

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-80379; File No. SR-LCH SA-2017-002)

April 5, 2017

Self-Regulatory Organizations; LCH SA; Notice of Filing and Immediate Effectiveness  
of Proposed Rule Change to Retroactively Apply Recently-Revised Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 30, 2017, 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 and II below, which Items have been primarily prepared by LCH SA. LCH SA filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The proposed rule change will retroactively apply LCH SA’s recently-revised fee schedule<sup>5</sup> from January 1, 2017 through February 17, 2017, the date that the revised schedule became effective.

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Changes to the fee schedule included (1) a modification of the annual fixed fee that covers all self-clearing activity for a Clearing Member and its affiliates under the Unlimited Tariff, (2) addition of an annual fixed fee for all General Members that participate in the CDS Clearing Services under the Introductory Tariff, and (3) removal of the volume-based discounts previously in effect for the client clearing activities of the CDS Clearing Service. See Securities Exchange Act Release No. 34-80114 (February 27, 2017), 82 FR 12481 (March 3, 2017).

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

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, Security-Based Swap Submission, or Advance Notice

1. Purpose

The purpose of the proposed rule change is to retroactively apply LCH SA's recently-revised fee schedule beginning January 1, 2017.

The purpose of the CDSClear fee grid revisions was to: (1) modify the annual fixed fee that covers all self-clearing activity for a Clearing Member and its affiliates under the Unlimited Tariff, (2) establish an annual fixed fee for all General Members that participate in the CDS Clearing Services under the Introductory Tariff, and (3) remove the volume-based discounts previously in effect for the client clearing activities of the CDS Clearing Service.

LCH SA was registered on December 29, 2016 but had long-standing plans to revise the fee schedule with an intended effective date of January 1, 2017.

The need to apply the fees retroactively results from being granted registration on December 29, 2016, only one (1) full business day prior to the expected effective date on January 1, which, when coupled with technological difficulties (including purchase of a

digital certificate) associated with the filing process, resulted in LCH SA not being able to submit the filing on December 30, 2016, as LCH SA initially anticipated.

Because LCH SA had also intended the fee change to become effective by January 1, 2017 it had already gone through the member consultation process, meaning that members were aware of the pending change in fee structure, including the proposed effective date of January 1, 2017.

Additionally, LCH SA's national competent authorities had been advised of the proposed fee change that had already gone through the regulatory review process with the Commodity Futures Trading Commission ("CFTC") in a manner that would have permitted the fee change to take effect on January 1, 2017.<sup>6</sup>

In that way, the proposed fee change was published on LCH SA's website no later than December 14, 2016, when it was self-certified to the CFTC pursuant to CFTC Rule 40.6.

## 2. Statutory Basis

LCH SA believes that the proposal is consistent with the provisions of Section 17A of the Act, in general and in particular with Section 17A(b)(3)(D) of the Act requiring the equitable allocation of reasonable dues, fees and other charges.<sup>7</sup>

LCH believes that applying the fees retroactively is reasonable. The fees would have been applicable absent the year end Commission registration as well as the technological difficulties LCH SA encountered with the submission of the filing. The members of LCH SA were consulted in advance and were fully aware that such fees were intended to be applicable by January 1, 2017.

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<sup>6</sup> See <http://www.cftc.gov/filings/orgrules/rule121516lchsadco001.pdf>.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(D).

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges.<sup>8</sup> With respect to the Unlimited Tariff, LCH SA has determined that the reduction in the Unlimited Tariff fixed fee for General Members with respect to self-clearing activity on behalf of the Clearing Member and its affiliates is reasonable and appropriate given the costs and expenses to LCH SA. With CDSClear now reaching a maturity stage in its development and the introduction of mandatory clearing of OTC derivatives in 2017, which will result in an increase in CDS client clearing activities, it is appropriate that the costs and expenses that LCH SA will incur in providing the CDS Clearing Service are shared more broadly among General Members and their clients that participate in the service. For the same reasons, LCH SA has determined that the cap on self-clearing fees, inclusive of the annual fixed fee, applicable to General Members electing the Introductory Tariff, should be lowered to the same amount as the revised Unlimited Tariff.

With respect to the annual fixed fee for General Members under the Introductory Tariff, LCH SA has determined that implementing an annual fixed fee for all General Members that participate in the CDS Clearing Service under the Introductory Tariff (which fee is separate from and in addition to the self-clearing and client clearing variable fees currently assessed), is reasonable and appropriate given the costs and expenses to LCH SA in providing the services to General Members. The fee assures that all General Members that benefit from the CDS Clearing Service pay an appropriate fee for such services, such as being consulted on potential rules, product and service changes, as well

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<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(D).

as benefiting from unlimited support for product and system training and testing, without regard to whether such General Members engage in CDS clearing activities. The proposed rule changes, therefore, are consistent with the requirements of Section 17A of the Act<sup>9</sup> and regulations thereunder applicable to it, because they provide for the equitable allocation of reasonable fees, dues, and other charges among clearing members and market participants by ensuring that General Members and their clients pay reasonable fees and dues for the services that LCH SA provides.

With respect to the removal of volume-based discounts, LCH SA has determined that removing the volume-based discounts for CDS client clearing activities is reasonable and appropriate given the costs and expenses to LCH SA in providing such services. The elimination of volume-based discounts will assure that clients pay an appropriate proportionate share of the costs and expenses that LCH SA will incur in providing the CDS Clearing Service.

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>10</sup>

LCH SA does not believe that the proposed retroactive application of the fee changes from January 1, 2017 would impose any burden on competition. LCH SA believes that the reduction in the annual Tariffs assessed on General Members with respect to self-clearing activity are reasonable and appropriate, as the Tariffs will apply equally to all General Members that self-clear CDS under the Unlimited Tariff.

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<sup>9</sup> 15 U.S.C. 78q-1.

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(I).

Additionally, LCH SA believes that an annual fixed fee for all General Members that participate in the CDS Clearing Service under the Introductory Tariff, which fee is separate from and in addition to the self-clearing and client clearing variable fees currently assessed, is appropriate in light of the expenses incurred by LCH SA in providing its services. Further, LCH SA believes that removing the volume-based discounts for CDS client clearing activities is reasonable and appropriate, as the clearing fees will apply equally to all clients that participate in the CDS Clearing Service.

The retroactive application of the fee changes will apply to all CDSClear members and will not adversely affect their ability to engage in cleared transactions or to access clearing services.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)<sup>11</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

LCH SA has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. According to LCH SA, the proposed retroactive application of the recently-revised fee schedule does not significantly affect the protection of investors or the public interest because LCH SA, its members, and its other regulators all expected that the revised fee schedule would apply starting on January 1, 2017.

After careful consideration, the Commission agrees that a waiver of the 30-day operative delay is appropriate under the particular facts and circumstances concerning this proposed rule change. The only reason LCH SA could not implement its revised fee schedule as planned was the Commission's approval of its registration on December 29, 2016, which did not leave LCH SA sufficient time to satisfy all of the technical requirements to file proposed rule changes with the Commission. Moreover, the Commission notes that the retroactive fee change will have no impact on US customers or members, further lessening any investor protection or public interest concerns associated with the retroactive application of a fee schedule to the date all parties expected it would become effective. Accordingly, the Commission designates the proposed rule change to be operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

#### 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 (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-LCH SA-2017-002 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-2017-002. 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 (<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/asset-classes/cdsclear>. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-LCH SA-2017-002 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Eduardo A. Aleman  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).