

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89793; File No. SR-LCH SA-2020-003)

September 9, 2020

Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to LCH SA's Governance Arrangements

I. Introduction

On July 23, 2020, Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4,² a proposed rule change to adopt certain changes to its governance arrangements, as described below. On July 29, 2020, LCH SA filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as modified by Amendment No. 1 (hereafter the "proposed rule change"), was published for comment in the Federal Register on August 10, 2020.⁴ The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ LCH SA filed Amendment No. 1 to correct the Exhibit 5 to the original filing to reflect a change in Article 13 of the Terms of Reference of the Board of Directors of LCH SA and to correct an erroneous citation in the original filing.

⁴ Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Relating to LCH SA's Governance Arrangements, Exchange Act Release No. 89465 (Aug. 4, 2020), 85 Fed. Reg. 48295 (Aug. 10, 2020) (SR-LCH-SA-2020-003) ("Notice").

II. Description of the Proposed Rule Change

A. Background

LCH Group Holdings Limited (“LCH Group”)⁵ is the majority-owner and parent company of LCH SA.⁶ London Stock Exchange Group PLC (“LSEG”) is the majority-owner and parent company of LCH Group. LCH Group is also the parent company of LCH Limited, a central counterparty (“CCP”) authorized to offer clearing services in the European Union and registered with the Commodity Futures Trading Commission as a derivatives clearing organization.

In connection with its purchase of approximately 58 percent of LCH Group in 2013, LSEG entered into an agreement (the “Relationship Agreement”) with LCH Group for the purpose of, among other things: (i) establishing core operating principles to be applied in managing the business of LCH Group; (ii) protecting minority shareholders of LCH Group by requiring the approval of 80 percent of votes on certain matters; (iii) requiring that the Board of Directors of LCH Group and the Boards of LCH SA and LCH Limited be comprised of a mix of independent non-executive directors, executive directors, User Directors (as defined below), Venue Directors (as defined below), and LSEG representatives; and (iv) requiring LSEG, as a majority shareholder, to consent to certain actions, such as approval of the LCH Group budget.

LCH SA represents that the Relationship Agreement is no longer necessary because certain contractual provisions are provided for in law or regulation and other provisions are

⁵ This description is substantially excerpted from the Notice, 85 Fed. Reg. 48295. Capitalized terms not otherwise defined herein have the meanings assigned to them in the LCH SA CDS/Clear Rule Book or the LCH SA governing documents, as applicable.

⁶ LCH Group currently owns 88.9 percent of LCH SA; Euronext N.V. owns 11.1 percent of LCH SA. See Notice, 85 Fed. Reg. at 48295, n. 4.

historic and no longer relevant. Notably, since 2013, LSEG has added to its shareholdings in LCH Group and now owns approximately 83 percent of LCH Group. Therefore, the minority protection provisions noted above are no longer relevant as LSEG alone could approve such matters by voting its shares. Consequently, LCH SA states that LCH Group and LESG plan to terminate the Relationship Agreement. LCH Group also has determined to simplify its governing arrangements and to eliminate provisions in LCH Group's governance documents that are unnecessary and outdated. LCH SA also represents that LCH Group has also determined to eliminate duplication in decision-making between its Board of Directors and the Boards of LCH SA and LCH Limited by limiting the LCH Group Board to representatives of LSEG and LCH Group only. Further, LCH SA states that LCH Group will amend its Articles of Association accordingly.⁷

In response to the actions of LCH Group, LCH SA has submitted the proposed rule change to amend and simplify LCH SA's governance arrangements to reflect changes in LCH Group's governance arrangements. Specifically, the proposed rule change would (i) amend the Board of Directors of LCH SA (the "Board") Terms of Reference ("Board TOR"); (ii) adopt the Terms of Reference of the Nomination Committee of the Board ("Nomination Committee TOR"); (iii) amend the Terms of Reference of the Risk Committee of the Board ("Risk Committee TOR"); (iv) amend the Terms of Reference of the Audit Committee of the Board ("Audit Committee TOR"); and (v) amend the Terms of Reference of the Remuneration Committee of the Board ("Remuneration Committee TOR"). Independent of these amendments related to the changes at LCH Group, the proposed rule change would also adopt the Terms of Reference of the Technology, Security, and Resilience Committee of the Board ("TSR

⁷ See Notice, 85 Fed. Reg. at 48296.

Committee” and “TSR Committee TOR”). Although the proposed rule change would revise LCH SA’s governance arrangements to reflect the changes that LCH Group is making to its own governance, LCH SA represents that the proposed rule change would not change the substance of LCH SA’s current governance.⁸

B. Board TOR

As discussed above, the proposed rule change would amend the Board TOR in light of the planned termination of the Relationship Agreement and the planned amendment of the LCH Group Articles of Association. Specifically, the proposed rule would (i) remove provisions that are now unnecessary in light of the changes discussed above; (ii) establish consent rights for LSEG, similar to those in the Relationship Agreement, and consultation requirements for LCH Group; (iii) update the composition and operation of the Board and the committees of the Board; and (iv) eliminate the inclusion of Venue Directors on the Board.

The proposed rule change would first remove those provisions no longer required as a result of the planned termination of the Relationship Agreement and the planned amendment of the LCH Group Articles of Association. In Article 2, the proposed rule change would remove definitions arising from the Relationship Agreement. The proposed rule change would also remove references to the Relationship Agreement in Article 4 and Article 12.

The proposed rule change would also revise a number of provisions to establish consent rights for LSEG as the indirect majority owner of LCH SA, similar to the rights provided to LSEG in the Relationship Agreement. For example, the proposed rule change would amend

⁸ See Notice, 85 Fed. Reg. at 48296.

Article 3 to provide LSEG a representative on the Board unconditionally.⁹ The proposed rule change would also amend Article 12 to require that LSEG consent to the Board's approval of a number of matters, including among other things, LCH SA's annual budget and material changes thereto. Similarly, the proposed rule change would amend Article 13 to give LSEG the right to consent to the settlement of certain litigation and to certain investments in information technology. Finally, the proposed rule change would add new Article 27, which would provide that the Board TOR may be amended by the Board, provided that any changes to LSEG's rights or any changes which would otherwise have a detrimental effect on LSEG's rights pursuant to the Board TOR would be subject to LSEG's consent.

Similar to these consent rights granted to LSEG, the proposed rule change would require that the CEO of LCH SA consult with LCH Group prior to taking certain actions. Under amended Article 13, the CEO would need to consult with, and obtain the approval of, the Board of LCH Group before taking a number of actions, including among other things, entering into any type of joint venture arrangement between LCH SA and any third party.

To facilitate these consent and consultation requirements, the proposed rule change would amend a number of articles to permit LCH SA's sharing of information with LCH Group and LSEG. The proposed rule change would amend Article 13 to require the CEO of LCH SA to provide to LSEG audited accounts for each financial year, along with financial and other information as needed for reporting requirements and budget forecasting. Moreover, Article 14 currently prohibits a director of LCH SA that was nominated by a shareholder of LCH Group

⁹ Article 3 currently provides that LSEG is entitled to a representative on the Board "for so long as LSEG is entitled to exercise or control the exercise of at least 5 percent of the votes able to be cast on all or substantially all matters at general meetings in LCH Group Holdings Limited."

(i.e., LSEG) from sharing information with the shareholder of LCH Group that made the nomination without the consent of the majority of the independent of LCH SA. The proposed rule change would amend Article 14 to provide that this general prohibition would not prevent information from being shared with LSEG, in its capacity as an indirect shareholder of LCH SA, for legal, accounting, tax regulatory, or disclosure purposes. In addition, under new Article 26, the Board must in certain cases notify LSEG of proposed transactions, and receive LSEG's approval before entering into such transactions, where the transactions trigger certain requirements for LSEG as a listed company in the UK.

Moreover, to allow further coordination and cooperation among LCH SA, LCH Group, and LSEG, the proposed rule change would add new provisions to resolve possible conflicts of interest among the companies. Article 25 currently imposes certain requirements on agreements between LCH SA and related parties, like LCH SA's directors and shareholders. The proposed rule change would amend Article 25 to provide that any contracts and agreements between LCH SA and LSEG or any member of the LSEG Group,¹⁰ will be subject to the prior approval of a committee of the Board consisting solely of the independent non-executive directors of LCH SA and that approval will be given provided that the contract or agreement is on bona fide arm's length terms.

The proposed rule change would also make a number of changes to the composition and operation of the Board in light of these changes. With respect to the composition of the Board, Article 3 currently provides that the Chief Risk Officer of LCH Group, along with the CEO of LCH SA and the CEO of LCH Group, will be the executive directors of the Board. The proposed

¹⁰ LSEG Group means London Stock Exchange Group plc and its subsidiaries from time to time other than those entities comprising the LCH Group.

rule change would amend Article 3 to provide that the Chief Risk Officer of LCH Group may, but is not required to, be one of the three executive directors of the Board. The proposed rule change similarly would remove the requirement that the Chairman of LCH Group be an independent non-executive director of the Board. Finally, the proposed rule change would update a reference in Article 3 to refer to the LCH SA Nomination Committee rather than the LCH Group Nomination Committee. As discussed further below, this change is necessary because LCH Group is disbanding its Nomination Committee.

With respect to the operation of the Board, the proposed rule change would first make a technical correction to Article 6, Quorum. This proposed revision would clarify that the Board may validly deliberate if at least half of the directors are present. LCH SA maintains that this is the intention behind the current language of Article 6 but that, as currently written, the language could be misinterpreted to mean that the Board could not deliberate if more than half of the Directors are present. As discussed above, the proposed rule change would amend Article 12 regarding the powers of the Board to require that LSEG consent to the Board's approval of a number of items. In addition, Article 12(e) assigns to the Board a number of responsibilities related to risk management. These responsibilities include, among other things, the annual adoption of the LCH Group Risk Governance Framework and a number of LCH SA-specific policies, such as the Financial Resource Adequacy Policy. As currently drafted, however, Article 12(e) does not actually require that the Board approve the adoption of the LCH Group Risk Governance Framework or the LCH SA-specific policies. The proposed rule change would clarify this by amending Article 12(e) to specifically require that the Board annually approve the adoption of the LCH Group Risk Governance Framework and policies. Finally, Article 12(d) currently provides the Board the power to issue a report to the LCH SA shareholders to

recommend a dividend, to be decided upon at a general meeting of the shareholders. The proposed rule change would alter this to explicitly require that the Board take into account certain factors prior to issuing the report. LCH SA is making this particular change to incorporate into Article 12(d) provisions from an existing LCH Group dividend policy which already has been adopted by LCH SA.¹¹

In line with these changes, the proposed rule change would make a number of changes to Articles 15-20, which pertain to specific committees of the Board. Article 15 introduces the Committees of the Board and explains, in general terms, their duties and responsibilities. The proposed rule change would amend Article 15 to note the addition of the TSR Committee and to change the reference to the LCH Group Nomination Committee to the LCH SA Nomination Committee (as discussed below, LCH Group is disbanding its Nomination Committee).

Article 16 describes in general terms the Audit Committee. The proposed rule change would amend Article 16 to remove the requirement that the Audit Committee TOR be substantially similar to the terms of reference of the Audit Committee of LCH Group. This change is necessary because, as discussed below, LCH Group is disbanding its Audit Committee. Moreover, the proposed rule change would amend Article 16 to recognize that changes in the Audit Committee TOR may be required by LCH SA's regulators (and not LCH Group's regulators) or any applicable law or regulation and to confirm that a Director representing LSEG and a Director representing Euronext would be a part of the Audit Committee.

Article 17 describes in general terms the Risk Committee. The proposed rule change would amend Article 17 to confirm that a Director representing LSEG would be vice-chairman of the Risk Committee.

¹¹ See Notice, 85 Fed. Reg. at 48297.

Article 18 describes in general terms the Nomination Committee. The proposed rule change would amend Article 18 to remove any reference to the LCH Group Nomination Committee and the requirement that, in the event LCH SA establishes its own Nomination Committee, its term of reference must be substantially similar to the terms of reference of the LCH Group Nomination Committee. This change is necessary because, as discussed below, LCH Group is disbanding its Nomination Committee. Moreover, the proposed rule change would amend Article 18 to confirm that a director representing LSEG would be a member of LCH SA's Nomination Committee.

Article 19 describes in general terms the Remuneration Committee. The proposed rule change would amend Article 19 to remove the provision requiring that the Remuneration Committee TOR take into account the remuneration policies and principles of the LCH Group Remuneration Committee. This change is necessary because, as discussed below, LCH Group is disbanding its Remuneration Committee. Moreover, the proposed rule change would amend Article 19 to confirm that a director representing LSEG would be a member of LCH SA's Remuneration Committee.

The proposed rule change would add new Article 20 to describe in general terms the TSR Committee. As discussed further below, the TSR Committee is a new Board committee. New Article 20 would specify that its organization and functions would be set out in the TSR Committee TOR.

The proposed rule would also specify the requirements for review and approval of changes to the terms of reference of the various Board committees. For the Risk Committee TOR, Remuneration Committee TOR, and Audit Committee TOR, the Board must review and approve the terms of reference annually and LSEG must consent to the terms of reference, in

respect of its rights under the terms of reference for each of these committees. With respect to the Nomination Committee TOR, the Board must review and approve the terms of reference annually and LSEG must consent to the terms of reference. LSEG's consent right under the Nomination Committee TOR is thus slightly more extensive, because that the LCH Group Nomination Committee Terms of Reference, upon which the Nomination Committee TOR is based, required LSEG consent for any amendment, not just with respect to its rights under the terms of reference.¹² The TSR Committee TOR and changes thereto would not be subject to the consent of LSEG because, as discussed further below, the TSR Committee would review, recommend, and report to the Board regarding technology matters but would not otherwise take action on behalf of the Board.

Finally, the proposed rule change would also make amendments to the inclusion of Venue Directors at LCH SA. Currently, the Board TOR provides that the Board shall include Venue Directors. Venue Directors are directors that (i) are nominated by a shareholder of LCH Group Holdings Limited that is a Venue (meaning an exchange) or (ii) are otherwise connected to such a shareholder by virtue of employment or directorship. As explained in the Notice, LCH SA represents that, with the exception of Euronext, there have been no Venue Directors on the LCH SA Board for some time.¹³ Since 2018, there has only been one entity (other than Euronext) that would qualify to nominate a Venue Director and that entity has not been interested in being represented on any LCH board.¹⁴ For that reason, the proposed rule change would remove the

¹² See Notice, 85 Fed. Reg. at 48298, n.16.

¹³ See Notice, 85 Fed. Reg. at 48297, n.13.

¹⁴ See Notice, 85 Fed. Reg. at 48297, n.13.

requirement for a Venue Director and would also delete the associated definitions in Article 2. With respect to Euronext, it is entitled to propose a director pursuant to certain existing contractual agreements.¹⁵ Thus, the Board TOR, as amended, would provide that Euronext is entitled to propose at least one of the directors to the Board as long as these agreements remain in force.

C. Nomination Committee TOR

As noted above, as part of the governance changes at LCH Group, the Board of LCH Group will be disbanding its committees, including its Nomination Committee. The LCH Group Nomination Committee served the functions of a nomination committee for LCH SA. Therefore, in light of the disbanding of the LCH Group Nomination Committee, LCH SA will establish its own Nomination Committee. Thus, the proposed rule change would adopt the Nomination Committee TOR to establish, among other things, the purpose, duties, powers, and procedures of the LCH SA Nomination Committee.

The overall purpose and background of the Nomination Committee, as described in Articles 1 and 2, would be to make recommendations to the Board for nominations of candidates for appointment as directors of the Board. Under Article 2, the Nomination Committee would nominate (i) an independent chairman of the Board (the “Chairman”); (ii) up to four independent directors that meet the standard for independence set out in the Nomination Committee TOR (“Independent Directors”); (iii) up to two directors (“User Directors”) associated with shareholders of LCH Group (other than LSEG) or other exchanges, trading venues, or trading facilities (“User Shareholders”); (iv) the director nominated by LSEG; and (v) the director nominated by Euronext. Moreover, the CEO of LCH Group, the CEO of LCH SA as proposed

¹⁵ See Notice, 85 Fed. Reg. at 48297, n.13.

by the CEO of LCH Group, and the Chief Risk Officer of LCH Group or another executive as proposed by the CEO of LCH Group would serve on the Board (each an “Executive Director”).

LCH SA maintains that this structure would not change the Board’s current proportion of independent directors or number of directors representing members and participants.¹⁶ This structure would, however, eliminate from the Board Venue Directors because, as discussed above, LCH SA has determined there is no reason to continue the inclusion of Venue Directors on the Board.

Article 3 would provide more detail regarding the director nominated by LSEG, including that LSEG has the right to nominate one director to the Board and a replacement should that director retire. Article 4 would provide more detail regarding the director nominated by Euronext, including that Euronext has the right to nominate one director to the Board and a replacement should that director retire. Article 5 would specify that the LCH SA CEO would be responsible for appointing their own management team in consultation with the LCH Group CEO.

Article 6 would set out the duties and powers of the Nomination Committee. Among other duties, the Committee would be required to (i) ensure that recommended candidates understand the responsibilities of Board membership and are able to devote the necessary time to LCH SA matters; (ii) ensure that recommended candidates are respected for their competence and are of good standing in their field of business; (iii) keep itself informed of any changes in law or regulations applicable to the composition of the Board and other matters for which the committee is responsible; and (iv) consult periodically with the nomination committee of LCH

¹⁶ See Notice, 85 Fed. Reg. at 48298.

Limited to ensure that there is a coordinated process for the appointment of suitable directors to both boards.

Article 7 would set out the procedures that the Nomination Committee would use to recommend candidates to be Chairman and Independent Directors. Moreover, Article 7 would establish the standards that the Nomination Committee would use to determine if a person is fit for appointment as Chairman or an Independent Director, including, among other factors, whether the person is independent in character and judgment. Moreover, in making recommendations with regard to Independent Directors, Article 7 would require that the Nomination Committee take into account that the Independent Directors should reflect: (i) a breadth of industry expertise and experience and product knowledge; (ii) particular expertise and experience in risk management, audit, clearing services and financial services; and (iii) diversity, including gender, age, geographical provenance, and educational and professional background. Finally, an Appendix to Article 7 would provide the procedures the Nomination Committee would use to invite User Shareholders to propose candidates to be User Directors, and the procedures the Nomination Committee would use to approve and select nominees from such candidates. The Appendix would further require that the Nomination Committee receive LSEG's approval prior to recommending a candidate's appointment to the Board as a User Director.

Article 8 would set out the tenure for directors. Under Article 8, each director (other than the Executive Directors and User Directors) would have, in principle, a maximum tenure on the Board of three three-year terms. However, the Nomination Committee would be allowed to nominate an Independent Director for such longer period as is necessary to ensure that not all such Independent Directors' appointments terminate at the same time. All User Directors would

have a tenure on the Board of one three-year term, unless otherwise agreed by the Board to ensure that not all such User Directors' appointments terminate at the same time.

The remaining articles of the Nomination Committee TOR would explain the membership and operation of the Nomination Committee. Under Article 9, the Board would appoint members to the Nomination Committee, which would be comprised of four to six directors, including the Chairman, at least two Independent Directors, one User Director and the LSEG Director. The Chairman of the Board, or such other Independent Director as the Independent Directors and LSEG may agree, would be the Chairman of the Nomination Committee. Article 10 would explain who would serve as secretary of the Nomination Committee, and Article 11 would explain the tenure of members of the Nomination Committee. Articles 12 through 16 would explain the conduct of meetings of the Nomination Committee, including notice, timing, location, attendance, quorum, and keeping of minutes. Article 17 would require the Chairman of the Nomination Committee to report to the Board on the discussions, decisions, and recommendations of the Committee and further require that the Nomination Committee furnish to the Board for approval each year a summary of, among other things, its activities and certain of its policies. Article 18 would provide that the Nomination Committee TOR could be amended from time to time with Board approval, subject to LSEG consent (as discussed above). Finally, Article 19 would set out the requirements with respect to confidentiality and conflicts of interest, and Article 20 would cover other miscellaneous matters, such as access to training and resources for members of the Nomination Committee.

D. Risk Committee TOR

The proposed rule change would amend the Risk Committee TOR to reflect the changes in the LCH Group governing arrangements but would not make substantive changes to the current Risk Committee TOR. For example, the proposed rule change would amend Article 1 to

reference the criteria for independence set out in LCH SA's Nomination Committee TOR rather than in LCH Group's Nomination Committee terms of reference because, as discussed above, LCH Group is disbanding its Nomination Committee. The proposed rule change would also revise Article 16, regarding confidentiality and conflicts of interest, to refer to rights LSEG or its representatives have under the Risk Committee TOR rather than rights LESG had under the Relationship Agreement.

The proposed rule change would also amend Article 1 to remove the provision that authorized LSEG to appoint the Vice Chairman of the committee only for so long as LSEG is entitled to exercise or control the exercise of at least 40 percent of the votes able to be cast on all or substantially all matters at general meetings of LCH SA. LCH SA considers this provision to be unnecessary because, as discussed above, LSEG now indirectly owns more than 40 percent of LCH SA. Under Article 1 as revised, LSEG is entitled to appoint the Vice Chairman provided that the person appointed has the skills and experience commensurate with such a role.

The proposed rule change would also amend Article 17 to remove references to LCH LLC. Although LCH LLC is registered with the CFTC as a DCO, its registration is currently dormant.¹⁷

Finally, the proposed rule change would amend Article 20 to specify the provisions which the Board could only amend with LSEG's consent.

E. Audit Committee TOR

The proposed rule change would amend the Audit Committee TOR to reflect the changes in the LCH Group governing arrangements but would not make substantive changes to the current Audit Committee TOR. For example, the proposed rule change would amend Article 2 to

¹⁷ Notice, 85 Fed. Reg. at 48300, n.26.

reference the criteria for independence set out in LCH SA's Nomination Committee TOR rather than in LCH Group's Nomination Committee terms of reference because, as discussed above, LCH Group is disbanding its Nomination Committee.

Moreover, the proposed rule change would amend Article 2 to remove the provision that LSEG is entitled to recommend or approve a director to the Audit Committee so long as it is entitled to exercise or control the exercise of at least 20 percent of the votes able to be cast at general meetings of LCH Group. As discussed above, LSEG now owns more than 20 percent of LCH Group. Thus, LCH SA no longer considers this provision to be necessary. Rather, under Article 2 as amended, LSEG always would be entitled to recommend or approve a director to the Audit Committee. The proposed rule change would also amend Article 2 to require that the LSEG-approved director be present at a meeting to establish quorum.

Similarly, the proposed rule change would amend Article 3 to remove the requirement that LCH SA's Audit Committee coordinate with the Audit Committee of LCH Group. As discussed above, LCH Group is disbanding its Audit Committee. For similar reasons, the proposed rule change would remove the requirement that the Audit Committee respond to any requests from the LCH Group Audit Committee to vary LCH SA's internal audit program of work. Moreover, the proposed rule change would require that the Audit Committee consider the auditor appointed by LSEG in respect of the wider LSEG Group when making recommendations to the Board concerning the appointment, evaluation and termination of the engagement of the external auditors for LCH SA.

The proposed rule change would make other updates to the responsibilities of the Audit Committee. To take into account the new TSR Committee, the proposed rule change would amend Article 3 to require the Audit Committee to coordinate with the TSR Committee. In

addition, the proposed rule change would revise references in Article 3 to external “auditors” rather than an “auditor”, to recognize that LCH SA has more than one external auditor. Finally, the proposed rule change would also amend Article 3 to provide that the Committee will review the annual audit plan prepared by LCH SA’s Internal Audit department after approval by the LCH SA’s CEO and ahead of any submission of the plan to LCH SA’s regulator, if requested by the regulator.

The proposed rule change would also make minor amendments to the operation of the Audit Committee in Article 5 and Article 8. In Article 5, the proposed rule change would add language to confirm that the Committee secretary will present all minutes of the proceedings and resolutions of all Committee meetings to the Committee for approval at the next following meeting. The proposed rule change would also delete current Article 8, which provides that the Committee will arrange for periodic reviews of its own performance and, at least annually, arrange for independent internal review of its constitution and these Terms of Reference. Instead, pursuant to the terms of the Board Terms of Reference and LCH SA’s representation, the Board, along with LCH SA’s executive management, would conduct this review.¹⁸ In place of current Article 8, the proposed rule change would add a new article on amendments to the Audit Committee TOR to specify the provisions which the Board could only amend with LSEG’s consent.

F. Remuneration Committee TOR

The proposed rule change would amend the Remuneration Committee TOR to reflect the changes in the LCH Group governing arrangements and to make other updates to the process for approving the remuneration of certain executives of LCH SA. For example, the proposed rule

¹⁸ See Notice, 85 Fed. Reg. at 48301.

change would delete from Article 2 the provision that LSEG is entitled to appoint a representative to the committee only for so long as LSEG is entitled to exercise or control the exercise of at least five percent of the votes able to be cast at general meetings of LCH Group. As discussed above, LSEG now owns more than five percent of LCH Group. Thus, LCH SA no longer considers this provision to be necessary. Under Article 2 as revised, LSEG always will be entitled to appoint a representative to the Remuneration Committee. Similarly, the proposed rule change would revise Article 2 to authorize the LCH Group CEO to attend committee meetings as an observer. Finally, the proposed rule change would Article 12, Confidentiality and Conflicts of Interest, to remove reference to any rights LSEG may have in the Relationship Agreement and refer, instead, to rights LSEG or its representatives have under the Remuneration Committee TOR.

The proposed rule change would also revise the Remuneration Committee TOR to reflect some minor changes in the remuneration process. For example, the proposed rule change would amend Article 1, to provide that LCH SA's remuneration policies would apply to "Specified Executives" rather than "Executive Management." LCH SA is making this technical change to confirm that the remuneration policies would apply only to those executives identified in the Remuneration Committee TOR or otherwise specified by the Board and would not apply to other LCH SA executives who otherwise might be deemed to fall within the category of "Executive Management" for other purposes. As proposed to be revised, "Specified Executives" would mean, with respect to LCH SA, the Board Chairman, the CEO, the Chief Risk Officer, the Chief Compliance Officer, and any other personnel designated by the Board from time to time, including any personnel with an annual remuneration package of more than €1,000,000 or equivalent.

Moreover, the proposed rule change would simplify the process for approval of the remuneration of the CEO or any Specified Executive. Under the process as revised, the Remuneration Committee first would consult with the LCH Group CEO before making a recommendation to the Board for approval, rather than first consulting with the LCH Group CEO *and* the LSEG CEO. Because the LSEG Remuneration Committee must approve the remuneration of the CEO or any Specified Executive as the final step in the process anyway, LCH SA does not believe it is necessary to consult with the Chief Executive Officer of LSEG at the start of the process.¹⁹ The proposed rule change would also amend Article 1 to require the Committee to review annually the ongoing appropriateness of any individual's remuneration and to review and recommend for approval by the Board the design of all incentive plans and performance related pay schemes, including performance targets to be used, that are designed by and received from the LSEG remuneration committee.

The proposed rule change would also amend Article 9 to require that minutes be presented to the Remuneration Committee for approval at the next meeting and Article 10 to specify the provisions that the Board could only amend with LSEG's consent.

G. TSR Committee TOR

Independent of the changes that LCH SA is making to reflect the changes to the governance of LCH Group, LCH SA has also proposed to create the TSR Committee of the Board and adopt the TSR Committee TOR. As set forth in the TSR Committee TOR, the overall purposes of the TSR Committee would be to represent the interests of the Board in the sound

¹⁹ With regard to the remuneration of directors, the proposed rule change would also amend Article 1 to provide that the Remuneration Committee will consult from time to time with the remuneration committee of LSEG and the remuneration committee of LCH Limited to ensure that there is a coordinated approach to the remuneration of directors on the Board and the board of directors of LCH Limited.

management of technology security and operational resilience, including cyber security and to ensure that technology security and operational resilience strategies, investments and outcomes support the mission, values, and strategic goals of LCH SA. To that end, the TSR Committee would be responsible for, among other things, review of LCH SA's operations and technology strategy and investments in technology in support of that strategy. To carry out its responsibilities, the TSR Committee would have full access to management and employees, as well as systems and records, and would be authorized to obtain independent professional advice. The Chairman of the TSR Committee would report its discussions and findings to the Board, but the TSR Committee would have not executive powers other than making findings and recommendations.

The TSR Committee TOR would also describe the composition and operation of the TSR Committee, including the conduct and attendance of meetings, requirements to establish quorum, and the confidentiality of matters considered by the TSR Committee.

III. Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.²⁰ For the reasons given below, the Commission finds that the proposed rule change is consistent

²⁰ 15 U.S.C. 78s(b)(2)(C).

with Sections 17A(b)(3)(C)²¹ and 17A(b)(3)(F) of the Act²² and Rule 17Ad-22(e)(2)(i), (iv), (v), and (vi) thereunder.²³

A. Consistency with Section 17A(b)(3)(C) of the Act

Section 17A(b)(3)(C) of the Act requires that the rules of LCH SA assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.²⁴ The Exchange Act does not define fair representation or establish particular standards of representation. The Commission has stated that, “at a minimum, fair representation requires that the entity responsible for nominating individuals for membership on the board of directors should be obligated by by-law or rule to make nominations with a view toward assuring fair representation of the interests of shareholders and a cross-section of the community of participants.”²⁵ The Commission believes that the proposed rule change is consistent with the fair representation requirement.

First, as discussed in Part II.B above, the proposed rule change would provide LCH SA’s indirect majority shareholder, LSEG, a representative on the Board and would require LSEG’s consent prior to the Board’s approval of a number of matters, including amendments to the Board TOR that would affect LSEG’s rights. Similarly, the proposed rule change would require that the LCH SA CEO consult with, and obtain the approval of, the Board of LCH Group, LCH SA’s direct majority shareholder, before taking a number of actions. To facilitate these consent

²¹ 15 U.S.C. 78q-1(b)(3)(C).

²² 15 U.S.C. 78q-1(b)(3)(F).

²³ 17 CFR 240.17Ad-22(e)(2)(i), (iv), (v), (vi).

²⁴ 15 U.S.C. 78q-1(b)(3)(C).

²⁵ Exchange Act Release No. 20221 (Sept. 23, 1983), 48 FR 45167, 45172 (Oct. 3, 1983).

and consultation requirements, the proposed rule change also would amend the Board TOR to permit LCH SA's sharing of information with LCH Group and LSEG and to resolve possible conflicts of interest among the companies. Moreover, with respect to specific committees of the Board, the proposed rule change would ensure some form of representation for LSEG on the Nomination Committee, Risk Committee, Audit Committee, and Remuneration Committee. Similarly, the proposed rule change would require LSEG's consent to changes to the terms of reference of a number of Board committees. With these changes, the Commission believes the proposed rule change should assure a fair representation of LCH SA's shareholders in the selection of its directors and administration of its affairs.

Second, as discussed in Part II.B above, the proposed rule change would remove from the Board TOR the requirement that the Board include a Venue Director. Based on LCH SA's representation, the Commission understands that, with the exception of Euronext, currently only one entity would qualify to nominate a Venue Director and that such entity has not shown an interest in representation on the Board.²⁶ With respect to Euronext, the proposed rule change would provide that Euronext is entitled to propose at least one of the directors to the Board as long as certain contractual agreements remain in force. Moreover, under the Board TOR and Nomination Committee TOR, as discussed in the Part II.B and Part II.C above, the Board would include up to two directors nominated by User Shareholders. Given the inclusion of representation for Euronext as well as User Shareholders on the Board, the Commission believes the proposed rule change should assure a fair representation of LCH SA's participants in the selection of its directors and administration of its affairs, even with the removal of the requirement for specific representation of Venues other than Euronext.

²⁶ See Notice, 85 Fed. Reg. at 48297, n.13.

Taking these reasons together, the Commission finds that the proposed rule change is consistent with 17A(b)(3)(C) of the Act.²⁷

B. Consistency with Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of LCH SA be designed to assure the safeguarding of securities and funds which are in the custody or control of LCH SA or for which it is responsible.²⁸

As discussed above, the proposed rule change would make numerous changes to LCH SA's governance arrangements to clarify and amend those governance arrangements in light of the anticipated termination of the Relationship Agreement and the anticipated changes to LCH Group's governance. The Commission believes that, as a general matter, these changes should help ensure that LCH SA has governance arrangements that support its ability to promptly and accurately offer clearance and settlement services to its clearing members and the markets LCH SA serves, and effectively manage the range of risks that arise in the course of providing such services. Moreover, the Commission believes that the proposed rule change should provide greater accessibility and clarity to LCH SA shareholders and participants to better understand LCH SA's governance arrangements. For both of these reasons, the Commission believes that the proposed rule change is consistent with the prompt and accurate clearance and settlement of securities transactions, and, accordingly, with Section 17A(b)(3)(F) of the Act.²⁹

Moreover, as discussed in Part II.B above, the proposed rule change would clarify the wording in Article 12(e) of the Board TOR to specifically require the Board to annually approve

²⁷ 15 U.S.C. 78q-1(b)(3)(C).

²⁸ 15 U.S.C. 78q-1(b)(3)(F).

²⁹ 15 U.S.C. 78q-1(b)(3)(F).

the adoption of the LCH Group Risk Governance Framework and a number of LCH SA-specific policies, such as the Financial Resource Adequacy Policy. The Commission believes that Board approval of this framework and policies should help to ensure that they are sufficient and kept up-to-date. Because the LCH Group Risk Governance Framework and other LCH SA-specific policies, such as the Financial Resource Adequacy Policy, should collectively ensure that LCH SA is able to access and secure its securities and funds, the Commission believes that this aspect of the proposed rule change should help to assure the safeguarding of securities and funds which are in the custody or control of LCH SA or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.³⁰

Taking these reasons together, the Commission finds that the proposed rule change is consistent with 17A(b)(3)(F) of the Act.³¹

C. Consistency with Rule 17Ad-22(e)(2)(i), (iv), (v), and (vi)

i. Rule 17Ad-22(e)(2)(i)

Rule 17Ad-22(e)(2)(i) requires that LCH SA establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent.³²

The Commission believes that the proposed amendments discussed above to reflect planned changes to the LCH Group governance arrangements and the planned termination of the Relationship Agreement would enhance the clarity of LCH SA's governance arrangements. In particular, the Commission believes that removing certain provisions from, and updating

³⁰ 15 U.S.C. 78q-1(b)(3)(F).

³¹ 15 U.S.C. 78q-1(b)(3)(F).

³² 17 CFR 240.17Ad-22(e)(2)(i).

references in, the terms of reference of the various Board committees in light of the anticipated changes to the LCH Group governance arrangements and the anticipated termination of the Relationship Agreement, as well as removing the requirements that the terms of reference be substantially similar to those of LCH Group (as discussed in Parts II.B, II.D, II.E, and II.F above), should reduce the possibility for confusion, increasing readability, and promoting consistency. Similarly, in eliminating the requirement that LCH SA's Audit Committee coordinate with the Audit Committee of LCH Group, as discussed in Part II.E above, the proposed rule change should remove a provision that if left unchanged, could cause confusion as LCH Group is disbanding its audit committee.

Similarly, the Commission believes that the changes discussed above regarding the Board would bring clarity to its operation. Specifically, in making a technical correction to Article 6 of the Board TOR to clarify that the Board may validly deliberate if at least half of the directors are present (as discussed in Part II.B above) the proposed rule change should reduce the possibility of confusion regarding when the Board has a quorum.

Finally, the Commission believes that, in adopting and updating the terms of reference for certain committees of the Board, the proposed rule change should clarify the operation of these committees. In specifying, among other things, the conduct of meetings, quorum, powers, and confidentiality of proceedings of the Nomination Committee (as discussed in Part II.G above); how the Audit Committee and Remuneration Committee would keep and approve meeting minutes (as discussed in Part II.E and Part II.F above); and how the Remuneration Committee would approve the remuneration of the LCH SA CEO and Specified Executives (as discussed in Part II.F above) the proposed rule change should provide clarity to how these committees would operate and carry out their responsibilities.

ii. Rule 17Ad-22(e)(2)(iv)

Rule 17Ad-22(e)(2)(iv) requires that LCH SA establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities.³³

The Commission believes the changes with respect to the establishment of the Nomination Committee discussed in Part II.C above should help to ensure consistency with this requirement. Specifically, the Commission believes that, in establishing standards the Nomination Committee would use in nominating candidates for appointment to the Board, the proposed rule change should help to ensure that directors have the experience and skills needed to comply with their responsibilities. Similarly, the Commission believes that, in establishing the procedures that the Nomination Committee would use to recommend candidates to be Chairman, Independent Directors, and User Directors, and the standards that the Nomination Committee would use to determine to select and recommend such candidates, the proposed rule change should help to ensure that the Chairman, Independent Directors, and User Directors have the experience and skills needed to comply with their responsibilities as such. Moreover, in establishing the tenure for directors and allowing the Nomination Committee to nominate Independent Directors and User Directors for a longer period as needed to ensure that not all terms end at the same time, the proposed rule change should help to prevent a sudden loss of experience that could negatively affect the Board's ability to carry out its duties. Finally, in specifying that the Chief Risk Officer of LCH Group may, but is not required to, be one of the three executive directors of the Board and removing the requirement that the Chairman of LCH

³³ 17 CFR 240.17Ad-22(e)(2)(iv).

Group be a non-executive director of the Board, as discussed in Part II.B above, the proposed rule change should clarify the composition of the Board, and therefore the Board's potential experience and responsibilities.

iii. Rule 17Ad-22(e)(2)(v)

Rule 17Ad-22(e)(2)(v) requires that LCH SA establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.³⁴

The Commission believes a number of the changes discussed in Part II.B above should establish clear and direct lines of responsibility for the Board. For example, in amending the Board TOR to specifically require the Board to annually approve the adoption of the LCH Group Risk Governance Framework and a number of LCH SA-specific policies, the proposed rule change should clarify this responsibility of the Board. Similarly, by amending the Board TOR to require that the Board take into account certain factors from an existing LCH Group policy (which has been adopted by LCH SA) prior to issuing a report to the LCH SA shareholders to recommend a dividend, the proposed rule change should clarify the factors the Board must consider when exercising this responsibility. Finally, in making the Board responsible for reviewing and approving the Nomination Committee TOR, Risk Committee TOR, Remuneration Committee TOR, Audit Committee TOR, and TSR Committee TOR annually, the proposed rule change should clarify the Board's responsibility with respect to these terms of reference.

The Commission likewise believes a number of the changes discussed above should establish clear and direct lines of responsibility for committees of the Board. In adding a reference to the TSR Committee in the Board TOR and adopting the TSR Committee TOR, the

³⁴ 17 CFR 240.17Ad-22(e)(2)(v).

proposed rule change would establish the TSR Committee and should clearly assign the TSR Committee certain responsibilities and duties, as discussed in Part II.G above. Similarly, the proposed rule change should clearly assign the Nomination Committee certain responsibilities and duties, as specified in the Nomination Committee TOR discussed in Part II.C above. Finally, the proposed rule change should clarify the Audit Committee's responsibilities by updating references to recognize that LCH SA has more than one external auditor, requiring consideration of the auditor appointed by LSEG in respect of the wider LSEG Group when making recommendations to the Board regarding external auditors for LCH SA, and requiring review of LCH SA's annual audit plan in certain circumstances, as discussed in Part II.E above.

iv. Rule 17Ad-22(e)(2)(vi)

Rule 17Ad-22(e)(2)(vi) requires that LCH SA establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of LCH SA.³⁵

As discussed above, the proposed rule change would make a number of changes to ensure representation of the interests of LCH Group and LSEG. For example, the proposed rule change would establish in the Board TOR certain representation, consent, and consultation rights similar to what LSEG has in the Relationship Agreement, including representation on the Board and certain Board committees and rights to consent with respect to certain actions of the Board and amendment to the Board TOR, as discussed in Part II.B above. Similarly, with respect to Board committees, as discussed in Part II.C through II.F above, the proposed rule change would grant LSEG representation and the right to consent to certain amendments to the terms of reference.

³⁵ 17 CFR 240.17Ad-22(e)(2)(vi).

Moreover, the proposed rule change would give the LCH Group CEO the right to attend Remuneration Committee meetings as an observer and would require the CEO of LCH SA to consult with LCH Group prior to taking certain actions, as discussed in Part II.B above. The proposed rule change would also authorize LCH SA's sharing of information with LCH Group and LSEG and would add provisions to resolve possible conflicts of interest among the companies, as discussed in Part II.B above. The Commission believes that all of these changes, taken together, should help to ensure LCH SA's consideration of the interests of LSEG and LCH Group, which as discussed above, are LCH SA's indirect and direct majority shareholders.

Similarly, the Commission believes that, in providing Euronext the right to propose at least one of the director to the Board so long as certain contractual agreements remain in force, as discussed in Part II.B above, the proposed rule change should help to ensure LCH SA's consideration of the interests of Euronext, which as discussed above, is a stakeholder in LCH SA.

For these reasons, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(2)(i), (iv), (v), and (vi).³⁶

³⁶ 17 CFR 240.17Ad-22(e)(2)(i), (iv), (v), (vi).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and in particular, with the requirements of Sections 17A(b)(3)(C)³⁷ and 17A(b)(3)(F) of the Act³⁸ and Rule 17Ad-22(e)(2)(i), (iv), (v), and (vi) thereunder.³⁹

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act⁴⁰ that the proposed rule change, as modified by Amendment No. 1 (SR-LCH-SA-2020-003), be, and hereby is, approved.⁴¹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

J. Matthew DeLesDernier
Assistant Secretary

³⁷ 15 U.S.C. 78q-1(b)(3)(C).

³⁸ 15 U.S.C. 78q-1(b)(3)(F).

³⁹ 17 CFR 240.17Ad-22(e)(2)(i), (iv), (v), (vi).

⁴⁰ 15 U.S.C. 78s(b)(2).

⁴¹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁴² 17 CFR 200.30-3(a)(12).