited to attend in-person meetings and conference calls to directly provide updates, information and answer questions.
39. A Participating Authority may request information additional to that covered under paragraph 32 from the Bank of England or from any other Participating Authority (the 'requested authority'). The Bank of England may also request information from any Participating Authority. Such requests for the provision of information or other assistance will be made in writing where possible, but in urgent cases may be made verbally and confirmed in writing within five business days. To facilitate assistance, the Participating Authority making a request (the 'requesting authority') to the Bank of England should specify in its request:
  - (a) the information or other assistance sought;
  - (b) a general description of the matter which is the subject of the request;
  - (c) the purpose for which the information or other assistance is sought;
  - (d) if the requesting authority is seeking confirmation of the accuracy of information provided by the requested authority and the nature of the confirmation sought;
  - (e) if the requesting authority is seeking further information in relation to information provided by the requested authority and should specify the nature of the further information sought;
  - (f) where onward disclosure of information provided to the requesting authority is likely to be necessary, the identity of the person to whom disclosure may be made and the reasons for such disclosure; and
  - (g) the desired time period for a reply.

Other Participating Authorities that have processes that need to be followed with regard to requests for confidential information that they receive should inform the Participating Authorities of such processes.

### **H. Process for adoption of Terms of Reference**

40. In order to be eligible to act as a Participating Authority, an authority must acknowledge in writing to the Bank of England that it supports the establishment of this Arrangement and that its participation in the Arrangement will be consistent with these Terms. Such acknowledgement should be in the form set out in Annex 2 to these Terms. This form should be signed by an authorised signatory who has the relevant authority in accordance with the authority's internal corporate governance or board approvals. Such acknowledgement must be made no later than five business days before the authority in question commences its participation in this Framework Arrangement. Before an authority in question commences its participation in this Framework Arrangement, the

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Bank of England will confirm to all authorities that are already Participating Authorities that the authority in question has acknowledged in writing its acceptance of these Terms.

41. Each Participating Authority must ensure that it is able to continue to observe these terms on an ongoing basis. Should a Participating Authority become aware that the acknowledgement it has made to the Bank of England in the form provided in Annex 2 ceases to be valid or will cease to be valid in the foreseeable future, the Participating Authority must inform the Bank of England of this as soon as is practical. On the receipt of such notice the Bank of England may choose to suspend or prohibit the authority in question from continuing to participate in the Framework Arrangement.
42. A Participating Authority may cease its participation at any time on the provision of written notice to the Bank of England that it has ceased participation in the Framework Arrangement and therefore ceased to observe these Terms. Any such termination of participation of the Framework Arrangement will release the authority ceasing participation from observance with these Terms, with the exception of the provisions of these Terms regarding confidentiality and use of information.
43. The Bank of England may, for good cause and at its discretion, suspend a Participating Authority's participation in the Framework Arrangement at any time and without notice if the Bank of England, acting reasonably, assesses that the authority in question has not materially observed these Terms. The Bank of England will endeavor to avoid taking such action by providing notice of its intention to suspend the participation of the authority before the suspension takes effect and by discussing any actual or possible issues of non-observance of these Terms with the Participating Authority in question.

### **I. Confidentiality and Uses of Information**

44. In these Terms, "Confidential Information" means any non-public information relating to the business or other affairs of any person or firm (including supervisory judgments or opinions of a Participating Authority) that is received by a Participating Authority through its participation in the Framework Arrangement.
45. A legal gateway<sup>3</sup> must exist between the Bank of England and each authority participating in this Framework Arrangement to enable the Bank of England to exchange Confidential Information with each authority, pursuant to FSMA. A Participating Authority other than the Bank of England may require specific and additional arrangements to be in place between it and the Participating Authorities to control and manage any provision of Confidential Information it may share under this Framework

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<sup>3</sup> A 'legal gateway' is a provision in legislation which allows a person, such as the Bank of England, to disclose information to another person. For example, the FSMA Disclosure of Confidential Information Regulations 2001 lists persons to whom disclosure of confidential information (as defined in s.348 FSMA 2000) can be made and the purpose for which the disclosure can be made. The Bank of England can only disclose confidential information where a legal gateway permits. Under parts of the Regulations a MoU must exist between the Bank of England and authorities in order to fully establish the legal gateway.

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Arrangement and the potential use of such Confidential Information by the Participating Authorities that receive it<sup>4</sup>.

46. All Confidential Information will be treated as confidential by the receiving Participating Authority to the extent permitted by applicable law (including by ensuring that all persons dealing with, or having access to such information are bound by obligations of professional secrecy) and, subject to the provisions on disclosure below, will be used by, within, and among the Participating Authorities only within the context of this Framework Arrangement and in connection with their regulatory, supervisory, or oversight responsibilities under, and subject to applicable laws or charters. Confidential Information received by a Participating Authority from any other Participating Authority, including the Bank of England, will not be disclosed other than in connection with those responsibilities or pursuant to legal obligations, and subject to the provisions set out below.
47. Except as provided in paragraphs 48, 49, 50 and 51 below, before a Participating Authority ('Participating Authority A') discloses any Confidential Information received from another Participating Authority ('Participating Authority B'), Participating Authority A will request and obtain prior consent from Participating Authority B which shall not be unreasonably withheld. Each Participating Authority will endeavor to respond to a request to disclose information within twenty calendar days.
48. Notwithstanding paragraph 47, a Participating Authority ('Participating Authority A') that receives Confidential Information from another Participating Authority ('Participating Authority B') may, without obtaining the consent of Participating Authority B, discuss such information with a third Participating Authority or an EMIR College member, provided that the authority with whom the Confidential Information is discussed has already received the same information in accordance with the Terms of this Framework Arrangement.
49. In the event that a Participating Authority ('Participating Authority A') is required by statute or legal process to disclose Confidential Information provided by another Participating Authority ('Participating Authority B'), Participating Authority A will, to the extent permitted by law, inform Participating Authority B about such possible compelled disclosure and seek Participating Authority B's prior consent. If Participating Authority B does not consent to such disclosure, Participating Authority A will assert all appropriate legal exemptions or privileges from disclosure that may be available. If despite such efforts, disclosure of the Confidential Information is ultimately compelled, Participating Authority A will, to the extent permitted by law, inform Participating Authority B in advance of such disclosure.
50. Subject to Paragraph 54, a Participating Authority ('Participating Authority A') may disclose Confidential Information provided by another Participating Authority ('Participating Authority B') to its national, state or provincial public sector financial

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<sup>4</sup> The Bank of England is not aware of any additional gateways required between the Bank and Participating Authorities to allow the Participating Authorities to share confidential information with the Bank.

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authorities<sup>5</sup>, subject to Participating Authority A, to the extent permitted by the law applicable to Participating Authority A, informing Participating Authority B about such disclosure and Participating Authority A obtaining the public sector financial authority's agreement to keep such Confidential Information confidential and not further disclose it except in accordance with paragraph 46 of these Terms.

51. The central banks representing the Eurosystem may disclose Confidential Information provided by another Participating Authority to the other central bank members of the Eurosystem, subject to the central banks representing the Eurosystem obtaining the receiving national central banks' agreement to keep such Confidential Information confidential and not further disclose it except in accordance with paragraph 46 of these Terms.
52. No privileges, immunities, or confidentiality associated with Confidential Information provided by a Participating Authority are intended to be waived as a result of sharing such information pursuant to these Terms.
53. Notwithstanding these Terms, a Participating Authority may inform financial institutions of, or otherwise make public, risks or deficiencies it has identified at LCH.Ltd where doing so is in connection with its responsibilities or pursuant to legal obligations, even when the knowledge of such risks or deficiencies is partly or in whole based on Confidential Information, so long as no Confidential Information provided by any other Participating Authority is disclosed, except in accordance with these Terms.
54. If a Participating Authority disclosing information seeks to impose further restrictions on disclosure or use of such information beyond those noted in these Terms it must set these out expressly when disclosing Confidential Information. Participating Authorities receiving Confidential Information subject to any such further restrictions shall agree to observe, to the extent permitted by applicable statute or legal process, the restrictions on disclosure or use of such information required by the Participating Authority that has provided the data.
55. For the avoidance of doubt, these Terms place no obligation or expectation on a Participating Authority to share Confidential Information.
56. The existence of this Arrangement may be publicly disclosed. A Party may publicly disclose an outline of the provisions of this Arrangement or all or portions of this Arrangement itself, , if required to do so by law, or if such public disclosure is in the proper exercise of its functions, powers or obligations. If a Party discloses any part of this Arrangement, it will inform the Bank of England, which will inform the other Parties.

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<sup>5</sup> "National , state or provincial public sector financial authorities" is defined as public sector financial authorities meaning central banks, securities and market regulators and prudential supervisors of financial market participants.

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### **J. Changes to Terms of Reference**

57. These Terms can be amended by obtaining the mutual and unanimous consent of the Participating Authorities, as expressed by each Participating Authorities' nominated representative in writing. Such amendments may be in response to the publication of new or amended international standards or guidance with regard to international regulatory cooperation.
58. Any Participating Authority, including the Bank of England, may cease their participation in this Framework Arrangement at any time at its discretion. Such a withdrawal from this Framework Arrangement may be effective immediately, but as a matter of practice the Participating Authority that intends to withdraw will endeavor to give the other Participating Authorities notice of not less than one month prior to its withdrawal. The Participating Authority that intends to withdraw should provide the Bank of England with advance notice of its intention to withdraw and should inform the remaining Participant Authorities of its reasons for withdrawing from the arrangement. Withdrawal from the Framework Arrangement releases the withdrawing authority from any commitments entered into under these Terms, with the exception of the confidentiality provisions which shall continue to apply to any Confidential Information provided prior to termination.
59. Operation of these terms will be suspended, with immediate effect, upon the Bank of England, as Chair of this Framework Arrangement, ceasing to participate in this Framework Arrangement. Following such suspension, the confidentiality provisions shall continue to apply to any Confidential Information provided prior to suspension.
60. Termination of these Terms will be effective immediately upon LCH.Ltd ceasing to provide clearing services. Following such termination, the confidentiality provisions shall continue to apply to any Confidential Information provided prior to termination.

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### Annex 1:

#### Member default and market emergency<sup>6</sup>

1. In the event of a market emergency or member default directly linked to LCH.Ltd, the Bank of England (or where relevant any other Participating Authority) will share with Participating Authorities the following information, where possible and as soon as practical:
  - a) Details of the emergency;
  - b) Actions likely to be taken by the Bank of England (or by any other Participating Authority, should the Bank of England be aware of any such possible action and the Participating Authority in question consents to the sharing of this information by the Bank of England);
  - c) Actions being taken by LCH.Ltd, including under its default rules;
  - d) If applicable, details of any default protections exercised; and,
  - e) Any other available information that would be of particular interest and relevance to other Participating Authorities.

#### Communication

1. The Bank of England (or, where relevant, any other Participating Authority) will, where necessary, facilitate a conference call, taking into account:
  - a) whether other authorities should be invited to the call; and
  - b) whether it would be appropriate to contact other crisis communication networks beyond this Framework Arrangement.
2. The Bank of England (or, where relevant, any other Participating Authority) will use the contact details referred to in paragraph 22 of these Terms. These representatives are responsible for notifying relevant individuals in their authorities where necessary and subject to confidentiality restraints.

#### Confidentiality

3. Subject to the provisions of these Terms regarding confidentiality and use of information, the Bank of England will decide on whether it may be appropriate to distribute information provided by the Bank of England on the market emergency outside the primary and secondary representatives of the Participating Representatives and, if so, in what form and scope.

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<sup>6</sup> Notwithstanding any other arrangement and where there is (a serious threat of) a major disruption to the functioning of the CCP or there is significant evidence to indicate that there is a high risk of a default of a major participant in the CCP or such a default has occurred.

**EXECUTION VERSION**

**Annex 2:**

**[Pro-forma letter acknowledging acceptance of these Terms**

*To be printed on the letter headed paper of the signatory organization]*

To:

The Director, Financial Market Infrastructure Directorate MG5-SE  
Bank of England  
20 Moorgate  
London  
EC2R 6DA  
United Kingdom

Date

Dear Sirs,

**Terms of Reference Governing the Operation of the Framework Arrangement for the Multilateral Regulatory, Supervisory and Oversight Cooperation Arrangement for LCH.Clearnet Ltd (“the Terms”)**

[Full name of signatory authority] consents to establish and participate in this Arrangement in a manner consistent with the Terms to which this letter is appended with effect from: (a) the date notified by the Bank of England as the effective date of the Terms; or (b) the date of signature of this letter, whichever is the later.

I am an authorised signatory on behalf of [Full name of signatory authority] and have the relevant authority (delegated or otherwise) to complete this form for and on behalf of [Full name of signatory authority]

Yours faithfully,

Signature \_\_\_\_\_

Print name \_\_\_\_\_

Position title \_\_\_\_\_

Date \_\_\_\_\_



**EXECUTION VERSION**