

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99109; File No. SR-LCH SA-2023-008)

December 7, 2023

Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, Relating to Recovery and Resolution

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“**Act**” or “**Exchange Act**”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on November 24, 2023, 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 primarily prepared by LCH SA. On December 5, 2023, LCH SA filed Partial Amendment No. 1 to the proposed rule change to make certain changes to the Exhibit 5 to File No. LCH SA-2023-008.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1, from interested persons.

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

LCH SA is proposing to amend its CDS Clearing Rule Book (“**Rule Book**”)⁴ to make conforming changes necessary to implement certain provisions of Regulation (EU)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Partial Amendment No. 1 updates the pagination throughout Exhibit 5 to File No. LCH SA-2023-008 and the Table of Contents in Exhibit 5 to File No. LCH SA-2023-008 to reflect the revised pagination. Partial Amendment No. 1 would also remove two references to field codes in Chapter 1 of Exhibit 5 to File No. LCH SA-2023-008.

⁴ LCH SA’s CDS Clearing Rule Book can be found on LCH SA’s public website: https://www.lch.com/system/files/media_root/CDSClear%20Rule_Book_11.05.2022.pdf.

2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties (“**CCP Recovery and Resolution Regulation**”) that are applicable to central counterparties (“**CCPs**”) authorized under the European Markets Infrastructure Regulation (“**EMIR**”)⁵ (the “**Proposed Rule Change**”).

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

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 such statements.

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

1. Purpose

LCH SA is proposing to amend the Rule Book to comply with certain requirements of the CCP Recovery and Resolution Regulation.

Pursuant to Article 9(6) of the CCP Recovery and Resolution Regulation, CCPs are required to provide in their rules that they may deviate from their recovery plan

⁵ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade reporting.

measures and, in such circumstances, they shall notify their competent authority designated in accordance with EMIR.⁶

Pursuant to Article 9(14) of the CCP Recovery and Resolution Regulation, following a default event in respect of a clearing member, each CCP shall use an additional amount of its pre-funded dedicated own resources (the “second skin-in-the-game”) prior to the requirement of non-defaulting clearing members to make a contribution in cash to the CCP up to at least each clearing member’s contribution to the default fund. This amount is additional to the prefunded dedicated own resources required in accordance with EMIR (the “first skin-in-the-game”) which will be used by the CCP before the use of each non-defaulting clearing member’s initial contribution to the default fund.⁷ On 25 November 2022, the European Commission adopted a delegated act specifying the methodology for calculation and maintenance of the second skin-in-the-game to be used in accordance with Article 9(14) of the CCP Recovery and Resolution Regulation (the “**Commission Delegated Regulation**”)⁸.

LCH SA is proposing to make the following conforming changes to its Rule Book for the purposes of complying with the above-mentioned requirements of the CCP

⁶ Article 9(6) of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties. <http://data.europa.eu/eli/reg/2021/23/oj>.

⁷ Article 9(14) of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties. <http://data.europa.eu/eli/reg/2021/23/oj>.

⁸ Commission Delegated Regulation (EU) 2023/840 of 25 November 2022 supplementing Regulation (EU) 2021/23 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculation and maintenance of the additional amount of pre-funded dedicated own resources to be used in accordance with Article 9(14) of that Regulation. http://data.europa.eu/eli/reg_del/2023/840/oj.

Recovery and Resolution Regulation, as complemented by the Commission Delegated Regulation in respect of the second skin-in-the-game.

Article 1.1.1 of the Rule Book (*Terms defined in the CDS Clearing Rule Book*) will be amended to include the definition of “CCP Recovery and Resolution Regulation” which will mean Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties.

LCH SA maintains a recovery plan that provides for certain measures to be taken in the case of a default or non-default event, with the goal to restore its financial resources to continue providing critical functions in all relevant scenarios. The recovery plan includes certain quantitative and qualitative indicators based on LCH SA’s risk profile. These indicators are used to identify the circumstances under which LCH SA may take measures in its recovery plan. LCH SA is proposing to add a new Article 2.4.4 entitled “Recovery” to implement the requirement of article 9(6) of the CCP Recovery and Resolution Regulation. This Article 2.4.4 will provide that pursuant to article 9(6) of the CCP Recovery and Resolution Regulation where, in order to achieve the goals of its recovery process, LCH SA proposes to: (a) take measures provided for in its recovery plan despite the fact that the relevant indicators have not been met; or (b) refrain from taking measures provided for in their recovery plan despite the fact that the relevant indicators have been met, such proposal shall be submitted to its board of directors for approval and any decision taken by the board of directors of LCH SA in this connection and its justification shall be notified to the Autorité de contrôle prudentiel et de resolution

(“ACPR”) without delay. The Proposed Rule Change would provide LCH SA with the flexibility to achieve its goal to restore financial resources in order to continue providing critical functions in all relevant scenarios identified in its recovery plan. For example, despite relevant recovery plan indicators being met, LCH SA may, in consultation with the Board of Directors, determine that certain measures provided for in its recovery plan may cause significant adverse effects to the financial system or will otherwise be ineffective given the facts and circumstances.

The default waterfall provisions in Article 4.3.3.1 of the Rule Book will be amended to include a reference to the second skin-in-the-game as a resource to be used to cover the losses resulting from the implementation of the CDS Default Management Process. In accordance with the requirement of Article 9(14) of the CCP Recovery and Resolution Regulation, the second skin-in-the-game will be added immediately before the collateral deposited by the non-defaulting clearing members as an additional contribution to the CDS Default Fund in a dedicated sub-paragraph (vi). Amended sub-paragraph (vi) will also provide that in accordance with Article 9(14) of the CCP Recovery and Resolution Regulation and Article 1 of the Commission Delegated Regulation, the LCH SA additional dedicated own resources, as determined from time to time will be (a) up to the amount of such dedicated own resources allocated to the CDS Default Fund in proportion to the size of the CDS Default Fund; and (b) in the case of an Event of Default occurring after a previous Event of Default but before LCH SA has reinstated such dedicated own resources in accordance with Article 3(2) of the Commission Delegated Regulation, up to the residual amount of such dedicated own resources in the CDS

Default Fund. Consequently, the sub-paragraphs following sub-paragraph (vi) will be renumbered accordingly.

In the penultimate paragraph of Article 4.3.3.1, LCH SA is proposing to clarify that the application of the LCH SA Contribution shall mean the application of an amount that LCH SA shall bear for its own account up to the amount of the LCH SA Contribution and the LCH SA additional dedicated own resources which shall mean an amount that LCH SA shall bear for its own account up to the amount of the dedicated own resources allocated to the CDS Default Fund.

Additionally, Clause 7.5 (*Application of any recoveries*) of Appendix 1 to the Rule Book is proposed to be amended for consistency purposes by adding a reference to the LCH SA dedicated own resources allocated to the CDS Default Fund referred to in sub-paragraph (vi) of Article 4.3.3.1, in addition to the current reference to the other resources of Article 4.3.3.1 referenced in this Clause 7.5.

Finally, LCH SA is proposing to modify Article 1.1.1 (*Terms defined in the CDS Clearing Rule Book*) to incorporate the defined term of “ACPR” to refer to one of the national competent authorities of LCH SA, the Autorité de Contrôle Prudentiel et de Résolution and any successor organization. Consequently, any reference to this competent authority in the Rule Book will be replaced by the new defined term of “ACPR”.

2. Statutory Basis

LCH SA believes that the Proposed Rule Change is consistent with the requirements of Section 17A of the Exchange Act⁹ and the regulations thereunder applicable to LCH SA. Section 17A(b)(3)(F) of the Act¹⁰ requires, in part, that the rules of LCH SA be designed to protect investors and the public interest.

The Proposed Rule Change is designed to enhance LCH SA's ability to achieve the goals of its recovery process by amending the Rule Book to provide greater flexibility for LCH SA to carry out its recovery plan. The Proposed Rule would amend the Rule Book to add a new Article 2.4.4 that states LCH SA may (1) take measures provided for in its recovery plan despite the fact that the relevant indicators (of the recovery plan) have not been met, or (2) refrain from taking measures provided for in its recovery plan despite the fact that the relevant indicators have been met. The Proposed Rule would also amend the Rule Book to state that should LCH SA take such measures provided for in its recovery plan despite the fact that the relevant indicators have not been met or refrain from taking such measures provided for in its recovery plan despite the fact that the relevant indicators have been met, the LCH SA Board of Directors would be required to approve such a decision. Furthermore, the Proposed Rule would amend the Rule Book to state that LCH SA will notify the ACPR of its decision and rationale for taking such measures. The amendment to the Rule Book to add new Article 2.4.4 is designed to provide LCH SA greater flexibility to utilize discretion in executing certain measures of

⁹ 15 U.S.C. 78q-1.

¹⁰ 15 U.S. Code § 78q-1(b)(3)(F).

its recovery plan. LCH SA's recovery plan is intended, in part, to address default and/or non-default losses to continue to provide critical functions to its clearing members. To that end, LCH SA has established various indicators that identify the circumstances under which certain measures contained in the recovery plan are to be executed. These indicators may be quantitative or qualitative, or a combination of both and are monitored and reviewed on a periodic basis. A quantitative indicator may include a default event causing a liquidity shortfall and a qualitative indicator may include a loss resulting from a cyber-attack which results in a discontinuity of critical services. A significant change to LCH SA risk profile, with a potential impact on scenarios or indicators may trigger a review between periodic reviews (which could be driven by new products or services, identification of a new scenario due to an emerging risk or in the context of incident management for instance) or new regulatory requirement. LCH SA may require flexibility in the measures that it takes or refrains from taking without being in violation of its own rules. The amendment to the Rule Book to add Article 2.4.4 is designed to provide the needed flexibility to execute its recovery plan to address default and/or non-default losses to continue to provide critical functions to its clearing members.

The Proposed Rule will also amend Article 4.3.3.1 of the Rule Book to include a reference to the second skin-in-the-game financial resource to be used to cover the losses resulting from the implementation of the CDS Default Management Process. The current default waterfall provides for LCH's contribution to the default losses, prior to applying a pro rata percentage of the collateral deposited by Non Bidders as a Contribution and prior to applying a pro rata Contribution amount of Collateral deposited by all other clearing

members. The Proposed Rule will add an additional pre-funded financial resource to be provided by LCH SA following the pro rata Contributions by Non Bidders and other clearing members, and prior to any pro rata Additional Contribution Amounts called by LCH SA, in accordance with the default waterfall. The Proposed Rule will also amend the penultimate paragraph of Article 4.3.3.1 by clarifying the meaning of the LCH SA Contribution and the LCH SA additional dedicated own resources as applied in the default waterfall described earlier in the Rule Book. LCH SA is proposing other clarifying changes to Clause 7.5 of Appendix 1 of the Rule Book by revising the last sentence of the first paragraph to include reference to the addition of the second skin-in-the-game for purposes of the application of any recoveries. The Proposed Rule to amend Article 4.3.3.1 of the Rule Book and conforming amendments to Article 7.5 of Appendix 1 are designed to provide an additional pre-funded financial resource by LCH SA prior to utilizing Additional Contribution amounts from non-defaulting clearing members. This additional financial resource provided by LCH SA further aligns the interests of LCH SA and its clearing members by ensuring LCH SA continues its practice of maintaining robust risk management practices and reduces the impact on non-defaulting clearing member financial resources.

The Proposed Rule would also make non-substantive amendments to the Rule Book to add a new defined term in Article 1.1.1 for “CCP Recovery and Resolution Regulation” and for “Autorité de Contrôle Prudentiel et de Résolution” for purposes of conforming to other amendments to the Rule Book.

Based on the foregoing, LCH SA believes the Proposed Rule Change is designed

to protect investors and the public interest in a manner consistent with Section 17A(b)(3)(F) of the Act.¹¹

LCH SA also believes the Proposed Rule Change is consistent with Rule 17Ad-22(e)(1)¹², which requires LCH SA to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.

In addition to being registered as a Clearing Agency with the SEC, LCH SA is authorized to offer clearing services in the European Union pursuant to rules established under EMIR for CCPs. As a result of the CCP Recovery and Resolution Regulation authorized under EMIR, LCH SA is required to amend its rules to remain in compliance with the adoption of the CCP Recovery and Resolution Regulation. Specifically, LCH SA is proposing to amend its Rule Book to comply with Article 9(6)¹³ and Article 9(14)¹⁴ of the CCP Recovery and Resolution Regulation. The Proposed Rule Change will ensure LCH SA's rules are consistent with the relevant laws and regulations authorized under EMIR, including the CCP Recovery and Resolution Regulation. LCH SA also believes that the legal basis for the Proposed Rule Change is clear and understandable to the

¹¹ 15 U.S. Code § 78q-1(b)(3)(F).

¹² 17 CFR § 240.17Ad-22(e)(1).

¹³ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade reporting, Title III, Chapter 1, Section 1, Article 9 ("Recovery Plans").

¹⁴ *Id.*

relevant authorities, participants, and participants' customers as proposed, and the public disclosure of the amendments to the Rule Book are transparent.

Based on the foregoing, LCH SA believes the Proposed Rule Change is consistent with Rule 17Ad-22(e)(1).¹⁵

LCH SA also believes the Proposed Rule Change is consistent with Rule 17Ad-22(e)(3)(ii)¹⁶, which requires LCH SA to establish, implement, maintain and enforce written policies and procedures reasonably designed to 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 LCH SA, which include plans for the recovery and orderly wind-down of LCH SA necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

The Proposed Rule Change would amend the Rule Book to enhance LCH SA's recovery plan by providing greater flexibility to execute its recovery plan. As previously noted, LCH SA's recovery plan is intended, in part, to address default and/or non-default losses to continue to provide critical functions to its clearing members and particular circumstances, including deteriorating market conditions may require LCH SA to deviate from executing certain measures established in its recovery plan. The flexibility to adapt to particular circumstances in order to achieve the intended goals of the recovery plan is a proactive risk management tool for comprehensively managing risk. In addition, the

¹⁵ 17 CFR § 240.17Ad-22(e)(1).

¹⁶ 17 CFR § 240.17Ad-22(e)(3)(ii).

required review and approval by the LCH SA Board of Directors and subsequent notification to the ACPR provides the necessary governance to ensure any deviation from the plan aligns with intended goals of the recovery plan.

The Proposed Rule Change would also further align the interests of LCH SA and its clearing members by ensuring LCH SA continues its practice of maintaining robust risk management practices and reduces the impact on non-defaulting clearing member financial resources. As previously noted, LCH SA is proposing to amend its Rule Book to provide for an additional pre-funded financial resource to be provided by LCH SA in the event of a CDS clearing member default. This pre-funded financial resource would be sized in proportion to the CDS Default Fund and utilized prior to Additional Contribution Amounts provided by non-defaulting clearing members per the CDS default management waterfall. This amendment to the Rule Book further enhances LCH SA's recovery plan by adding an additional pre-funded financial resource and supports LCH SA's ongoing efforts to comprehensively manage risks.

Based on the foregoing, LCH SA believes the Proposed Rule Change is consistent with Rule 17Ad-22(e)(3)(ii).¹⁷

LCH SA also believes the Proposed Rule Change is consistent with Rule 17Ad-22(e)(23)(i)¹⁸, which requires LCH SA to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and

¹⁷ *Id.*

¹⁸ 17 CFR § 240.17Ad-22(e)(23)(i).

procedures.

As previously noted, LCH SA is proposing to amend the CDS default waterfall provisions of its Rule Book by adding an additional pre-funded financial resource to be provided by LCH SA in the event of a CDS clearing member default. The Proposed Rule will also amend the penultimate paragraph of Article 4.3.3.1 by clarifying the meaning of the LCH SA Contribution and the LCH SA additional dedicated own resources as applied in the default waterfall described earlier in the Rule Book. These proposed amendments to the Rule Book will publicly disclose key aspects of LCH SA's default rules and procedures. Based on the foregoing, LCH SA believes the Proposed Rule Change is consistent with 17Ad-22(e)(23)(i)¹⁹.

The proposed rule change is not inconsistent with the existing rules of LCH SA, including any other rules proposed to be amended.

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act²⁰ 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. LCH SA does not believe that the Proposed Rule Change would impose any burden on competition. The purpose of the Proposed Rule Change is for LCH SA to amend its Rule Book to make conforming changes necessary to implement certain provisions of the CCP Recovery and Resolution Regulation that are applicable to CCPs authorized under EMIR. Specifically, LCH SA is codifying in its Rule Book the

¹⁹ *Id.*

²⁰ 15 U.S.C. 78q-1(b)(3)(I).

regulatory requirements under the CCP Recovery and Resolution Regulation, which establish guidance on LCH SA's recovery process, including with respect to governance and notification to regulatory authorities. LCH SA is also codifying in its Rule Book the CCP Recovery and Resolution Regulation and Commission Delegated Regulation requirements with respect to the default waterfall that LCH SA apply the second skin-in-the-game prior to the requirement of non-defaulting clearing members to make a contribution to LCH SA up to at least each clearing member's contribution to the default fund. This requirement is in addition to the first skin-in-the-game, which is to be used by LCH SA before the use of each non-defaulting clearing member's initial contribution to the default fund. These amendments to the Rule Book, and subsequent conforming changes, would not burden any Clearing Members or other market participants and will be applied equally for all Clearing Members. LCH SA is codifying the CCP Recovery and Resolution Regulation and Commission Delegated Regulation, which are designed to further enhance risk management practices for CCPs to comprehensively manage risks related to a Clearing Member default. Therefore, LCH SA does not believe that the Proposed Rule Change would impose a burden on competition 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

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.

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:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-LCH SA-2023-008 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-LCH SA-2023-008. 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, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at <http://www.lch.com/resources/rules-and-regulations/proposed-rule-changes-0>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-LCH SA-2023-008 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

²¹ 17 C.F.R. §200.30-3(a)(12).