

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88297; File No. SR-LCH SA-2020-001)

February 27, 2020

Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change
Relating to Amendments to the Wind Down Plan

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² notice is hereby given that on February 24, 2020, Banque Centrale de Compensation, which conducts business under the name LCH SA (“LCH SA”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which Items have been prepared primarily by LCH SA. 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

Banque Centrale de Compensation, which conducts business under the name LCH SA (“LCH SA”), is proposing to adopt an updated wind down plan (the “**WDP**”). The text of the proposed rule change has been annexed as Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 these statements.

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

1. Purpose

On September 28, 2016, the Securities and Exchange Commission (the “**Commission**”) adopted amendments to Rule 17Ad-22³ pursuant to Section 17A of the Securities Exchange Act of 1934 (the “**Act**”) ⁴ and the Payment, Clearing and Settlement Supervision Act of 2010 (“**Clearing Supervision Act**”) ⁵ to establish enhanced standards for the operation and governance of those clearing agencies registered with the Commission that meet the definition of a “covered clearing agency,” as defined by Rule 17Ad-22(a)(5)⁶ (collectively, the new and amended rules are herein referred to as “**CCA rules**”).

LCH SA is a covered clearing agency under the CCA rules and therefore is subject to the requirements of the CCA rules, including Rule 17Ad-22(e)(3). The CCA rules require that covered clearing agencies, among other things: “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 the covered clearing agency, which ... includes plans for the recovery and

³ 17 CFR 240.17Ad-22

⁴ 15 U.S.C. 78q-1

⁵ 12 U.S.C. 5461 et. seq.

⁶ 17 CFR 240.17Ad-22(a)(5).

orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.”⁷

As a central counterparty recognized under the European Market Infrastructure Regulation (“**EMIR**”), LCH SA is also required to have in place relevant recovery and wind down mechanisms required under EMIR⁸.

As a credit institution based in the European Union, LCH SA is also subject to Directive 2014/59/EU, as supplemented, requiring institutions to draw up and maintain recovery plans setting forth options for measures to be taken by the institution to restore its financial position following a significant deterioration of its financial position.

The purpose of the WDP is to ensure an orderly wind down of the CCP under extreme circumstances and to limit market impact as much as possible, should the recovery plan (the “**RP**”)⁹ or the resolutions measures that could have been taken by the authorities have failed to allow the CCP to obtain the resources required to a return to business as usual conditions.

The WDP sets out the steps that LCH SA would follow to close its clearing services and shut down the company. The plan demonstrates how LCH SA, as it exists today, can achieve this orderly wind down within six (6) months

In addition, in order to ensure the feasibility of the plan, LCH SA holds capital, funded by equity, equal to the operating expenses for a six (6) month period. LCH SA has

⁷ 17 CFR 240.17Ad-22(e)(3)(ii).

⁸ Regulation (EU) No. 152/2013 of 19 December 2012, Article 2.

⁹ See LCH SA File No. SR-LCH SA-2019-008

estimated the amount required to wind down and ensures that it remains inferior to the level of capital set aside.

Although, it is only required to update the wind down plan when a significant change has occurred, LCH SA has decided to review its wind down plan on an annual basis or more frequently if required. The objective of this annual review is to update the overall cost to wind down in order to ensure it remains under the amount of capital held for that purpose, update the assessment of key contract termination provisions, align with the recovery plan if need be and more generally complete the plan with any areas for improvement which could have been detected during the year. In 2018, LCH SA conducted a review of the wind down and identified two areas that needed to be addressed.

The revised version of the plan clarifies the fact that, in accordance with its banking status and with its rules, LCH SA could not decide to wind down by itself but that, if the CCP is no longer deemed viable by its authorities, the ACPR could require LCH SA to start to wind down. This requirement could be made while the CCP is operating under its current governance or once it has been put under resolution by the ACPR. Only in the case where all business lines have been previously closed and the CCP has no longer any clearing activity, could it decide to wind down alone. The corresponding paragraphs related to the triggers, discussions with the regulators, the governance process and the assumptions have also been clarified accordingly.

Wind down clauses have been added to the contract, which governs the staff redundancy processes. It now formally stipulates that the conditions of this contract would not apply in case of wind down and only legal conditions, which are less demanding for the CCP, would be applicable.

The other changes are of a secondary nature. The wind down costs have been updated. They remain significantly lower to what LCH SA holds as liquid resources corresponding to 6 months of expenses as required by regulation. The assessment of key exchange and IT contract termination provisions has also been updated. The contracts with platforms recently connected to LCH SA have been added as well as the agreement governing the staff redundancy processes.

The WDP, which was approved by the Board of Directors on May 14th 2019, has been annexed as Exhibit 5. LCH SA has requested confidential treatment of the plan as Exhibit 5, however the main changes are described above.

2. Statutory Basis.

Rule 17Ad-22(e)(3)(ii) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it establishes plans for the orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses. The proposed revised version of the plan does not bring any material change to the currently approved plan, however the annual review ensures that it is appropriately maintained and continues to be operational should it have to be triggered.

Changing the wording in the plan with respect to the role of ACPR will clarify the responsibilities in the triggering of the plan and avoid any misunderstanding with LCH SA's governance.

Integrating the redundancy contract concluded between the management and the Unions and which governs the laying off staff in the wind down plan and adding wind down clauses to it, has reduced legal uncertainties regarding the management of staff

redundancies. By adding two new contracts with recently connected platforms, LCH SA made sure that these contracts contained wind down provisions.

Rule 17Ad-22(e)(15)(i) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.

LCH SA has updated the cost of wind down noted in the plan. This amount remains significantly under the amount of capital, funded by equity, equal to the six months of operating expenses that the CCP holds for that purpose. LCH SA bases its calculation on the latest audited expenses.

Rule 17Ad-22(e)(15)(ii) requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for holding liquid net assets funded by equity equal to the greater of either six months of its current operating expenses or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under Rule 17Ad-22(e)(3)(ii).

LCH SA believes that its proposed WDP meets this requirement given the demonstration that LCH SA can achieve an orderly wind down within six (6) months. The calculation of the overall cost of winding down has been updated. It is very substantially lower than the six (6) months of Operational expenses that the CCP holds in cash or highly liquid securities. The regular review and reassessment of the plan ensures that it remains up to date and relevant.

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.¹⁰

LCH SA does not believe the proposed rule change would impact or impose any burden on competition as it mainly relates to clarification and updates and no fundamental change is made to the plan. The proposed rule change would maintain LCH SA's WDP up to date in accordance with and for the purposes of the CCA rules and would continue to ensure its applicability.

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.

¹⁰ 15 U.S.C. 78q-1(b)(3)(I).

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. Please include File Number SR-LCH SA-2020-001 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-LCH SA-2020-001. 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, N.E., Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. 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/rules-and-regulations/proposed-rule-changes-0> . All

comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-LCH SA-2020-001 and should be submitted on or before [Commission to insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).