

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100394; File No. SR-LCH SA-2024-002)

June 21, 2024

Self-Regulatory Organizations; LCH SA; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to the CDS Select Membership Model

I. Introduction

On March 13, 2024, 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 SR-LCH SA-2024-002 (“Proposed Rule Change”) pursuant to Section 19(b) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4² thereunder to amend its CDS Clearing Rule Book (the “Rule Book”) and CDS Clearing Procedures (“Procedures”) to incorporate new terms and to make conforming, clarifying and clean-up changes to implement a new model of CDSClear select membership. The Proposed Rule Change was published for public comment in the *Federal Register* on March 28, 2024.³ The Commission has received no comments regarding the Proposed Rule Change.

On May 9, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Exchange Act Release No. 99847 (Mar. 22, 2024), 89 FR 21579 (Mar. 28, 2024) (File No. SR-LCH SA-2024-002) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

until June 26, 2024.⁵ The Commission is instituting proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,⁶ to determine whether to approve or disapprove the Proposed Rule Change.

II. Summary of the Proposed Rule Change

LCH SA is a clearing agency registered with the Commission.⁷ Through its CDSClear business unit, LCH SA provides central counterparty services for security-based swaps, including credit default swaps, and options on credit default swaps.⁸ LCH SA provides these central counterparty services to its Clearing Members. Some of these Clearing Members provide clearing services for clients.

LCH SA has two types of Clearing Members, General Members and Select Members. General Members may provide client clearing services to affiliates and non-affiliates, must participate in Competitive Bidding for auction packages, and must submit prices to LCH SA.⁹ On the other hand, Select Members may only provide client clearing services to their affiliates, must participate in competitive bidding only for a subset of auction packages, and may choose whether to submit prices.¹⁰ Select Members and General Members must nominate representatives for the CDS Default Management Committee and CDS Default Management Group.¹¹

⁵ Exchange Act Release No. 100094 (May 9, 2024), 89 FR 42515 (May 15, 2024) (File No. SR-LCH SA-2024-002).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ Capitalized terms used but not defined herein have the meanings specified in the LCH SA Rule Book or Framework as applicable.

⁸ *What We Clear*, <https://www.lch.com/services/cdsclear/what-we-clear> (last visited Apr. 30, 2024).

⁹ Notice, 89 FR at 21579.

¹⁰ *Id.* at 21579, 81.

¹¹ *Id.* at 21581.

The Proposed Rule Change would alter LCH SA's select membership. It would allow Select Members to provide client clearing services to non-affiliated firms and choose whether to participate in Competitive Bidding. LCH SA also proposes to allow Select Members to choose whether to nominate representatives for both the CDS Default Management Committee and CDS Default Management Group. Although LCH SA proposes changes related to Select Members' submission of end-of-day prices, as currently, the Proposed Rule Change would still allow Select Members to choose whether to submit prices. LCH SA also proposes a new form through which Select Members may make certain elections.

III. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the Proposed Rule Change should be approved or disapproved.¹² Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, which would provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,¹³ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is

¹² 15 U.S.C. 78s(b)(2)(B).

¹³ *Id.*

instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Exchange Act¹⁴ and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Exchange Act,¹⁵ which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions; to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible; to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and, in general, to protect investors and the public interest;
- Rule 17Ad-22(e)(13) under the Exchange Act,¹⁶ which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at minimum, requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.

¹⁴ 15 U.S.C. 78q-1.

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22(e)(13).

- Rule 17Ad-22(e)(18) under the Exchange Act,¹⁷ which requires, in part, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to establish objective, risk based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F)¹⁸ and Rules 17Ad-22(e)(13)¹⁹ and (e)(18)²⁰ of the Exchange Act, or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4(g) under the Exchange Act,²¹ any request for an opportunity to make an oral presentation.²²

¹⁷ 17 CFR 240.17Ad-22(e)(13).

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 17 CFR 240.17Ad-22(e)(13).

²⁰ 17 CFR 240.17Ad-22(e)(18).

²¹ 17 CFR 240.19b-4(g).

²² Section 19(b)(2) of the Exchange Act grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

The Commission asks that commenters address the sufficiency of LCH SA's statements in support of the Proposed Rule Change, which are set forth in the Notice, in addition to any other comments they may wish to submit about the Proposed Rule Change.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include file number SR-LCH SA-2024-002 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-LCH SA-2024-002. 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 (<https://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 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at

<https://www.lch.com/resources/rulebooks/proposed-rule-changes>.

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-2024-002 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Vanessa A. Countryman,
Secretary.

²³ 17 CFR 200.30-3(a)(31).