

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-101383; File No. SR-LCH SA-2024-002)

October 18, 2024

Self-Regulatory Organizations; LCH SA; Notice of Filing of Amendment No. 1 and Partial Amendment No. 1 to Proposed Rule Change Relating to the CDS Clear Select Membership Model

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4,<sup>2</sup> notice is hereby given that 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 (“**Proposed Rule Change**”), as described in Items I, II and III below, which Items have been primarily prepared by the clearing agency. The Proposed Rule Change was published for public comment in the *Federal Register* on March 28, 2024.<sup>3</sup> On May 9, 2024, pursuant to Section 19(b)(2) of the Exchange Act,<sup>4</sup> 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, until June 26, 2024.<sup>5</sup> On June 21, 2024, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,<sup>6</sup> to determine whether to approve or disapprove the Proposed Rule

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 C.F.R. § 240.19b-4.

<sup>3</sup> Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to the CDS Clear Select Membership Model, Exchange Act Release No. 34-99847 (Mar. 22, 2024); 89 FR 21579 (Mar. 28, 2024) (SR-LCH SA-2024-002) (“Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

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

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

Change.<sup>7</sup> On September 18, 2024, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change, until November 23, 2024.<sup>8</sup> The Commission has not received comments regarding the Proposed Rule Change.

On October 11, 2024, LCH SA filed Amendment No. 1 to the Proposed Rule Change to make certain changes to the narrative description and exhibits.<sup>9</sup> On October 17, 2024, LCH SA filed Partial Amendment No. 1 to the Proposed Rule Change to correct certain errors in the Exhibit 1A as amended [sic].<sup>10</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 and 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 filing with the Commission an amendment to its CDS Clearing Rule Book (“**Rule Book**”) and CDS Clearing Procedures (“**Procedures**”) to incorporate new terms and to make conforming, clarifying and clean-up changes to implement the new model of CDSClear select membership.

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<sup>7</sup> Exchange Act Release No. 100394 (June 21, 2024), 89 FR 53685 (June 27, 2024) (File No. SR-LCH SA-2024-002).

<sup>8</sup> Exchange Act Release No. 101094 (Sept. 18, 2024), 89 FR 77919 (Sept. 24, 2024) (File No. SR-LCH SA-2024-002).

<sup>9</sup> Amendment No. 1 amends the narrative, Exhibit 1A, and Exhibit 5.1 [sic] to address additional proposed changes to LCH SA’s Select Membership model. Amendment No. 1 also provides an Exhibit 3.3 [sic] containing LCH SA’s responses to an SEC request for information related to the Select Membership model.

<sup>10</sup> Partial Amendment No. 1 replaces the Statutory Basis and Burden on Competition sections of the Exhibit 1A [sic] from Amendment No. 1 with the text of the Statutory Basis and Burden on Competition sections of the narrative description from Amendment No. 1. Partial Amendment No. 1 does not propose any additional changes.

## **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. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

#### **1. Purpose**

LCH SA is proposing this Amendment No. 1 to SEC filing SR-LCH SA-2024-002 primarily to revise the Rule Book to add an obligation for a Select Member to contribute to end-of-day prices and participate in competitive bidding should its margins exceed a predetermined threshold over a designated period of time. In addition, LCH SA is revising the Rule Book to clarify that a Select Member’s obligation to contribute to end-of-day prices and participate in competitive bidding shall be removed if the Select Member’s margins fall below the predetermined threshold over a designated period of time.

In accordance with the current Rule Book, Select Members can provide clearing services in respect of credit default swaps (“**CDS**”) and options on CDS (collectively, the “**CDSClear Clearing Services**”) to Affiliates only. LCH SA is proposing to extend the possibility for Select Members to provide CDSClear Clearing Services to any client, including Affiliates (the “**New Select Membership**”) to allow some prospective clearing members that wish to provide clearing services to non-affiliated clients without becoming General Members. General Members must participate in Competitive Bidding for

Auction Packages and submit prices to LCH SA, and thus the New Select Membership would allow some clearing members to provide clearing services to non-affiliated clients even if they do not have the capacity to participate in competitive bidding or to submit prices to LCH SA.

Pursuant to the New Select Membership, LCH SA is proposing to change the conditions in which the requirement for Select Members to participate in Competitive Bidding for Auction Packages will apply. Indeed, as part of the competitive auction process applicable in the context of the default management process implemented in respect of the default of a Clearing Member, each non-defaulting Clearing Member is required to submit bids in respect of any portfolio of trades reflecting the Cleared Transactions of the Defaulting Clearing Member, subject to exceptions provided for in the Rule Book; among them, a non-defaulting Clearing Member which is a Select Member shall submit bids only in respect of a portfolio of trades that does not include any trade which does not belong to the relevant Select Member's Products Families, currently defined as the categories of credit default swaps ("**CDS**") and options on CDS in respect of which LCH SA provides clearing services and that may be selected by a Select Member in the relevant form (the "**Product Family Form**"). Instead, LCH SA is proposing to add the option for any Select Member to elect to participate in Competitive Bidding for Auction Packages at its own discretion, unless the amount of the total Margins associated with its group's house and client clearing activity exceeds a specific threshold as further described below under sub-paragraph (iv) (*New elections and amended requirements to participate in Competitive Bidding and contribute to prices*). Unlike Clearing Members admitted as General Members, Select Members will not

benefit from the possibility to subscribe to the unlimited tariff allowing them to clear an unlimited number of trades for their own account for an annual fixed fee set out in the CDSClear fee grid.<sup>11</sup>

Pursuant to the New Select Membership, LCH SA also is proposing to change the method by which Select Members submit prices to LCH SA. Currently, Select Members may opt to submit prices to LCH SA in respect of its open positions belonging to the Product Families elected by the relevant Select Member. Select Members would be able to choose whether to submit prices under the New Select Membership in respect of the relevant Trading Cities they have selected in the new “Select Member Form,” unless the amount of the total Margins associated with its group’s house and client clearing activity exceeds a specific threshold, as discussed below.

Besides, LCH SA is proposing to add the option for Select Members to elect to participate in the CDS Default Management Group and CDS Default Management Committee.

At this time, LCH SA is not proposing to amend the Risk Management Framework or its free grid as a result of providing the New Select Membership. General Members will continue to have an unlimited fee tariff option, unlike Select Members, and General Members on variable tariff pay will have both lower fixed fee and lower variable fees than Select Members. General Members who clear for clients may also be able to give their clients the same liquidity margin as other General Members, unlike Select

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<sup>11</sup> The CDSClear fee grid is available on LCH SA’s website at the following link:  
<https://www.lch.com/services/cdsclear/fees>.

Members, who may incur a higher liquidity margin, including a liquidity concentration charge, for large positions, including large client positions.

In order to implement the Proposed Rule Change, LCH SA is proposing to amend the Rule Book and Section 1 and Section 5 of the Procedures to reflect the amended terms and conditions of the New Select Membership model.

### **Proposed Revisions to the Rule Book and Procedures**

#### *(i) CDSClear Client Clearing Services*

LCH SA is proposing to extend the possibility for Select Members to provide CDSClear clearing services to any client, in addition to Affiliates.

LCH SA is proposing to delete the defined term, “Affiliated Firm” since it was used only in respect of the current Select Member model pursuant to which a Select Member may provide client clearing services to Affiliated Firms, which include their Affiliates and any entity that is otherwise a member to the same institutional protection scheme as the Clearing Member. Since Select Members will be permitted to provide clearing services to any client, regardless of whether it is an Affiliated Firm, there is no need to keep such defined term and therefore any reference to “Affiliated Firm(s)” or to the provision of client clearing services to Affiliated Firm(s) is proposed to be deleted from the definitions of “CCM”, “FCM/BD Clearing Member” and “Select Member”, as well as from Article 2.2.1.1(iv) and (v), Article 2.2.2.1(iv), Article 4.2.7.2(ii), and Article 5.1.1.1. Indent (i) of Articles 5.1.1.2 and 6.1.1.2 of the Rule Book will be also removed since such indent is currently providing for the condition pursuant to which a Select Member may provide client clearing services to an Affiliated Firm only.

As a result of the removal of the condition that a Select Member may provide client clearing services to Affiliated Firms only, the term “Affiliated Firm” will be revised to “Affiliate” (as that term is defined in the Rule Book) in the definition of the following defined terms: “CCM Indirect Gross Segregated Account Client”, “CCM Indirect Net Segregated Account Client”, “CCM Individual Segregated Account Client” and “FCM/BD Client” and in Article 6.1.1.2.

The definition of “Select Member” would also be revised to clarify that Select Members may offer CDSClear Clearing Services to any client, including Affiliates.

LCH SA is proposing to revise Article 4.2.7.2(ii) by deleting reference to “General Member” and “Select Member” as well as “Affiliated Firms”, as this distinction would no longer be relevant with Select Members, under certain circumstances, having the option to be a Price Contribution Participant and providing CDS Client Clearing Services to any client.

(ii) Removal of the defined terms “Product Family” and “Product Family Form”

LCH SA is proposing to delete the defined terms, “Product Family” and “Product Family Form”, as these defined terms are only applicable when participation in Competitive Bidding is mandatory for all Select Members in respect of the Product Families they have selected in the Product Family Form. Because of the new options Select Members will have, there is no longer a need to use the Product Family Form.

As a result, LCH SA is proposing to delete any reference to “Product Family Form” and “Product Family” in Section 1.1.1, Article 2.2.0.4, Article 3.1.6.2(ii), Article 3.1.6.5, and Clause 5.4.1(ii) and Clause 6.1 of Appendix 1 (*CDS Default Management Process*), and replace these terms with the new defined term of “Select Member Form”

(as further explained in sub-paragraph (iii) below), where relevant (*e.g.*, in the definition of “CDS Clearing Documentation”).

LCH SA is also proposing to delete Article 3.1.6.8 related to “Product Family Form” in its entirety as it is no longer relevant as a result of the changes made pursuant to this subparagraph (ii).

Finally, any reference to a General Member or a Select Member will be removed from current Clause 6.1.2(ii)(a) of Appendix 1 (*CDS Default Management Process*) because of the removal of the “Product Family Form”. Specifically, there is no longer a need to make a distinction between both memberships for the purposes of the registration process for the Index Swaption service in the context of the transfer of positions resulting from the auction process.

*(iii) Select Member Form*

LCH SA is proposing to add a new defined term, “Select Member Form”, in Section 1.1.1 of the Rule Book, to define the form by which the Select Member could make the elections (including the option to participate in Competitive Bidding) – as further elaborated in renumbered Article 2.2.0.4 of the Rule Book and Section 1 and Section 5 of the Procedures.

LCH SA is proposing to revise Section 1.1 (*Application Procedure*), indent (c), entitled “*CDSClear Application Form*” in the Procedures to replace the term “Product Family Form”, which is no longer relevant, by the term “Select Member Form”. LCH SA is also proposing to clarify that the Select Member Form will be made available by LCH SA’s CDSClear Business Development & Relationship Management team.



This Select Member Form would be used by Select Members to elect to participate in Competitive Bidding for selected Trading Cities. Proposed Clause 5.4.1(ii) would provide that all Non-Defaulting Clearing Members are required to participate in Competitive Bidding save where a Non-Defaulting Clearing Member is a Select Member provided that: (a) it is not required to participate in Competitive Bidding pursuant to Article 2.2.0.4; and (b) it has (y) not elected to participate in Competitive Bidding within 1 hour of the declaration of an Event of Default by LCH SA and (z) not complied with its obligations under Article 2.2.1.1(xi), in accordance with the conditions set out in Article 2.2.0.4. LCH SA would interpret this provision to mean that Select Members wishing to participate in Competitive Bidding would have to make such election in the Select Member Form and submit to LCH SA within 1 hour of the declaration of an Event of Default, and the Select Member must comply with the membership criteria set forth in Article 2.2.1.1(xi). Notwithstanding the foregoing, LCH SA also interprets Clause 5.4.1(ii) of Appendix 1 to clarify that a Select Member would have to participate in Competitive Bidding if it is required to do so in accordance with Article 2.2.0.4 of the Rule Book (as further described in paragraph (iv)), irrespective of a Select Member's elections in respect of its participation in Competitive Bidding or compliance with the membership criteria set forth in Article 2.2.1.1(xi) of the Rule Book.<sup>12</sup>

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<sup>12</sup> To be clear, a Select Member may only elect to participate in Competitive Bidding by doing so on the Select Member Form. LCH SA would not require a Select Member to participate in Competitive Bidding that has not elected to participate in Competitive Bidding by the appropriate deadline but has complied with any obligations under Article 2.2.1.1(xi). Further, LCH SA would not require a Select Member to participate in Competitive Bidding that has elected to participate in Competitive Bidding after the relevant deadline and has complied with its obligations under Article 2.2.1.1(xi).

*(iv) New elections and amended requirements to participate in Competitive Bidding and contribute to prices*

LCH SA is proposing to revise renumbered Article 2.2.0.4 of the Rule Book to add the possibility for Select Members to elect to participate in Competitive Bidding subject to the conditions set forth in Article 2.2.1.1 of the Rule Book (*Membership Requirements*).

Article 2.2.1.1 of the Rule Book sets forth the conditions that any Applicant wishing to be admitted as a Clearing Member by LCH SA must satisfy. As such conditions apply to both General Members and Select Members, LCH SA is proposing to remove reference to “Select Member” and “General Member” from Article 2.2.1.1(iv) and (v) and Article 2.2.2.1(iv) of the Rule Book. In addition, LCH SA is proposing to specify in Article 2.2.1.1(xi) that Select Members wishing to elect to participate in Competitive Bidding would have to demonstrate being able to successfully participate in the implementation of the CDS Default Management Process and in regular fire drills run by LCH SA in accordance with the Rule Book.

Provided that Select Members comply with the conditions referenced in Article 2.2.1.1 of the Rule Book, LCH SA is proposing to revise Article 2.2.0.5 (now renumbered as Article 2.2.0.4) of the Rule Book to include the possibility for Select Members to:

- (i) submit Market Data pursuant to Section 5 of the Procedures in respect of one or more Trading City(ies); if a Select Member is a Price Contribution Participant, and therefore will receive the Price Requirements Files in respect of the relevant Trading Cities, it will be bound by all obligations of any Price Contribution Participant as set out in the Rule Book and Section 5 of the Procedures. Under

current Article 2.2.05, the Select Member has the possibility to contribute to prices by submitting Market Data (and therefore to be a Price Contribution Participant) in accordance with Section 5 of the Procedures but is under no obligation to do so, which would be no longer the case under the New Select Membership model; indeed, once a Select Member will elect to be a Price Contribution Participant for one or more Trading Cities, or its Group Total Margin Percentage has exceeded a certain threshold as discussed below, it will be subject to the obligation to provide the Market Data for the Trading Cities in respect of which it has Open Positions;

- (ii) participate in Competitive Bidding as further detailed in Clause 5 of the CDS Default Management Process, subject to Article 2.2.1.1(xi); it will be also clarified that a Select Member which has elected or is required to participate in Competitive Bidding will be subject to the provisions of the clearing rules which apply to any non-defaulting Clearing Member which is required to participate in Competitive Bidding for each Auction Package;
- (iii) nominate DMG Representatives in accordance with Clause 11.2.2 of the CDS Default Management Process, whereas, in accordance with the current version of Clause 11.2.2 of the CDS Default Management Process, each Clearing Member, including any Select Member, shall nominate DMG Representatives. Since the participation to the Competitive Bidding process will be no longer required in respect of Product Families for a Select Member, the obligation to participate in the CDS Default Management Group will become optional for consistency purposes. LCH SA would expect that Select Members that have elected to

participate in Competitive Bidding will be interested in participating in the CDS Default Management Group and therefore nominate DMG Representatives for that purpose; and/or

- (iv) nominate representatives to be appointed as members of the CDS Default Management Committee in accordance with Clause 10.2 of the CDS Default Management Process. Similarly to the nomination of DMG Representatives as described in previous indent (iii), each Clearing Member, including any Select Member, shall nominate representatives to be appointed as members of the CDS Default Management Committee in accordance with current Clause 10.2 of the CDS Default Management Process and for the same reasons, this will become only an option for the Select Member which might be interested in participating in the CDS Default Management Committee if they were to select the possibility to participate in Competitive Bidding.

Since a Select Member will need to make the above listed elections under the New Select Membership model, the possibility to change its election in respect of its contribution to prices as currently provided for in Article 2.2.0.5 has been extended to all the new elections to be made as well; hence, the Select Member will be able to change any of its elections by providing LCH SA with a copy of a duly signed updated Select Member Form, in accordance with the conditions set out in Section 5 of the Procedures pursuant to the revised Article 2.2.0.5 (now renumbered as Article 2.2.0.4).

New Article 2.2.0.4 will be also amended to provide that, irrespective of a Select Member's elections in respect of its participation in Competitive Bidding and its contribution to prices in accordance with sub-paragraphs (i) and (ii) of Article 2.2.0.4, a

Select Member will still be required to contribute to prices by submitting Market Data for all the Trading Cities and participate in Competitive Bidding provided the percentage of its total Margins for the house and client clearing activities of its group (such percentage being referred to in as the “Group Total Margin Percentage” which, together with “Average Group Total Margin” and “Average CDSClear Total Margin”,<sup>13</sup> are new defined terms that have been added to Section 1.1.1 of the Rule Book<sup>1</sup>) has exceeded a participation threshold for sixty consecutive Clearing Days. Such participation threshold will be referred to in the CDS Clearing Rule Book as the “Participation Threshold” which will mean the percentage as determined by LCH SA, which is equal to the lower of 5% and the sixth largest Group Total Margin Percentage among all the Group Total Margin Percentages calculated in respect of each Financial Group to which one or more Clearing Members belong. The obligation to contribute to prices and participate in Competitive Bidding will apply until the Clearing Day on which the Group Total Margin Percentage has remained 1 percentage point below the Participation Threshold for sixty consecutive Clearing Days. In the event that LCH SA reasonably believe that such circumstance will occur, LCH SA may request the Select Member to carry out such tests as LCH SA may reasonably require to assess its ability to participate in Competitive Bidding. The purpose of these requirements is to ensure that, irrespective of the membership category of the Clearing Members, there will be a sufficient number of participants in Competitive

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<sup>13</sup> “Group Total Margin Percentage” will mean in respect of a Financial Group to which one or more Clearing Members belong and in respect of any Clearing Day, the ratio of its Average Group Total Margin divided by the Average CDSClear Total Margin. The “Average Group Total Margin” will mean, in respect of any Clearing Day, the average over the last sixty Clearing Days of the sum of all the Margins (excluding Variation Margins) calculated by LCH SA in respect of the Account Structure(s) of the Clearing Members belonging to the same Financial Group and the “Average CDSClear Total Margin” will mean, in respect of any Clearing Day, the average over the last sixty Clearing Days of the sum of all the Margins (excluding Variation Margins) calculated by LCH SA in respect of the Account Structures of all the Clearing Members.

Bidding and in the price contribution process. Because under the proposed rule change Select Members may be required to submit Market Data and participate in Competitive Bidding, LCH SA proposes removing language from proposed Article 2.2.0.4 suggesting that Select Members do not ever have any obligation to submit Market Data.

In addition, LCH SA is proposing to revise the definition of “Price Contribution Participant” in Section 1.1.1 of the Rule Book to clarify that it includes Select Members that have opted for submitting, or is required to submit, Market Data in accordance with Article 2.2.0.4, rather than Section 5 of the Procedures. LCH SA proposes to add the text “or is required to submit” to the Price Contribution Participant definition to account for the possibility that a Select Member may be required to submit Market Data under the proposed rule change.

In addition, LCH SA is proposing to revise Section 5.18.1 (*Market Data submission*) of the Procedures to delete a paragraph that notes that a Select Member may decide to receive or stop receiving Price Requirement Files and provides instructions for how a such Select Member can choose to receive or stop receiving Price Requirement Files. Indeed, the election to be a Price Contribution Participant will be made by the Select Member by using the new Select Member Form and this election can be updated by updating such form in the conditions set out in amended paragraph (c) of Section 5.11 of the Procedures.

Furthermore, Clauses 10.2.1 and 11.2.2 of Appendix 1 (*CDS Default Management Process*) would be revised to include representatives nominated by Select Members to the CDS Default Management Group and CDS Default Management Committee since the Select Members will be permitted to opt for the possibility to participate in the CDS

Default Management Group and/or the CDS Default Management Committee in accordance with amended Article 2.2.0.4 (currently Article 2.2.0.5) as further explained in page 11 above.

LCH SA is also proposing to amend indent (d) entitled “*Due diligence and review process*” of Section 1.1 (*Application Procedure*) of the Procedures to include the obligation for Select Members to successfully carry out tests as referenced in Article 2.2.1.1 (xi) of the Rule Book.

Finally, LCH SA is proposing to revise Section 5.11(c) (*Update of the Select Member Form*) of the Procedures to also specify that the Select Member, having elected to participate in Competitive Bidding, will be required to participate in Competitive Bidding for each Auction Package.

(v) *Updated Select Member Form*

LCH SA is proposing to revise Article 2.2.0.5 to enable Select Members to elect to opt out of Competitive Bidding and all other elections in sub-paragraphs (i) to (iv) of Article 2.2.0.5, under conditions set forth in Section 5 of the Procedures as this is currently the case but in respect of the contribution to prices only. The Select Member Form will allow the Select Member to notify its elections to LCH SA and also to update it should it wish to change any of its elections, in accordance with the amended provisions of Section 5.11 of the Procedures, as further described below.

LCH SA would revise Section 5.11(c), “*Update of the Select Member Form*”, (formerly, “*Update of the Product Family Form*”) of the Procedures to cover the update process of the Select Member Form, as the Product Family Form, and any reference thereto, is no longer relevant. Any update to the Select Member Form may be subject to

passing requisite tests prescribed by LCH SA and if the update pertains to the Select Member no longer participating in the Competitive Bidding Process, such update will be effective on the eighth Clearing Day following the Clearing Day on which the updated Select Member Form is received, in order to ensure that the Select Member will still be required to participate in Competitive Bidding if an Event of Default is declared in respect of another Clearing Member at the same time the updated Select Member Form of such Select Member is received by LCH SA.

LCH SA is also proposing to specify that Select Members should be able to change any of its election(s) via provision of an updated Select Member Form to the CDSClear Business Development & Relationship Management team via email.

(vi) Additional Amendments

LCH SA also proposes to make other revisions to the Rule Book and Section 1 and Section 5 of the Procedures to correct certain cross-references, grammar and/or typographical errors, and to provide additional clarification. For example, Article 1.2.2.4 of the Rule Book will be amended to clarify that the reference to “days” means “calendar days” for the avoidance of doubt.

2. Statutory Basis

LCH SA believes the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered clearing agencies, including with Section 17A(b)(3)(B)<sup>14</sup> and Section 17A(b)(3)(F) of the Act<sup>15</sup>. Section 17A(b)(3)(B) of the Act requires, *inter alia*, that the rules of a clearing agency

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<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(B).

<sup>15</sup> 15 U.S.C. 78q-1(b)(3)(F).



provide that any registered broker or dealer, bank or other person or class of persons may become a participant in such clearing agency.<sup>16</sup> Section 17A(b)(3)(F) of the Act requires, *inter alia*, that a clearing agency's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds in the custody or control of LCH SA, and are not designed to permit the unfair discrimination in the admission of participants or among participants in the use of the clearing agency.<sup>17</sup>

Per LCH SA's current CDSClear Rule Book, a Clearing Member may either be designated as a General Member or a Select Member.<sup>18</sup> A General Member is either a CCM<sup>19</sup> or an FCM/BD Clearing Member<sup>20</sup> that has been admitted by LCH SA as a General Member in accordance with Section 1 of the Procedures.<sup>21</sup> A Select Member is either a CCM or an FCM/BD Clearing Member that: (a) does not provide CDS Client Clearing Services to Clients other than Affiliated Firms; and (b) has been admitted by

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<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> See Section 1.1.1. ("Terms defined in the CDS Clearing Rule Book") of the CDSClear Rule Book. [https://www.lch.com/system/files/media\\_root/CDSClear\\_Rule\\_Book\\_26.09.2023.pdf](https://www.lch.com/system/files/media_root/CDSClear_Rule_Book_26.09.2023.pdf).

<sup>19</sup> A "CCM" is defined in the current CDS Clearing Rule Book as any legal entity admitted as a clearing member in accordance with the CDS Clearing Rules and party to the CDS Admission Agreement, provided that if such entity wishes to provide CDS CCM Client Clearing Services described in TITLE V, it shall either (i) be a General Member or (ii) provide such CDS CCM Client Clearing Services to its Affiliated Firms only. If such entity is an FCM/BD, it must satisfy LCH SA that it is able to provide the CDS Client Clearing Services in accordance with Title V prior to offering such services.

<sup>20</sup> A "FCM/BD Clearing Member" is defined in the current CDS Clearing Rule Book as any FCM, BD or a legal entity that is both FCM and BD that has been admitted as a clearing member in accordance with the CDS Clearing Rules and is a party to the CDS Admission Agreement and which has not elected to become a CCM, provided that if such FCM/BD Clearing Member wishes to provide CDS Client Clearing Services described in TITLE VI, it shall either (i) be a General Member or (ii) provide such CDS Client Clearing Services to its Affiliated Firms only.

<sup>21</sup> See Section 1 ("Membership") of the CDS Clearing Procedures. [CDSClear\\_Section\\_1\\_Procedures\\_\\_18.07.2019.pdf \(lch.com\)](#).

LCH SA as a Select Member in accordance with Section 1 of the Procedures.<sup>22</sup> LCH SA is proposing to amend the definition of a Select Member to allow Select Members to offer client clearing to any client, including Affiliates. In doing so, LCH SA is proposing to remove the obligation that Select Members participate in Competitive Bidding for Auction Packages including trades belonging to the Product Families they actively trade. Instead, under certain circumstances, Select Members would have the ability to elect to participate in Competitive Bidding for Auction Packages at their own discretion. Furthermore, Select Members may elect to contribute end of day prices under certain circumstances and participate in the Default Management Process and Default Management Committee. This will enhance LCH SA's ability to contain losses and manage a clearing member default. Select Members would also be incentivized to become General Members for purposes of participating in default auctions as their client clearing activity grows. By expanding the clients for whom Select Members may clear to include any client, including Affiliates and thus expand participation in clearing, LCH SA believes such changes are consistent with Section 17A(b)(3)(B)<sup>23</sup> and Section 17A(b)(3)(F)<sup>24</sup> of the Act such that its rules are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds in the custody or control of LCH SA, and are not designed to permit the unfair discrimination in the admission of participants or among participants in the use of the clearing agency.

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<sup>22</sup> Id.

<sup>23</sup> 15 U.S.C. 78q-1(b)(3)(B).

<sup>24</sup> 15 U.S.C. 78q-1(b)(3)(F).

LCH SA also believes the Proposed Rule Change is consistent with Rule 17Ad-22(e)(1) of the Act which requires, *inter alia*, that a covered clearing agency 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.<sup>25</sup> LCH SA believes the changes to its Rule Book and Procedures are clear, understandable, and consistent with the relevant laws and regulations applicable to LCH SA. In addition, LCH SA believes changes to the Rule Book and Procedures regarding the extension of the possibility for Select Members to provide CDSClear clearing services to any client, including Affiliates and publishing such changes on its public website provides greater transparency to Clearing Members and their customers, and to the general public. Therefore, LCH SA believes that the Proposed Rule Change is consistent with Rule 17Ad-22(e)(1)<sup>26</sup>.

LCH SA also believes that the Proposed Rule Change is consistent with Rule 17Ad-22(e)(13)<sup>27</sup> of the Act which requires, *inter alia*, 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.<sup>28</sup> Select Members were previously required to bid during default management auctions if the auction package contained products in the product family they subscribed to, regardless of whether the Select Member actively traded the product.

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<sup>25</sup> 17 CFR § 240.17Ad-22(e)(1).

<sup>26</sup> Id.

<sup>27</sup> 17 CFR § 240.17Ad-22(e)(13).

<sup>28</sup> Id.

The requirement to participate in such default auctions presents challenges for certain Select Members that don't actively trade in the products being auctioned, and thus may serve as an obstacle to clearing agency membership. Select Members also may not have the operational capacity to participate in default auctions as General Members. This is evidenced by LCH SA's experience facilitating fire drill exercises requiring participation by Select Members.<sup>29</sup> LCH SA's proposed changes to the mandatory obligation to bid in default auctions for Select Members will address this issue. Furthermore, LCH SA believes the existing pool of General Members required to bid, in addition to the Select Members that opt in to bidding or who may be required to bid on default auction portfolios provides sufficient participation for purposes of ensuring LCH SA can take timely action to contain losses and liquidity demands and continue to meet its obligations. Therefore, LCH SA believes that the Proposed Rule Change is consistent with Rule 17Ad-22(e)(13).<sup>30</sup>

Finally, LCH SA believes that the Proposed Rule Change is consistent with Rule 17Ad-22(e)(18)<sup>31</sup> under the Act. Rule 17Ad-22(e)(18) under the Act requires, *inter alia*, 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, require participants to have sufficient financial resources and robust operational capacity to meet

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<sup>29</sup> For example, Select Members have historically required assistance managing default files and have routinely requested assistance addressing questions during fire drill exercises.

<sup>30</sup> 17 CFR § 240.17Ad-22(e)(13).

<sup>31</sup> 17 CFR § 240.17Ad-22(e)(18).

obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.<sup>32</sup> LCH SA is proposing to expand its membership criteria for Select Members by allowing Select Members to clear for any clients, including Affiliates. LCH SA is proposing to remove the obligation that Select Members participate in Competitive Bidding for Auction Packages including trades belonging to the Product Families they actively trade. Instead, in some circumstances, Select Members would have the ability to elect to participate in Competitive Bidding for Auction Packages at their own discretion. LCH SA believes this proposed change more accurately captures the risk profile of Select Members as it pertains to their size and operational capabilities. Specifically, Select Members are typically non-CDS market-making banks (price takers) and thus, smaller Clearing Members. In addition, Select Members may not have the operational capacity to bid on products they don't actively trade during a default management auction. As such, LCH SA believes that the Proposed Rule Change is consistent with Rule 17Ad-22(e)(18) under the Act.<sup>33</sup>

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act 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.<sup>34</sup>

LCH SA does not believe the Proposed Rule Change would impose burdens on competition that are not necessary or appropriate in furtherance of the purposes of the

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<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> 15 U.S.C. 78q-1(b)(3)(I).

Act. Specifically, the Proposed Rule Change will contribute to offer access to clearing services to any client of Select Members expanding the client clearing activity. Under some circumstances, the Proposed Rule Change will also remove the burden of Select Members from having the obligation to bid on products they don't actively trade in default management auctions. LCH SA further believes the Proposed Rule Change is equitable for both General Members and Select Members, as clearing members will continue to have discretion in electing to be either General Members or Select Members under the new membership model. Furthermore, existing General Members will not be prevented from switching to become Select Members under the Proposed Rule Change. The increased access to clearing services under the Proposed Rule Change may result in increased liquidity in the service as membership grows. Therefore, LCH SA does not believe that the Proposed Rule Change would impose burdens on competition that are 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:

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>); or
- Send an e-mail to [rule-comments@sec.gov](mailto: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 email 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-regulations/self-regulatory-organization-rulemaking>). 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 the 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 PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>35</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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<sup>35</sup> 17 CFR 200.30-3(a)(12).