

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87720; File No. SR-LCH SA-2019-008)

December 11, 2019

Self-Regulatory Organizations; LCH SA; Order Approving Rule Change Relating to the Updated 2018 Version of the Recovery Plan

I. Introduction

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”), Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² a proposed rule change (“the “Proposed Rule Change”) to adopt an updated recovery plan (the “RP”). The proposed rule change was published for comment in the Federal Register on October 29, 2019.³ The Commission has not received any comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The purpose of LCH SA’s RP is to maintain the continuity of critical services in times of extreme stress and to facilitate its recovery.⁴ Generally, the RP identifies if and to what level LCH SA’s services are critical for the market and what internal or external services/systems are critical for the continuity of LCH SA’s activity; outlines the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34- 87388 (October 23, 2019), 84 Fed. Reg. 57897 (October 29, 2019) (SR-LCH SA-2018-008) (“Notice”).

⁴ The description herein is substantially excerpted from the Notice, 84 Fed. Reg. 57897.

scenarios under which recovery of the LCH SA might be necessary; defines the early warning indicators and triggers for initiating the recovery measures; defines the governance framework to trigger these recovery measures; and identifies the available recovery tools to manage crisis situations and to restore business as usual.

Significant scenarios that could prevent LCH SA from providing its critical services discussed in the RP include the default of one or multiple clearing members; liquidity shortfalls as result of a clearing member or allied clearing house default; default of an investment counterparty of LCH SA or any other investment losses resulting from changes in the market value on the investments; losses resulting from an operational risk event; failure of a critical IT service provider; and failure of financial market infrastructures such as an allied clearing house, CSD, or Trades Repository.

The proposed rule change intends to incorporate the following main changes from the updated 2018 version of the RP: (1) inclusion of details on handling of the recovery from a cyber-risk scenario, (2) inclusion of fraud as an operational risk, (3) inclusion of tools for non-Euro transactions and collateral, (4) implementation of CC&G rulebook changes related to service closure, (5) inclusion of a comprehensive list of LCH SA's critical service providers, (6) inclusion of details regarding the monitoring of capital related tools, and (7) inclusion of details for managing the failure of LCH Ltd as a service provider.

A. Recovery from a Cyber-Risk Scenario

Under the proposed rule change, the RP would include more details on the management of a cyber-risk scenario with the addition of the Cyber Crisis Management Plan as a new recovery tool. The Cyber Crisis Management Plan would define “cyber-

crisis” and provide a framework of procedures describing and specifying how LCH SA would respond to a potential breach of a system, service or network indicating possible problems with information security policy or a failure of controls. The RP further defines cyber-risks as 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 taking the form of unauthorized scans or probes, malicious code, denial of service, or attempts to gain access. The framework and procedures would be activated in event that LCH SA detected a cyber incident that could potentially cause a significant impact on LCH SA business objectives.

B. Fraud Risk

In addition to losses resulting from a clearing member default scenarios, the RP covers losses resulting from a non-default operational risk event. While the current version of the RP addresses operational risks such as failure of third party service providers or cyber risks, the proposed rule change would include as an operational risk losses resulting from a fraud which impacts the critical services provided by LCH SA. As is the case with other operational risks, the RP would specify that business lines and operational risk departments have the responsibility to identify potential fraud and to put into place relevant controls to monitor for fraud risk.

C. Non-Euro recovery tools

Currently, the RP includes various tools to deal with liquidity needs resulting from default losses or other events giving rise to liquidity constraints, including deferral of settlement for fixed income and cash equity as well as collateral limits. The RP would now specify that to bolster its recovery tools, LCH SA can use several new tools to meet

liquidity needs, including using non-Euro collateral to raise liquidity, transforming liquidity received in non-Euro currencies into Euro through bi-lateral repo transactions with the “FXmarkets” recovery tool, receiving liquidity directly in Euro from Gilt or USD securities, and performing payments in an alternate currency than the original obligation.

D. CC&G rulebook changes

The current version of the RP provides as a recovery tool the closure of the interoperability link on Italian debt, which is triggered when CC&G is declared in default or CC&G has performed a service closure. Upon triggering this tool, LCH SA will proceed with closing out all outstanding contracts. Further, uncovered losses from the cash settlement and close out after a CC&G default will be covered by deposited collateral of CC&G and the application of a haircut on outgoing payments to clearing members. In order to cover a potential cash shortfall in case of a CC&G default, LCH SA is proposing that the RP would state that in the event of a closure of CC&G, LCH SA will not be obliged to perform payment to clearing members until it receives deposited collateral from the CC&G estate, which addresses LCH SA’s potential inability to retrieve the deposited collateral with CC&G

E. Critical Service Providers

The current RP in general describes critical services such as those provided by LCH Ltd and other entities providing technological services. The RP describes LCH SA’s approach to the maintaining continuity of services to LCH SA, including contractual rights. In this rule proposal, the RP would describe that LCH SA will implement a new framework to manage critical service providers. The framework would

identify the various types of critical service providers and include a new list of such providers in an annex to the RP. This would layout the overall landscape of providers and facilitate LCH SA's ability to monitor for potential financial or operational failure of a critical service provider and plan to replace service providers or otherwise sustain any disruption caused by their failure.

F. Monitoring of Capital Related Tools

The quantitative assessment section of the recovery plan would include more details on the monitoring of capital related recovery tools like surplus capital, variable payments and dividend payments in order to help ensure their adequacy to cover the identified scenarios. This additional detail would list each tool and describe their efficiency as recovery tools. The RP currently notes that LCH SA will monitor that surplus/buffers capital is adequate to cover both default and non-default losses. The proposed rule would revise the RP to describe the stress scenarios and associated indicators as well as the capital coverage tools available in each case. In addition to the capital requirements and available headroom, the RP would note that 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. The RP would indicate that the capital and buffers are monitored in order to allow LCH SA to always be in a situation to replenish the skin in the game within one month if the CCP was to face multiple defaults.

In addition to surplus capital, the RP would indicate that the LCH Board may decide to withhold Dividend payment and Variable bonus payment to be used as additional buffers.

G. LCH Ltd exit plan

In response to French regulatory recommendations, the RP would provide information related to the dependency between LCH SA and LCH Ltd. LCH Ltd provides IT services to LCH SA and an approach on how LCH SA will manage a potential wind down of LCH Ltd would be included in the RP. The RP would include scenarios and mitigating actions in case of failure of LCH Ltd as a service provider. For example, LCH SA will take steps to replicate the exact information technology services provided by LCH Ltd.

III Discussion and 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 such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.⁵ For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act⁶ and Rules 17Ad-22(e)(2) and (3) thereunder.⁷

A. 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 promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of

⁵ 15 U.S.C. 78s(b)(2)(C).

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 17 CFR 240.17Ad-22(e)(2) and (3).

securities and funds which are in the custody or control of LCH SA or for which it is responsible, and, in general, to protect investors and the public interest.⁸

As noted above, the updates to the RP reflected in this proposed rule change would add more details on the management of a cyber-scenario and the Cyber Crisis Management Plan has been added as a new recovery tool. By providing a framework of procedures for allowing LCH SA to respond to or prevent cyber incidents, the Commission believes that LCH SA will improve its ability to cope with, prevent, and plan for disruptions to its clearing services by responding quickly to such things as software malfunctions or cyber breaches. Further, the Commission believes that LCH SA will be in a position to prioritize incidents and activate the relevant response teams and plans.

Similarly, by updating the RP to account for the failure of entities such as linked CCPs and critical service providers as described above, the Commission believes that the proposed rule change provides LCH SA the ability to timely and efficiently plan for, monitor, and respond to failures or disruptions of these other parties. Specifically, the RP would note that LCH SA has implemented the rules relating to CC&G service closure related to a potential loss on investment of the cash collateral with CC&G. LCH SA may not immediately be able to retrieve the deposited collateral with CC&G if it is insolvent and has to wait for the relevant payment of the estate. However, the RP would clarify that LCH SA is only obliged to perform payment to clearing members if and when it has received the relevant funds from the CC&G estate. The Commission believes that these

⁸ 15 U.S.C. 78q-1(b)(3)(F).

changes strengthen LCH SA's ability to recover from the liquidity and credit challenges that could arise from CC&G's closure. This in turn enhances LCH SA's financial position and ultimately its ability to continue to provide prompt and accurate clearance and settlement. Likewise, the RP would include scenarios and mitigating actions in case of the failure of LCH Ltd as a service provider and include a list of other critical service providers. The Commission believes that these proposed changes enhance LCH SA's management of important relationships by including details of these services and the steps that it can take to replace or otherwise respond to disrupted services. The Commission believes that this in turn promotes LCH SA's ability to continue to promptly and accurately clear transactions.

Additionally, as noted above, the RP would include more details on the monitoring of capital related recovery tools like surplus capital, variable payments and dividend payments. For example, the RP would note that LCH SA will monitor that "surplus/buffers capital" is adequate to cover both default and non-default losses. By including within the RP the scenarios, indicators, and capital coverage tools available in each case, the Commission believes that LCH SA will enhance its ability to preserve the requisite financial resources and hence its ability to continue to promptly and accurately clear transactions and safeguard securities and funds in its custody and control.

Further, the proposed rule change would provide that LCH SA can use several new tools to meet liquidity needs, including using non-Euro collateral to raise liquidity, transforming liquidity received in non-Euro currencies through bi-

lateral repo transactions with the “FXmarkets” recovery tool, receiving liquidity directly in Euro from Gilt or USD securities, and performing payments in an alternate currency than the original obligation. The Commission believes that this enhances LCH SA’s ability to resolve a specific currency liquidity shortfall resulting from a management of a defaulting clearing member and thereby maintains its financial strength and ultimately its ability to promptly and accurately clear transactions.

Overall, the Commission believes that with the additional detail described above, the updated RP would continue to strengthen the purpose of the RP as originally adopted of maintaining the continuity LCH SA’s critical services by reducing the likelihood of a disorderly or unsuccessful recovery through planning for various disruptive scenarios. Therefore, for the reasons stated above the Commission finds that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds in LCH SA’s custody and control, and, in general, protect investors and the public interest, consistent with the Section 17A(b)(3)(F) of the Act.⁹

B. Consistency with Rule 17Ad-22(e)(2)

Rule 17Ad-22(e)(2) requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, provide for governance arrangements that are clear and transparent and

⁹ 15 U.S.C. 78q-1(b)(3)(F).

clearly prioritize the safety and efficiency of the covered clearing agency, to support the public interest requirements in Section 17A of the Act.¹⁰

As noted above, more details on the management of a cyber-scenario and the Cyber Crisis Management Plan have 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 and crises. The RP would contain details about the procedures utilized to identify incidents, notification of hierarchy, and for notifying and activating the Crisis Management Team. The Commission believes that proposed details regarding the cyber scenario will enhance LCH SA's governance procedures as they relate to cyber crisis by setting forth a clear process for detecting and notifying required management as well as activation of a specific plan for managing cyber crisis.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(2).

C. Consistency with Rule 17Ad-22(e)(3)

Rule 17Ad-22(e)(3) requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, 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.

¹⁰ 17 CFR 240.17Ad-22(e)(2).

Overall, the Commission believes that the rule proposal enhances LCH SA's ability to manage legal, credit, liquidity, operational, general business, investment, and other risks that arise in or are borne by the covered clearing agency in the recovery context. As noted above, the rule proposal updates the RP to address operational, liquidity, and investment risks. Specifically, the RP would include fraud as an operational risk and incorporate it into its system for the monitoring and management of losses. The Commission believes that with this addition, the RP is more attentive to fraud as an operational risk. Additionally, the Commission believes that the inclusion of non-Euro recovery tools described above will enhance LCH SA's ability to cope with liquidity challenges by giving it additional ways to access and meet liquidity needs. The Commission also believes that by implementing the rules relating to CC&G service closure discussed above, LCH SA has resolved a potential liquidity risk relating to a CC&G default.

Further, the Commission believes that the proposed changes to the RP related to LCH Ltd. and other critical service providers strengthen LCH SA's ability to maintain the continuity of critical services in times of extreme stress and to facilitate the recovery of LCH SA. For instance, the Commission believes that the list of critical service providers and scope of each service enhances LCH SA's ability to identify those services which could impact the continuity of LCH SA's operations and the LCH Ltd exit plan strengthens LCH SA's ability to manage a potential wind down of LCH Ltd. and replicate or replace the services provided by LCH Ltd. on short notice.

Additionally, because the quantitative assessment section of the RP, as described above, now includes more details on the monitoring of capital related recovery tools, the

Commission believes that LCH SA's ability to monitor and sustain its capital requirements under various scenarios has been strengthened.

Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(3).

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, Section 17A(b)(3)(F) of the Act¹¹ and Rules 17Ad-22(e)(2) and (3) thereunder¹².

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR-LCH SA-2019-008) be, and hereby is, approved.¹³

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

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Assistant Secretary

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 17 CFR 240.17Ad-22(e)(2) and (3).

¹³ In approving the proposed rule change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁴ 17 CFR 200.30-3(a)(12).