

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-87388; File No. SR-LCH SA-2019-008)

October 23, 2019

Self-Regulatory Organizations; LCH SA; Notice of Filing of a Proposed Rule Change  
Relating to the Updated 2018 Version of the Recovery Plan

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on October 8, 2019, Banque Centrale de Compensation, which conducts business under the name LCH SA (“LCH SA”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by LCH SA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change**

LCH SA is proposing to adopt an updated recovery plan (the “RP”) in accordance with Rule 17Ad-22(e)(3)(ii). The text of the proposed rule change has been annexed as Exhibit 5. LCH SA has requested confidential treatment of the material submitted as Exhibit 5.

**II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

In its filing with the Commission, LCH SA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

1. Purpose

On September 28, 2016, the Securities and Exchange Commission (the "Commission") adopted amendments to Rule 17Ad-22<sup>3</sup> pursuant to Section 17A of the Securities Exchange Act of 1934 (the "Act")<sup>4</sup> and the Payment, Clearing and Settlement Supervision Act of 2010 ("Clearing Supervision Act")<sup>5</sup> to establish enhanced standards for the operation and governance of those clearing agencies registered with the Commission that meet the definition of a "covered clearing agency," as defined by Rule 17Ad-22(a)(5)<sup>6</sup> (collectively, the new and amended rules are herein referred to as "CCA rules").

LCH SA is a covered clearing agency under the CCA rules and therefore is subject to the requirements of the CCA rules, including Rule 17Ad-22(e)(3). The CCA rules require that covered clearing agencies, among other things, "establish, implement, maintain and enforce written policies and procedures reasonably designed to . . . maintain

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<sup>3</sup> 17 CFR 240.17Ad-22.

<sup>4</sup> 15 U.S.C. 78q.

<sup>5</sup> 12 U.S.C. 5461 et. seq.

<sup>6</sup> 17 CFR 240.17Ad-22(a)(5).

a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which . . . includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses”.<sup>7</sup> As a central counterparty recognized under the European Market Infrastructure Regulation (“EMIR”)<sup>8</sup>, LCH SA is also subject to prudential requirements, as well as requirements regarding its operations and oversight. As a credit institution based in the European Union, LCH SA is also subject to Directive 2014/59/EU, as supplemented, requiring institutions to draw up and maintain recovery plans setting forth options for measures to be taken by the institution to restore its financial position following a significant deterioration of its financial position.

Specific guidance has been given on Recovery for CCP by CPMI IOSCO. Within the CPMI IOSCO principles for financial market infrastructures (PFMI) it is outlined that all systemically important FMIs should have a comprehensive and effective recovery plan. For this purpose, it has issued the report “recovery of financial market infrastructures” containing guidance on recovery plans, content of a recovery plan in October 2014 and a guidance relating resilience and recovery in 2017.

Furthermore, regulations are under preparation on a European level outlining the Recovery and Resolution measures for CCPs.

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<sup>7</sup> 17 CFR 240.17Ad-22(e)(3)(ii).

<sup>8</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

As described in more detail below, the purpose of the RP is to maintain the continuity of critical services in times of extreme stress and to facilitate the recovery of LCH SA agency. Among other things, the RP seeks to: (i) identify if and to what level LCH SA's service are critical for the market and what internal or external services/systems are critical for the continuity of LCH SA's activity; (ii) outline the scenario under which recovery of the LCH SA might be necessary; (iii) define the early warning indicators and triggers for initiating the recovery measures under the RP, including the market conditions or events that could trigger it; (iv) define the governance framework to trigger these recovery measures; (v) identify the available recovery tools to manage crisis situations and to restore business as usual; and (vi) perform a quantitative and qualitative assessment if the recover tools meet the CPMI IOSCO criteria for recovery instruments.

The RP also includes a detailed summary of the overall business and regulatory framework that LCH SA operates in, including identification of applicable regulations, company structure, detail regarding the LCH SA business lines and geographical spread, and information regarding the interaction between LCH SA and its parent entity (the "Parent").

The RP also contains an FMI analysis, which analyses LCH SA relationship with other financial market infrastructure (e.g. settlement platforms, trade repositories, etc) and institutions used by LCH SA or its clearing members such a payment and settlement agents.

The RP covers all scenarios, which may potentially prevent LCH SA from providing its critical services:

- The default of one or multiple Clearing Member(s) on one or several of its markets, where LCH SA has to re-establish the matched book and may have to allocate any uncovered credit losses to its own capital or to surviving clearing members.
- Potential and actual liquidity shortfalls as result of a clearing member or allied clearing house default.
- The default of an investment counterparty of LCH SA or any other investment losses resulting from changes in the market value on the investments.
- A loss resulting from an operational risk event or any other event which impacts the critical services provided by LCH SA and particularly legal and operational risk (including Fraud) which finally would erode LCH SA's capital.
- Failure of a critical IT service provider. A special focus has been made on LCH Ltd as a provider of critical services to LCH SA given the fact that LCH Ltd is also a CCP and part of the same group.
- Poor business performance or loss of critical contracts with Exchanges.
- Operational or financial failure of an FMI (e.g. allied clearing house/ (I) CSD/ Trades Repository).

The updated 2018 version of the RP includes the following main improvements:

- CC&G Rulebook changes: consultation with clearing members and National Competent Authorities have been completed and LCH SA has implemented the rules relating to CC&G service closure during 2018. This has resolved a potential liquidity risk relating to a CC&G default.

- Critical service providers: LCH SA has implemented a new framework to manage critical service providers, this framework has been approved in the LCH SA Board and a new list of critical service providers has been put together which is part of this RP.
- Cyber scenario: The RP includes now more details on the management of a cyber-scenario and the Cyber Crisis Management Plan has been added as a new recovery tool. The purpose of this document is to provide a framework of procedures allowing LCH SA to respond to cyber incidents in case of cyber crisis. As such, the process defined is to be activated in case of detection of a cyber incident that could potentially cause a significant impact on LCH SA business objectives
- Capital related recovery tools: the quantitative assessment section of the recovery plan now includes more details on the monitoring of capital related recovery tools like surplus capital, variable payments and dividend payments.
- Recovery tools for non-Euro transactions and collateral: LCH SA has to its disposal GMRA's to raise liquidity on USD and GBP, access to FX markets and can perform payments in alternative currency (EUR) as a last resort.
- LCH Ltd exit plan: LCH Ltd provides IT services to LCH SA and a practical approach on how LCH SA will manage a potential wind down of LCH Ltd is now included in the RP.

## 1. Identification of Critical Services and Operations

With respect to the critical services that might impact the continuity of LCH SA's operations, the proposed RP provides that an assessment has been done in accordance with guidance by the Financial Stability Board ("FSB") on identification of critical functions and shared services. LCH SA has assessed that the clearing services LCH SA provides to participants with respect to the markets identified in the RP are deemed critical for purposes of the RP. Overall the services provided in respect of all markets are critical because: (1) the volume of the activity on certain markets may be very significant, (2) most of the business on the relevant market is cleared through LCH SA or (3) the suspension of the clearing service could impact materially the functioning of the market; the level of global market share with respect to certain products is high; and LCH SA's service are used by significant clearing firms. Moreover, a transfer of the clearing activity to another CCP is technically and organizationally complex to perform on short notice.

The RP also identifies those shared operations which LCH SA depends on to perform critical services to members, including those critical departments and services and systems within its corporate group and those provided by others. The RP identifies the main operating units within LCH SA that play a critical role in providing services as well as those enterprise systems that are critical for LCH SA's ongoing operations. Such systems are categorized as (i) Tier 1 Enterprise Critical (which is the most important category and where a failure may have direct impact on the continued functioning of LCH SA); (ii) Tier 2 Business Critical (which is a category of systems where business may not be able to proceed as usual in the event of a failure); and (iii) Tier 3 Business

Support (which are non-critical systems). In addition, the RP identifies those services provided by its affiliates (including its Parent) and third-party service providers through a comprehensive framework that are essential to LCH SA's operations as well as the agreements governing such relationships.

The RP describes that LCH SA maintains comprehensive exit management plans should LCH Ltd initiate its own recovery and wind-down plan, cease to operate following a Business continuity or Cyber event, or notify LCH SA of its termination of services, as well as the corresponding recovery tools in each case.

The RP also describes the business continuity procedures and exit management plans that LCH SA would initiate upon the failure of a critical third-party service provider including LCH Ltd. This is managed under relevant services agreement between LCH Ltd and LCH SA so that LCH SA can continue to offer its services in case of a potential failure.

## 2. Identification of Possible Stress and Recovery Scenarios

The RP categorizes potential stress scenarios in two ways as a result of either: (i) clearing member defaults and (ii) non-clearing member events. Clearing member defaults are identified as those losses that threaten LCH SA's ability to operate as a going concern through either uncovered credit losses or liquidity shortfalls created as a result of a default by one or more members. Non-clearing member defaults are defined as losses impacting capital adequacy arising from risks, including, without limitation, general business risks, operational events, custody and investment risks, or risks on the interoperability link.



The RP then identifies, prior to implementing any of the recovery strategies described therein, the day-to-day risk measures in place to assure provision of the critical services performed where these are insufficient the recovery plan will be triggered.

With respect to clearing member defaults, the LCH SA risk framework provides mitigations for uncovered credit losses due to a member default. LCH SA follows high standards to assess financial resources against member portfolios, including initial margin model covering the potential loss from any member default to a 99.7% confidence level over the applicable holding period, margin add-ons to deal with specific member portfolios risks such as concentration, liquidity risk and sovereign risk, and default fund sizing to cover simultaneous default of the 2 members having the largest stress testing losses beyond the 99.7% confidence level. Stress tests are applied by LCH SA in order to assess whether financial resources are calibrated to handle systemic risks. In addition, a reverse stress testing procedure is used to ascertain adequacy of financial resources held against member positions. The stress testing framework is reviewed on an annual basis.

Further, reverse stress testing exercise is conducted at least quarterly for each default fund and is subject to review by LCH Executive Risk Committee. Risk monitoring mechanisms have been established in order to anticipate and identify any credit or market risks with respect to a clearing member, including daily monitoring of credit watch lists by LCH SA's credit risk department.

The RP covers the default of one or multiple Clearing Member(s) on one or several of its markets, where LCH SA has to re-establish the matched book and may have allocate any uncovered credit losses to its own capital or to surviving clearing members.

With respect to liquidity shortfalls as a result of the clearing member default, the existing liquidity risk management framework seeks to manage liquidity risk by requiring certain minimum liquidity coverage ratio and using reserve stress testing to identify plausible scenarios where the liquidity coverage ratio falls below 100%, as well as considering the liquidity impact as a result of the default of its liquidity line provider.

LCH SA would leverage on the reserve stress testing scenarios and the liquidity line provider's default to define the liquidity recovery scenarios.

In addition, the RP provides that LCH SA uses a set of early warning indicators and management actions to mitigate liquidity risk prior to implementing RP. To the extent a clearing member default has occurred, LCH SA would perform increased risk monitoring, including preparation of liquidity risk reports that would be produced several times a day.

The RP covers the potential and actual liquidity shortfalls as result of a clearing member or allied clearing house default.

For operational risks, the RP provides that on a monthly basis, control assessments, incident and audit recommendations are reviewed and adjusted as appropriate. On a yearly basis, a risk and control self-assessment is performed whereby all risks are reassessed. The operational risk department performs second line challenge on all these activities. In addition, all "major" or "high" incidents are processed through a detailed incident review to identify actions to further improve the control environment.

LCH SA performs a business impact analysis where it identifies all critical systems and departments and has in place a global business continuity strategy which outlines the strategy to maintain critical services in case of a disaster. The RP further

identifies events, including cyber-attacks, failure of a critical service provider, failure of data providers and exchanges, failure of LCH SA's Parent, and reputational events as potential operational risks that could threaten its continued functioning.

The RP covers both a loss resulting from an operational risk event (for example resulting from a fraud) or any other event which impacts the critical services provided by LCH SA (e.g. failure in the provision of service by a third party, unavailability of primary place of work, Staff unavailability to a point where the continuity of operations may be compromised or the occurrence of a cyber-event).

The most important operational exposures within SA relates to Cyber risk:

- Third party liability, associated damages and defense costs arising from the following, amongst others: Privacy and confidentiality, Network security, Media liability, Regulatory costs and fines, Internal investigation; cover combines the Civil Liability and Crime policy only for Third Party related Liabilities and the Cyber policy;
- Business Interruption, caused by a Cyber incident or a software malfunction

The definition of a cyber crisis involves several notions which, according to the ISO 27000 standard, can be described as follows:

- A security event is an identified occurrence of a system, service or network state indicating a possible breach of information security policy or failure of controls, or a previously unknown situation that can be security relevant
- A security incident is a single or a series of unwanted or unexpected information security events that have a significant probability of compromising business operations and threatening information security.

The following scenarios are possible for a cyber attack:

- Attempts (either failed or successful) to gain unauthorized access to a system or its data
- Security breach or potential security breach
- Unauthorized scan or probe
- Unwanted disruption or denial of service
- Malicious code or virus
- Unauthorized processing or storage of data
- Networking system failure (widespread)
- Application or database failure (widespread)
- Etc.

A crisis management plan has been developed to manage the risks listed above. It comprises:

- The procedure to identify the priority of an incident and decide whether to activate the Crisis Management Plan (Triaging Procedure) ;
- The procedure to notify the hierarchy (Escalation Procedure) and activate the Crisis Management Team (Crisis Management Team Activation Plan) ;
- The Tactical Procedures used to fuel the decision-making process, depending on the crisis scenario;
- The Communication Procedures used to dress the guidelines of the notification of the incident ;
- The several contact registries necessary to swiftly notify the relevant contacts.

A specific change in the plan has been to detail the case of a failure of LCH Ltd which provides critical IT service to LCH SA. The following scenarios have been identified:

1. A Business continuity event affecting LCH Ltd. This is mitigated through highly resilient systems described in the business continuity plan.
2. A sale of LCH SA. In this case, LCH Ltd would continue to provide the service over the period required to exit and described in detail in the exit plan. The plan states the main steps that would be followed.
3. A Wind-down of LCH Ltd. In this case, LCH Ltd will have insufficient resources to continue as a CCP but will continue to provide the service for 6 months supported by its wind down capital. The plan describes the steps that would be followed to replicate the exact IT service provided by LCH Ltd on short notice

Business risk is managed by the relevant individual business lines and requires frequent monitoring of results against budget and financial plans, with a second line challenge performed by the risk and finance departments to verify if sufficient capital buffers are available for applicable business risks. In addition, LCH SA conducts a yearly review of business risk scenarios to define potential loss scenarios under foreseeable conditions and the LCH SA finance department monitors key metrics, including revenues and quarterly financial information. Investment risk and second line monitoring is also conducted with respect to interest rate risk, aggregate credit risk exposure, daily mark-to-market limits, and internal credit scores for investment counterparties.

The RP also considers that LCH SA is connected to a broad range of financial market infrastructures, including central securities depositories, settlement platforms and

interoperating central counterparties and identifies the types of operational or financial failures that could restrict LCH SA's ability to operate.

Finally, the RP identifies a series of scenarios which, taken together, could also impact the continued functioning of critical services.

### 3. Triggers for RP

The RP includes a detailed list of events, which if they were to occur would trigger the implementation of a specific action identified in the RP.

The RP provides that a clearing member default will be identified through credit risk monitoring and review of external information indicating a default. Each LCH SA business line then applies its own default management process under which a default management group identifies and manages the phases of the default management process and the application of the default waterfall. The possible triggers for the RP include: (i) a clearing member default, in which case the default procedures will be initiated to reestablish the matched book; (ii) several default events may lead to more than one replenishment of Skin in the Game (iii) mutualized default fund contributions per specific default have been consumed, in which case unfunded resources will be used to keep LCH SA appropriately funded.

Each LCH SA business lines maintain its own default management process and waterfall, but, in general, the RP describes the tools used in the event of a clearing member default. The default management process is used to re-establish the matched book of LCH SA and return back to business as usual and therefore considered as a recovery tool. The relevant governance for the management of a default is followed as described in the paragraph 5.

When covering the relevant credit losses related to a default event, first, LCH SA looks to the defaulting clearing member's margin. These amounts are already held by LCH SA and are available to manage the default of a clearing member and, as such, are not considered to be a trigger of the RP. Second, LCH SA looks to the defaulting clearing member's default fund contribution, which may be allocated to the defaulting clearing member's shortfalls. Again, this action is within the control of LCH SA and does not impact the capital adequacy of LCH SA, so is also not considered a trigger for the RP. Third, in line with requirements under EMIR, LCH SA is required to hold capital equivalent to 25 percent of LCH SA's minimum net capital requirement against which default losses can be applied against liquid available capital. In addition, excess capital is held to replenish such amount within the relevant EMIR deadline. Where multiple defaults occur over a longer time period and lead to multiple replenishments of Skin in the Game, this may lead to start up of the recovery plan and application of capital conservation measures. Fourth, should losses arising from a clearing member default be consumed by the defaulter's margin and default fund contribution and subsequently LCH SA's contribution from capital, LCH SA may look to non-defaulting member default fund contributions. Those amounts are pre-funded by members and held and controlled by LCH SA for the purposes of managing a default and, thus, the utilization of those amounts is not considered an application of the RP. However, LCH SA has the right to trigger an assessment of the defaults as to reestablish the fund to its original size, and such an assessment is considered to be a recovery measure under the RP. Finally, when it is no longer possible for LCH SA to make assessments and all pre-funded default fund

contributions have been used, recovery measures under the RP, as described below, will be implemented.

With respect to liquidity shortfall triggers, LCH SA runs a daily liquidity assessment and monitors key liquidity drivers. In the event that these fall below a specific level, the RP will be triggered. In addition, the occurrence of a clearing member default or the failure of a third-party providing settlement and payment services to clearing member may also result in increased monitoring, and in the event that LCH SA does not have sufficient liquid resources to meet liquidity needs, the RP would be triggered.

With respect to non-clearing member default events, the RP identifies those events with more particularity and identifies the specific triggers for the RP with respect to such events:

For investment losses, which are defined as losses related to the default of an investment counterparty or losses incurred as a result of extreme market conditions, the RP is triggered if losses are greater than the maximum regulatory capital allocated to this activity. For operational risk events, the RP is triggered upon any operational losses that consume the regulatory capital LCH SA holds against the relevant risks; failure of a third party which impacts the provision of LCH SA's services; and reputational events impacting LCH SA's reputation with clearing members and partners. With respect to business risks, the RP is triggered upon a loss that consumes the regulatory capital LCH SA holds against the relevant risks. The RP may also be triggered upon the failure of other financial market infrastructures or a failure in the delivery of services including a cyber-event.



#### 4. Identification and Assessment of Recovery Tools

The RP identifies the various recovery tools that may be applied by LCH SA upon the triggering of the RP, using again the same distinction between clearing member default events and non-clearing member events.

For clearing member default scenarios, the existing stages of the LCH SA default management process have been used as the framework for identifying and confirming the appropriate tools to use in the event of a clearing member default. The RP describes the default management process in detail and summarizes the actions to be taken at each phase, including, as mentioned above, (i) reestablishing the matched book, (ii) default fund assessments, (iii) service continuity charges, and (iv) voluntary payments. To the extent that the default fund and assessments cannot manage the losses accumulated from the clearing member default and any service continuity or voluntary service continuity contributions received are not sufficient to cover the relevant losses, the service closure phase of the default management process is triggered and all outstanding contracts will be closed out as of the clearing day following such determination and all relevant losses are allocated to the clearing members. If the RP is triggered as a result of a liquidity shortfall, the RP provides that LCH SA may use its central bank credit line to deposited securities received on behalf of defaulting clearing member(s). The amounts of non-Euro liquidity are very low and LCH SA has appropriate liquidity lines but also has recovery tools in place for this for example the possibility to pay in alternative currency (Euro).

Other potential tools to manage liquidity stress situation are limits with respect to illiquid collateral or, if necessary apply increased haircuts on certain types of collateral to incentivize the use of more liquid collateral as well or apply specific liquidity margins.

The measures should assure that LCH SA has sufficient liquid resources at all times. As a last resort, under its rulebook, LCH SA could defer funding for the settlement platform for a limited period of time.

As to non-clearing member events, the tool that is used under the RP will depend on the nature of the event, but for most investment, business, and operational risks, LCH SA has its capital surplus that it can allocate losses against. Further, LCH SA can put in place several measures for capital conservation and LCH SA also maintains insurance coverage for specific operational risk events. As a last resort, LCH SA may also initiate a capital raising strategy in order to obtain an injection of capital to replenish any consumed capital.

In order to cope with a liquidity stress situation, LCH SA has the possibility to use non-Euro collateral to raise liquidity. The repurchase agreements will then realise the required currency liquidity requirements needed to satisfy the outgoings resulting from the member default. Non-euro bonds deposited as non cash collateral by surviving members can be used for repo transactions and CALM should perform repo transactions with Gilt/T-bills as collateral in order to raise liquidity. CaLM has multi-currency GMRA signed with a number of investment banks, which will allow CaLM to do bilateral transactions. If liquidity is received in non-euro currencies through bilateral repo transaction this can be transformed into Euro through the recovery tool "FX markets". CALM also has its disposal some Triparty repo agreement signed to do cross currency repo transactions, where liquidity is received directly in Euro from Gilt or USD securities.

For any shortfall in a particular currency SA has the ability to enter into a FX Transaction with a range of counterparties. LCH SA also has the possibility to transform liquidity received through bilateral repo transaction of collateral in USD and GBP into Euro.

Article 4.4.3.2 of CDS Clear rulebook and instruction I.V.4-2 of the SA Rulebook allows LCH to convert amounts owed to members into such other currency or currencies, using a reasonable/prevaling rate of exchange. In the application of this regulation, LCH SA is therefore able to resolve a specific currency liquidity shortfall by completing the required transaction in an alternate currency than the original obligation.

A “Cyber Crisis Management Plan” has been developed which provide a framework of procedures allowing LCH SA to respond to cyber incidents in case of cyber crisis. As such, the process defined is to be activated in case of detection of a cyber incident that could potentially cause a significant impact on LCH SA business objectives. Cyber incidents can develop rapidly and business impact can quickly escalate. The objective of this framework is to manage cyber events or incident in a way that:

- limits the damage, increases the confidence in stakeholders and reduces recovery time and costs,
- facilitate systematic and efficient response, • empowered decision making,
- all response activities are recognised and coordinated.

LCH SA monitors on a monthly basis if it meets the EMIR capital requirements and in addition it monitors sufficient “surplus/buffers capital” is available to assure recovery of the CCP from both CMD and non-CMD losses under single scenarios (e.g. default of a clearing member on one or several services, default on an investment

counterpart) and combined scenarios (e.g. Failure of a clearing member which is also acting as an investment counterparty). Associated to each scenario is attached one or several indicators and the capital coverage tools available in each case. In addition to the capital requirements and available headroom, LCH SA follows indicators such as the Liquidity Coverage Ratio, the aggregate credit risk and market risk exposure on its investment portfolio, operational risk and business risks indicators. Capital coverage instruments include prefunded capital surplus and buffers, limitation of credit and market risks and therefore of potential losses and insurance coverage. The capital and buffers are monitored in order to allow LCH SA to always be in a situation to replenish the SIG within one month, if the CCP was to face multiple defaults. The liquidity coverage ratio indicator ensures that LCH SA will always be in a situation to have access to sufficient liquidity provided either from its own cash or by the ECB even in very extreme cases as no capital coverage is possible in a liquidity stress scenario. The Aggregate Risk Exposure and Market Risk limits on the investment portfolio are in place to ensure that capital will be sufficient to cover any reasonable losses. Operational risk is followed to ensure that operational risk capital can be replenished if the insurance policy does not cover the loss event. Finally, business risk scenarios are monitored to ensure LCH SA has sufficient capital for replenishment if required.

Next to the surplus capital, the LCH Board may decide to withhold Dividend payment and Variable bonus payment to be used as additional buffers.

If an event resulted in a major disruption of its activities, LCH SA would initiate its business continuity strategy, which establishes an enterprise wide RP and response proportionate to the event which aims to minimize the impact of a major disruption on

LCH SA's critical business and resources, or in case of a cyber-event LCH will trigger the cyber crisis management plan. For any disruption or loss of key third-party service provider, LCH SA would be able to exercise several contractual rights and maintains exit plans which are intended to safeguard the continuity of services. LCH SA also maintains back up procedures and protocols that would be initiated if there is an impact on critical services of FMIs, for example its ability to collect margin within T2 under an emergency platform. Finally, LCH SA maintains a crisis communication plan, which outlines the procedure for communicating with clearing members and partners in the event of a disruption.

With respect to each recovery tool identified, the RP also seeks to assess that each tool possesses the following characteristics: comprehensive; effective, including as to reliability, timeliness; transparent, provides appropriate incentives, and results in a minimum negative impact. To confirm that each recovery tool does, in fact, have these characteristics, the RP considers as to each: the barriers or constraints within the tool itself; the steps and time to implement (if not already available as a tool); the likely effectiveness of the tool; any risk of execution; the potential impacts on participants and markets generally; the sequencing of the use of the tools where multiple tools may be required; and the legal basis of the tool. The RP also includes a qualitative and quantitative assessment to provide an indication of the likelihood and severity of a potential recovery situation and whether the tools included in the RP are adequate.

##### 5. Governance Requirements

The creation of the RP and its approval is subject to a number of layers of governance approval. At a high level, the LCH SA Management Committee is

responsible for the preparation of the RP and implementation of the monitoring and the recovery tools set forth in the RP. Before submission to the LCH SA Risk Committee, the RP is reviewed and validated by the Executive Risk Committee of LCH Group. The LCH SA Risk committee, which includes independent directors, then reviews, challenges (if needed), and recommends the RP for approval by the LCH SA board. Final approval of the RP rests with the LCH SA Board.

At a more granular level, the RP identifies the groups and individuals within LCH SA that are responsible for the various aspects of the RP.

A clearing member default will be managed in accordance with the relevant procedures. The Default Management Group (“DMG”) is responsible for the management of the default while all critical decisions are escalated and submitted to the LCH SA Default Crisis Management Team (“DCMT”). All decision which may lead to the triggering of recovery measures are subject to discussion in the DCMT and approval of the LCH SA CEO.

With respect to non-clearing member events, the management of those events will depend on the nature of the event. For example, investment losses and liquidity shortfalls are managed from a first line of defense, which attempts to control risks within the risk appetite parameters set by the Board, and then are escalated as appropriate. Operational risks are managed in accordance with the operational risk policy approved by the Board and reporting and second line challenges are performed by the operational risk department. Business risk is managed by individual business lines and requires frequent monitoring of results against budget and financial plans, with a second line challenge

performed by the risk and finance departments to verify if sufficient capital buffers are available for the applicable business risks.

Upon the occurrence of a clearing member default, the recovery measures that will apply are clearly set forth in LCH SA's rulebook and LCH SA's CEO has the authority to trigger the different stages in the waterfall process, but will consult with DCMT and regulators prior to taking any action. In addition, the RP provides that the LCH SA will also activate an emergency board meeting for approval (if reasonably possible). Upon receipt of information relevant to a scenario causing non-default losses, the LCH SA management committee will consider whether a recommendation to formally invoke the RP should be made to the LCH SA Board. Upon receipt of a recommendation for action, the LCH SA Board will consider the information presented to determine if the RP should be formally invoked.

#### 6. Plan Testing and Maintenance

The RP requires that LCH SA conduct testing and review of member default rules and associated procedures through the running of periodic "fire drills" which simulate member default scenarios. According to the RP, the fire drills are intended to simulate all aspects of a member default, including the auctioning of the defaulting members portfolio to non-defaulting members (where appropriate) and involves the participation of members and relevant functions within the LCH SA organization. Further, because one of the main scenarios contemplated under the RP is a clearing member default, the testing of this element (*i.e.* the tools to recover from uncovered credit losses or liquidity shortfalls arising from a member default) will be incorporated into each relevant fire drill cycle. As noted in the RP, LCH SA performs an annual multi-service fire drill and

service specific fire drills are performed at least annually and testing for non-default events are incorporated into the fire drill regime as well. Should either the periodic testing or other change within LCH SA result in the need to amend the RP, the RP will be revised in accordance with the governance requirements identified above.

(b) Statutory Basis

LCH SA believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the regulations thereunder, including the standards under Rule 17Ad-22<sup>9</sup>.

Section 17A(b)(3)(F) of the Act<sup>10</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions to assure safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and in general to protect investors and the public interest. LCH SA believes that the RP will permit it to initiate recovery upon the occurrence of certain trigger events to maintain continuity of critical services or orderly wind down in accordance with the applicable requirements of Rule 17Ad-22<sup>11</sup> and LCH SA's rules. The RP is designed to formalize and set out the risk framework and measures that LCH SA will use to ensure its stability and recovery in the event of a crisis in order to be able to maintain its critical business processes and operations. Specifically, the RP would describe the LCH SA risk framework and process applicable to identify measure, monitor and manage the risks faced by LCH SA in the

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<sup>9</sup> 17 CFR 240.17Ad-22.

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>11</sup> 17 CFR 240.17Ad-22.



provision of clearing, settlement and risk management services when a crisis event occurs. The RP would serve as a means of addressing, credit risk, market risk, general business risk, operational risk, and other risks that may otherwise threaten the viability of LCH SA. The RP would also support the stability of LCH SA as a clearing house that is part of the broader financial markets and seeks to promote the protection of market participants from the risk of default by a clearing member of LCH SA or an unforeseen operational or business event that impacts LCH SA's continued functioning. The RP also facilitates the prompt clearance and settlement of the securities as it will enable LCH to levy additional resources to match the positions, limit the volume of fails and more generally avoid the market disruption that would be caused by the default of the CCP. The objective of the RP is to maintain the viability of the CCP and bring back the company to normal business, thereby ensuring that the securities and funds that the members have deposited as guarantees be fully returned to the market participants. In that regard, LCH SA believes that the RP supports the public interest, in line with Section 17A(b)(3)(F)<sup>12</sup> of the Act.

The RP would also be consistent with the specific relevant requirements of Rule 17Ad-22, including under 17Ad-22(e)(2) and (3)<sup>13</sup>. Rule 17Ad-22(e)(2)<sup>14</sup> provides that a covered clearing agency shall have governance arrangements that are clear and transparent and clearly prioritize the safety and efficiency of the covered clearing agency, to support the public interest requirements in Section 17A of the Act applicable to

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<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>13</sup> 17 CFR 240.17Ad-22(e)(2) and (3).

<sup>14</sup> 17 CFR 240.17Ad-22(e)(2).

clearing agencies, and the objectives of owners and participants. LCH SA believes that the RP is consistent with these requirements. The RP includes extensive governance requirements that clearly identify the lines of responsibility with respect to the RP. As described above, at a high level, the LCH SA Management Committee is responsible for the preparation of the RP and implementation of the monitoring and the recovery tools set forth in the RP. The LCH SA Risk committee, which includes clearing member representatives, then reviews, challenges (if needed), and recommends the RP for approval by the LCH SA board. Final approval of the RP rests with the LCH SA Board, which includes, among other categories, non-executive Chair, independent directors and user directors. At a more granular level, the RP identifies the groups and individuals within LCH SA that are responsible for the various aspects of the RP. Therefore, LCH SA believes that the RP contains governance arrangements that are clear and transparent and clearly prioritize the safety and efficiency of the covered clearing agency, to support the public interest requirements and the objectives of owners and participants, and is, therefore, consistent with the requirements of Rule 17Ad-22(e)(2).

Rule 17Ad-22(e)(3)<sup>15</sup> requires that a covered clearing agency maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which must include plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses. The RP is designed to maintain the continuity of critical services in times of extreme stress and to facilitate the

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<sup>15</sup> 17 CFR 240.17Ad-22(e)(3).

recovery of LCH SA in the event of extreme (loss) scenarios, as part of LCH SA's comprehensive risk management framework. As described above, the RP seeks to identify those services which could impact the continuity of LCH SA's operations, implement early warning indicators to identify potential recovery scenarios and define the triggers for initiating the RP, and clearly identify the recovery tools available under the RP. Accordingly, LCH SA believes the RP is consistent with Rule 17Ad-22(e)(3)<sup>16</sup>.

B. Clearing Agency's Statement on Burden on Competition.

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act<sup>17</sup>. LCH SA does not believe the proposed rule change would impact or impose any burden on competition. The proposed rule change would establish and maintain LCH SA's RP in accordance with the CCA rules. The RP would not affect clearing member's access to services offered by LCH SA or impose any direct burden on clearing members. To the contrary, the RP seeks to identify the key risks and to establish appropriate recovery measures to ensure LCH SA's ability to operate in the event of an extreme loss. Accordingly, the proposed rule change would not unfairly inhibit market participants' access to LCH SA's services or disadvantage or favor any particular user in relationship to another user. Therefore, LCH SA does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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<sup>16</sup> 17 CFR 240.17Ad-22(e)(3).

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(I).

Written comments relating to the proposed rule change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

D. Extension of Time Period for Commission Action

LCH SA does not consent to the extension of the time period listed in Section 19(b)(2) of the Securities Exchange Act of 1934 for Commission action.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-LCH SA-2019-008 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-LCH SA-2019-008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549 on official business days between the hours of 10:00 am and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at <https://www.lch.com/resources/rules-and-regulations/proposed-rule-changes-0>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-LCH SA-2019-008 and should be submitted on or before [Commission to insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority<sup>18</sup>.

Jill M. Peterson  
Assistant Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).