

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88578; File No. SR-LCH SA-2020-001)

April 7, 2020

Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change
Relating to Amendments to the Wind Down Plan

I. Introduction

On February 24, 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 thereunder² a proposed rule change updating its wind down plan (“WDP”). The proposed rule change was published for comment in the Federal Register on March 4, 2020.³ The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change⁴

The purpose of the WDP is to ensure an orderly wind down of LCH SA under extreme circumstances and to limit market impact as much as possible, should its recovery plan or the resolutions measures that could have been taken by the authorities fail to allow LCH SA to obtain the resources required to return to business as usual conditions. The WDP sets out the steps that LCH SA would follow to close its clearing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to Amendments to the Wind Down Plan; Exchange Act Release No. 88297 (February 27, 2020); 85 FR 12814 (March 4, 2020) (“Notice”).

⁴ The description herein is substantially excerpted from the Notice, 85 FR 12814.

services and shut down the company. In addition, the WDP reflects LCH SA's estimate of the costs that it would incur to conduct a wind-down, thereby allowing LCH SA to ensure that it maintains capital sufficient to cover such costs.⁵

In 2018, LCH SA conducted a review of its WDP and is proposing to update it to clarify the circumstances under which LCH SA could determine to wind down. More specifically, these revisions would make clear that LCH SA generally could not make such a determination on its own initiative. Instead, if LCH SA is no longer deemed viable after consultation with its regulatory authorities⁶ (either while operating under its current governance or once it has been put under resolution), the ACPR could require LCH SA to wind down.⁷ Further, the proposal would clarify that only in the case where all business lines have been closed and LCH SA no longer has any clearing activity, could LCH SA make the decision to wind down on its own initiative and without the direction of its regulator.

LCH SA is also proposing to update the WDP with new estimates of the costs that it would incur to wind-down. Such costs would still be lower than the amount that LCH SA holds as liquid resources corresponding to 6 months of expenses that are the minimum required by the European Market Infrastructure Regulation ("EMIR").

⁵ For more information regarding LCH SA's WDP, please see Securities Exchange Act Release No. 34-83451 (June 15, 2018), 83 FR 28886 (June 21, 2018) (SR-LCH SA-2017-013).

⁶ LCH SA is regulated as a credit institution and central counterparty by its National Competent Authorities: l'Autorité des marchés financiers, l'Autorité de Contrôle Prudentiel et de Résolution (ACPR), and Banque de France

⁷ ACPR can act as either the prudential authority or the resolution authority for LCH SA.

Additionally, the proposed rule change would update the ‘assessment of key member, exchange, and IT contract termination provisions’ section of the WDP to add (i) contracts that LCH SA recently entered with particular platforms and (ii) the contract governing the LCH SA staff layoff processes.⁸

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.⁹ For the reasons given below, the Commission finds that the proposed rule change is consistent with Rules 17Ad-22(e)(3)(ii), 17Ad-22(e)(15)(i) and (ii).¹⁰

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

Rule 17Ad-22(e)(3)(ii) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures that are reasonably designed, as applicable, to ensure that it maintains plans for the orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.¹¹ As described above, the proposed rule change would revise the WDP to clarify that it is the ACPR and not LCH SA that can decide to wind-down. Additionally, LCH SA would also update the list of key

⁸ However, the conditions of this employment contract would not apply in case of wind down, and only legal conditions, which are less demanding for LCH SA, would be applicable for staff layoffs.

⁹ 15 U.S.C. 78s(b)(2)(C).

¹⁰ 17 CFR 240.17Ad-22(e)(3)(ii), (e)(15)(i), and (e)(15)(ii).

¹¹ 17 CFR 240.17Ad-22(e)(3)(ii).

contractual provisions reflected in the WDP to add contracts for services providers and an employment contract.

The Commission believes that these clarifications and updates allow LCH SA to maintain the WDP with current and relevant information. In particular, the Commission believes that more precise specification of the role of the ACPR should clarify which entity has the authority to trigger the WDP. The Commission also believes that by updating the list of contracts with wind-down provisions, LCH SA can maintain current and relevant information in its WDP. Therefore, for the above reasons the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(3)(ii).

B. Consistency with Rule 17Ad-22(e)(15)(i)-(ii)

Rule 17Ad-22(e)(15)(i) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed, as applicable, to, among other things, (i) determine the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken, and (ii) provide for holding liquid net assets funded by equity equal to the greater of either six months of its current operating expenses or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under Rule 17Ad-22(e)(3)(ii).

As noted above, LCH SA proposes to update its WDP with new estimated wind-down costs, which are less than the amount that LCH SA holds as liquid resources corresponding to 6 months of expenses that are the minimum required by EMIR. The Commission believes that by updating its WDP with this information after its annual

review allows LCH SA to maintain procedures reasonably designed to determine wind-down costs and to ensure they remain under the amount of capital held for that purpose. Therefore, the Commission believes that this aspect of the proposed rule change is consistent with Rule 17Ad-22(e)(15)(i).

Similarly, the Commission believes that by updating these costs, LCH SA would be able to assess whether it holds liquid net assets sufficient to ensure an orderly wind-down of critical operations and services. Therefore, the Commission believes that the proposed rule change is consistent with Rule 17Ad-22(e)(15)(ii).

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 Rules 17Ad-22(e)(3)(ii), 17Ad-22(e)(15)(i) and (ii).¹²

It is therefore ordered pursuant to Section 19(b)(2) of the Act¹³ that the proposed rule change (SR-LCH SA-2020-001), be, and hereby is, approved.¹⁴

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier
Assistant Secretary

¹² 17 CFR 240.17Ad-22(e)(3)(ii), (e)(15)(i), and (e)(15)(ii).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 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).

¹⁵ 17 CFR 200.30-3(a)(12).