



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82421; File No. SR-LCH SA-2017-010]

Self-Regulatory Organizations; LCH SA; Order Granting Accelerated Approval of a
Proposed Rule Change Relating to the Implementation of the Markets in Financial
Instruments Regulation
December 29, 2017.

I. Introduction

On November 21, 2017, Banque Centrale de Compensation, which conducts business under the name LCH SA (“LCH SA”), filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to make conforming and clarifying changes necessary to implement certain provisions of the European Union’s Markets in Financial Instruments Regulation (“MiFIR”).³ The proposed rule change was published for comment in the Federal Register on December 7, 2017.⁴ The Commission received no comment letters regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

⁴ Securities Exchange Act Release No. 34-82194 (December 1, 2017), 82 FR 57803 (December 7, 2017) (SR-LCH-2017-010) (“Notice”).

II. Description of the Proposed Rule Change

a. Overview

The principal purpose of this proposed rule change is to amend LCH SA's CDS Clearing Rulebook (the "Rulebook") and CDS Clearing Procedures (the "Procedures") to implement provisions of MiFIR that are applicable to central counterparties ("CCPs") authorized under the European Markets Infrastructure Regulation ("EMIR")⁵ (each such CCP, an "authorized CCP").⁶ In particular, the proposed rule changes are intended to implement Article 29 of MiFIR, which the Commission understands requires authorized CCPs to establish effective systems, procedures and arrangements to ensure that cleared derivatives transactions are submitted and accepted for clearing on a straight-through processing ("STP") basis,⁷ and Article 30 of MiFIR, which the Commission understands requires authorized CCPs to establish indirect clearing arrangements with respect to exchange-traded derivatives ("ETDs") that are of "equivalent effect" to the corresponding requirements under EMIR.⁸

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.

⁶ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Rulebook.

⁷ In this context, the Commission understands STP to mean that an authorized CCP must have systems, procedures, and arrangements in place to ensure derivatives are cleared as quickly as technologically practicable using automated systems. Notice, 82 FR at 57804. The Commission understands that RTS 26 provides detailed additional requirements regarding the transfer of information and related authorized CCP rulebook requirements, as well as timelines for the transfer of information, among other things. See id. at 57803 & n.5 (citing RTS 26).

⁸ Notice, 82 FR at 57803.

In addition, the Commission understands that the European Commission has adopted regulatory technical standards to set more specific requirements that authorized CCPs must meet in order to comply with MiFIR. The regulatory technical standards for straight-through processing (“RTS 26”) were adopted in 2016.⁹ More recently, the European Commission adopted regulatory technical standards, which align the indirect clearing requirements under EMIR and MiFIR (“Indirect Clearing RTS”).¹⁰ MiFIR takes effect January 3, 2018 and it is expected that the Indirect Clearing RTS will also take effect on the same date.

b. Straight-Through Processing

The Commission understands that RTS 26 establishes the specific requirements with which authorized CCPs, trading venues,¹¹ and clearing members¹² must comply in

⁹ Commission Delegated Regulation (EU) 2017/582 of 29.6.2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing.

¹⁰ Commission Delegated Regulation (EU) of 22.9.2017 amending Commission Delegated Regulation (EU) No 149/2013 with regard to regulatory technical standards on indirect clearing arrangements. A separate, but identical, set of RTS apply to indirect clearing of exchange-traded derivatives. See, Commission Delegated Regulation (EU) of 22.9.2017 supplementing Regulation (EU) No 600/2014 with regard to regulatory technical standards on indirect clearing arrangements.

¹¹ The Commission understands that the term “trading venue,” as used in RTS 26, refers to EU-based venues only (*i.e.*, regulated markets, multilateral trading facilities and organized trading facilities). LCH SA therefore represents that third-country venues (*e.g.*, U.S. swap execution facilities, security-based swap execution facilities, designated contract markets and national securities exchanges) are not required to comply with the RTS 26 provisions applicable to trading venues. Notwithstanding this definition, LCH SA explains that it proposes to apply the STP amendments described herein with respect to all derivatives transactions concluded on swap execution facilities and designated contract markets registered with the U.S. Commodity Futures Trading Commission (“CFTC”) and the definition of the term “Trading Venue” in the

order to ensure that transactions in cleared derivatives are submitted and accepted for clearing “as soon as technologically practicable using automated systems,” as required by Article 29(2) of MiFIR. LCH SA stated that it must comply with the RTS 26 requirements applicable to authorized CCPs.¹³ These requirements can be conceptually divided as: (i) a CCP’s information requirements; (ii) cleared derivatives transactions concluded on a trading venue; (iii) cleared derivatives transactions concluded bilaterally; (iv) resubmission of cleared derivatives transactions in the event of clerical error or technical problems; and (v) backloading transactions.

i. CCP Information Requirements

Article 1(2) of RTS 26 requires an authorized CCP to detail in its rules the information it needs from trading venues and counterparties to clear derivatives transactions, and the format such information must take, in order for the authorized CCP to accept that transaction for clearing.¹⁴

Rulebook has been amended accordingly (See Section 1.1.1 of the Rulebook). Notice, 82 FR at 57803, n. 7.

¹² The Commission understands that the term “clearing member” is not defined in RTS 26. However, Article 29 of MiFIR refers to “investment firms which act as clearing members in accordance with” EMIR. LCH SA represents that the term “investment firm” refers only to those EU firms which are required to be authorized under the revised Markets in Financial Instruments Directive (“MiFID II”) and, therefore, third-country firms that are clearing members of authorized CCPs (*e.g.*, SEC-registered broker dealers (“BDs”) and futures commission merchants (“FCM”) registered with the CFTC) are not required to comply with the RTS 26 provisions applicable to clearing members. In any event, LCH SA proposes to apply the STP requirements discussed herein to all derivatives transactions submitted for clearing by any Clearing Member, including a Clearing Member that is a BD or FCM. Notice, 82 FR at 57804, n. 8.

¹³ Notice, 82 FR at 57803-04.

¹⁴ Id. at 57804.

The Commission understands that the Rulebook currently provides that all clearing members must be participants of at least one Approved Trade Source System, *i.e.*, a middleware provider, which receives Original Transaction Data relating to Intraday Transactions from the relevant Clearing Members or the relevant Trading Venue. The Approved Trade Source System is then responsible for ensuring that this data is then submitted to LCH SA. To give effect to the CCP information requirements of Article 1(2) of RTS 26, LCH SA proposed to amend Article 3.1.4.1 of the Rulebook to confirm that the data relating to such submission must be made in a format acceptable to, or required by, the relevant Approved Trade Source System.¹⁵

ii. Cleared Derivatives Transactions Concluded on a Trading Venue

Article 3(4) of RTS 26 requires an authorized CCP to accept or reject a cleared derivatives transaction concluded on a trading venue for clearing within 10 seconds of receipt of the relevant information from the trading venue.¹⁶ Where the authorized CCP determines to reject the transaction for clearing, it is required to inform the clearing member and the trading venue on a real-time basis.¹⁷

LCH SA noted that it has traditionally imposed a series of controls on Intraday Transactions, including the following:

¹⁵ Id.

¹⁶ LCH SA represents that as a CFTC-registered derivatives clearing organization, LCH SA is currently subject to this same requirement in connection with its CDS Clearing Service. *See*, 17 CFR 39.12(b)(7); CFTC Staff Guidance of Straight-Through Processing, dated September 26, 2013, available at <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/stpguidance.pdf>. Notice, 82 FR at 57804, n. 9.

¹⁷ Notice, 82 FR at 57804.

- Eligibility Controls, which verify the completeness of the information relating to the Original Transaction and to determine whether the Original Transaction meets LCH SA's Eligibility Requirements;
- Client Transaction Checks, which verify whether, in respect of an Original Transaction that is a Client Transaction, the relevant Clearing Member has consented to the registration of the trade on behalf of its Client; and
- Notional and Collateral Checks, which verify whether accepting the trade for clearing would exceed the relevant Clearing Member's Maximum Notional Amount and/or whether the Clearing Member has sufficient collateral available to satisfy the margin requirement associated with clearing the trade.¹⁸

LCH SA proposed to amend Section 5.3 of the Procedures to confirm that, in accordance with Article 3(4) of RTS 26, the relevant Clearing Member(s) are not required to provide their consent to the acceptance of a Trading Venue Transaction for clearing.¹⁹ LCH SA noted that it will, however, apply the Notional and Collateral Checks to Trading Venue Transactions.²⁰ LCH SA also proposed to amend Article 3.1.4.5 of the Rulebook to make clear that all stages of the intraday clearing process must occur within the timeframe required by Applicable Law, meaning that LCH SA must perform the Notional and Collateral Checks within the 10 second time-frame prescribed by Article 3(4) of RTS 26.²¹

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Id.

Finally, LCH SA proposed to amend Article 3.1.5.1 of the Rulebook to clarify that notice of a Rejected Transaction will be provided to the relevant Trading Venue and/or Approved Trade Source System in accordance with Applicable Law.²²

iii. Cleared Derivatives Transactions Concluded Bilaterally

The Commission understands that Article 4(2) of RTS 26 requires an authorized CCP to send information concerning a cleared derivatives transaction concluded bilaterally between counterparties it receives from such counterparties to the relevant clearing member(s) within 60 seconds of receipt of such information. Moreover, LCH SA stated that Article 4(3) of RTS 26 requires the authorized CCP to accept or reject such a bilateral transaction for clearing within 10 seconds of receipt of the acceptance or non-acceptance by such clearing member(s), and where the authorized CCP determines to reject the transaction for clearing it is required to inform the clearing member on a real-time basis.²³

LCH SA proposed to amend Section 5.3 of the Procedures to clarify that cleared derivatives transactions concluded bilaterally will be subject to the Client Transaction Checks referred to above. In particular, LCH SA proposed that, upon successful completion of the Eligibility Controls, it will send a Consent Request to the relevant Clearing Member(s). Pursuant to Article 3.1.4.5 of the Rulebook, LCH SA is required to send each such Consent Request in accordance with the timeframe required by Applicable Law (*i.e.*, 60 seconds).²⁴

²² Id.

²³ Id.

²⁴ Id.

Once LCH SA has delivered a Consent Request, a Clearing Member then has a choice regarding how to respond. It may opt for a so-called “Automatic Take-Up Process,” whereby the Clearing Member effectively pre-approves specific Clients for automatic acceptance of Consent Requests; in such circumstances, the Clearing Member will not be required to respond to the Consent Request.²⁵ A Clearing Member may also opt for a “Manual Take-Up Process,” whereby it must affirmatively respond within the time frame required by Applicable Law (*i.e.*, 60 seconds) or otherwise by the end of the real-time clearing session on that day, as set forth in the amendments proposed by LCH SA.²⁶ The proposed changes would then require LCH SA to accept or reject the trade, and make the relevant notifications, within the timeframe required under Applicable Law.²⁷

Finally, LCH SA proposed to amend Article 3.1.5.1 of the Rulebook to clarify that notice of a Rejected Transaction will be provided to the relevant Clearing Member and/or Approved Trade Source System in accordance with Applicable Law.²⁸

iv. Resubmission

Where the non-acceptance of a cleared derivatives transaction for clearing is due to a clerical or technical error, Article 5(3) of RTS 26 permits the trade to be resubmitted within one hour, provided the original counterparties to the trade agree to such

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

resubmission.²⁹ Accordingly, LCH SA proposed to amend Article 3.1.5.1 of the Rulebook to state that a Rejected Transaction may be resubmitted for clearing in accordance with Applicable Law.

v. Treatment of Backloading Transactions

The Commission understands that STP requirements apply to “cleared derivatives transactions,” which are defined in Article 29(2) of MiFIR to include derivatives that are concluded on an EU-regulated market, all OTC derivatives that are subject to an EMIR mandatory clearing requirement, and all other derivatives which are agreed by the relevant counterparties to be cleared.³⁰ LCH SA proposed to amend the Rulebook to designate Backloading Transactions as outside of the scope of MiFIR’s STP requirements. Specifically, Article 3.1.6.3 would be amended to provide that LCH SA is entitled to assume that any Backloading Transaction submitted for clearing by LCH SA was either entered into prior to the effective date of MiFIR (*i.e.*, January 3, 2018) or is otherwise not subject to an EMIR mandatory clearing requirement and that the parties to the Backloading Transaction did not agree at the time of execution for the Backloading Transaction to be subject to clearing.³¹

c. Indirect Clearing Arrangements

i. Indirect Clearing RTS

The Commission understands that Article 4(3) of EMIR requires that indirect clearing arrangements should not increase counterparty risk and ensure protections that

²⁹ Id. at 57805.

³⁰ Id.

³¹ Id.

are of “equivalent effect” to the protections for client clearing set out in Articles 39 and 48 of EMIR.³² For these purposes, the term “indirect clearing arrangement” refers to a set of relationships – also called a “chain” – where at least two intermediaries are interposed between an end-client and the relevant authorized CCP. The most basic indirect clearing chain therefore involves the following four entities: an authorized CCP; a clearing member of the authorized CCP; the client of the Clearing Member that is itself an intermediary (“Direct Client”); and the client of such Direct Client (“Indirect Client”). The Commission also understands that longer chains are permitted in certain circumstances.³³

LCH SA noted that the majority of the obligations under the Indirect Clearing RTS fall to Clearing Members and Direct Clients, but that authorized CCPs must comply with certain new requirements relating to account structures, default management, and risk management.³⁴ Because indirect clearing was a concept introduced in EMIR, LCH SA stated that its Rulebook already had a number of features implementing the initial set

³² Id.

³³ Id.

³⁴ LCH SA represented that the indirect clearing arrangements for OTC derivatives described herein, in particular, the requirements relating to account structures and default management, generally will not be applicable to Clearing Members that are FCM Clearing Members or U.S. Clearing Members, *i.e.*, BDs. LCH SA further represented that, in connection with the CDS Clearing Service, FCM Clearing Members will continue to be required to maintain cleared swaps customer accounts in accordance with the segregation requirements set out in Section 4d(f) of the Commodity Exchange Act and Part 22 of the CFTC’s rules, 17 CFR 22.1 *et seq.* Similarly, LCH SA explained that a U.S. Clearing Member that is not also an FCM Clearing Member will be required to maintain customer security-based swap accounts in accordance with 17 CFR 240.15c3-3. See Notice, 82 FR at 57805.

of indirect clearing requirements. LCH SA proposed the following conforming amendments to reflect the updated requirements of the Indirect Clearing RTS.³⁵

ii. Indirect Client Account Structures

An authorized CCP must permit a clearing member to open and maintain at least the following two types of accounts for its Direct Client(s) that have Indirect Client(s):

- one omnibus segregated account for all Indirect Clients of all such Direct Clients (“CCP OSA”); and
- one gross (position and margin) segregated account per Direct Client for all Indirect Clients of that Direct Client that choose gross segregation (a “CCP GOSA”).

Therefore, an authorized CCP is expected to maintain at least: (i) one CCP OSA per clearing member; plus (ii) the requisite number of Direct Client-specific CCP GOSAs per clearing member.³⁶

The principal indirect clearing-related amendment to the Rulebook that LCH SA proposed is the introduction of two new account structures that are putatively designed to reflect the requirements of the Indirect Clearing RTS. Specifically, LCH SA proposed to introduce a new CCM Indirect Client Net Segregated Account Structure (*i.e.*, a CCP OSA) as well as a new CCM Indirect Client Gross Segregated Account Structure (*i.e.*, a CCP GOSA), collectively referred to as CCM Indirect Client Segregated Account Structures.³⁷

³⁵ Notice, 82 FR at 57805.

³⁶ Id.

³⁷ Id.

LCH SA also proposed to amend Title V, Chapter 2 of the Rulebook to specify the circumstances in which such Account Structures may be opened. In particular, Article 5.2.1.3 would be amended to clarify that a given CCM Client that provides indirect clearing services to CCM Indirect Clients must be allocated to one CCM Indirect Client Net Segregated Account Structure but may, upon request, be allocated to one CCM Indirect Client Gross Segregated Account Structure.³⁸

iii. Default Management

LCH SA noted that the Indirect Clearing RTS primarily addresses a Clearing Member's default management of an insolvent Direct Client and therefore does not specifically address an authorized CCP's treatment of CCP OSAs and CCP GOSAs in the event of a Clearing Member default. Nevertheless, LCH SA stated that it believes that these accounts should be held, to the extent possible, in accordance with the requirements of EMIR Articles 39 and 48.³⁹ As a result, LCH SA proposed the following amendments to the Rulebook to address the treatment of CCM Indirect Client Segregated Account Structures in the event of the default of the CCM, the CCM Client and of LCH SA itself:

CCM Default

- In the event of a CCM default, Clause 4.3 of the CDS Default Management Process would be amended to provide that LCH SA will attempt, in the first instance, to port the Client Cleared Transactions of a CCM Indirect Gross Segregated Account Client to a single Backup Clearing Member, provided that certain conditions are met, including that the Backup Clearing Member has

³⁸ Id. at 57805-06.

³⁹ Id. at 57806

unconditionally agreed to act as Backup Clearing Member and that the instruction is received within the prescribed timeframe – referred to as the “Porting Window” – established by LCH SA for this purpose. If these conditions are not met, LCH SA proposed to liquidate the existing Client Cleared Transactions and re-establish them with the Backup Clearing Member. LCH SA also proposed, upon instruction, to transfer the associated Collateral to the Backup Clearing Member.

- In respect of Client Cleared Transactions in a CCM Indirect Client Net Segregated Account Structure (or where porting is not achieved in respect of Client Cleared Transactions in a in a CCM Indirect Client Gross Segregated Account Structure), LCH SA proposed to amend Clause 4.4.3 of the CDS Default Management Process, which requires LCH SA to calculate an amount – called the “CDS Client Clearing Entitlement” – equal to: (1) the pro rata share of the liquidation of the Non-Ported Cleared Transactions; plus (2) the pro rata share of the liquidation value of the Client Assets recorded in the relevant Client Collateral Account; minus (3) the pro rata share of the costs of any hedging undertaken; minus (4) the pro rata share of the costs, expenses and liabilities of LCH SA in implementing the CDS Client Default Management Process, in each case where such pro rata share is attributable to a given CCM Indirect Client to reference Indirect Client Segregated Account Structures.
- Upon a CCM default, LCH SA proposed to amend Article 4.3.3.1 of the Rulebook to clarify that CCM Indirect Clients belonging to a CCM Indirect Client Gross Segregated Account Structure bear no fellow-customer risk: only the value of the Collateral referable to a given CCM Indirect Client – called the “CCM

Indirect Client Gross Account Balance” – will be available to satisfy any Damages attributable to the liquidation of any Non-Ported Cleared Transactions referable to such CCM Indirect Client.⁴⁰

CCM Client Default

In the event of the default of a CCM Client that has CCM Indirect Clients, LCH SA’s normal default management arrangements for CCMs will not apply. Instead, LCH SA proposed that the defaulting CCM Client will be default managed by the CCM, which will determine whether to liquidate the Client Cleared Transactions registered in the relevant CCM Indirect Client Segregated Account Structures or to attempt to port the Client Cleared Transactions of the CCM Indirect Clients belonging to a CCM Indirect Client Gross Segregated Account Structure to a Backup Client. LCH SA also proposed amendments that provide that porting may occur on a consolidated basis, *i.e.*, where all the CCM Indirect Clients appoint a single Backup Client, or on a per-CCM Client Trade Account basis, *i.e.*, where a given CCM Indirect Client appoints a single Backup Client specific to that CCM Indirect Client. LCH SA proposed to amend Article 5.4.1.3 of the Rulebook to provide that LCH SA will make the relevant transfers in its records at the instruction of the CCM undertaking the default management of its defaulting CCM Client.⁴¹

LCH SA Default

LCH SA proposed to amend Article 1.3.1.9 of the Rulebook to clarify that, following a default by LCH SA, CCMs shall calculate a separate CCM Client

⁴⁰ Id.

⁴¹ Id.

Termination Amount in respect of each CCM Indirect Client Net Segregated Account Structure and each CCM Indirect Client Gross Segregated Account Structure it holds with LCH SA.⁴²

iv. Miscellaneous

The Commission understands that Article 3(3) of the Indirect Clearing RTS requires an authorized CCP to identify, monitor and manage any “material risks” arising from the provision of indirect clearing services that may affect the resilience of the authorized CCP to adverse market developments, and Article 2(3) of the Indirect Clearing RTS states that an authorized CCP may not “prevent the conclusion of” indirect clearing arrangements that are entered into on reasonable commercial terms.⁴³ Based on these requirements, LCH SA proposed to amend Article 5.1.3.1 of the Rulebook to clarify that a CCM may permit its CCM Clients to offer clearing services to their CCM Indirect Clients, provided certain conditions are met. Specifically, the proposed amendments would clarify that the contractual terms of the indirect clearing arrangements must comply with the relevant requirements of EMIR and MiFIR and must further provide for the establishment of CCM Indirect Client Segregated Account Structures (described in greater detail above), in accordance with the wishes of the relevant CCM Indirect Clients.⁴⁴

Furthermore, LCH SA proposed to amend Article 5.2.1.1 of the Rulebook to include an express recognition that a given CCM Client may be acting in the capacity of

⁴² Id.

⁴³ Id.

⁴⁴ Id.

clearing its own proprietary transactions as well as in the capacity of providing clearing services to its CCM Indirect Clients. Finally, LCH SA proposed amendments to Title V, Chapter 3 of the Rulebook to provide for non-default transfers of all Client Cleared Transactions in a given CCM Indirect Client Segregated Account Structure (accompanied by the associated Client Assets upon request) or partial transfers of Client Cleared Transactions in a given CCM Indirect Client Segregated Account Structure (without the associated Client Assets) to the relevant accounts of a Receiving Clearing Member.⁴⁵

d. Certain Clarifying Amendments

LCH SA also proposed certain clarifying revisions to the Rulebook, Procedures, and Clearing Notice as described below.

i. Auction Member Representation

LCH SA proposed amendments to various provisions of the CDS Default Management Process (Annex 1 of the Rulebook) to clarify the responsibilities between a Non-Defaulting Clearing Member and the Auction Member Representative appointed by the Non-Defaulting Clearing Member to act in such Clearing Member's place in the competitive bidding process as described in Clause 5.4 of the CDS Default Management Process.⁴⁶

ii. Member Uncovered Risk

LCH SA proposed to replace the definition of "Member Uncovered Risk" with "Group Member Uncovered Risk" to take into account the relevant LCH Group Risk Policy, which considers whether Clearing Members belong to the same group for

⁴⁵ Id. at 57806-07.

⁴⁶ Id. at 57807.

purposes of the relevant risk calculations, including calculation of margin and Default Fund requirements. The proposed revisions are set out in Section 4.4.1.2 and Section 4.4.1.8 of the Rulebook and Sections 2.12, 2.16, and 6.4 of the Procedures.⁴⁷

iii. Calculation of Contributed Prices

LCH SA proposed amendments to Section 5.18.2 of the Procedures to reflect changes made to the methodology with regard to the application of the bid-ask restraint in the calculation of contributed prices. In addition, LCH SA proposed to remove the references to a particular time in the Rulebook regarding the price contribution process. Consequently, the definition of “End of Day” would be removed from the Rulebook. LCH SA proposed to amend Article 4.2.7.7 of the Rulebook and Section 5.18.5 (b) and (d) of Procedure 5 accordingly.⁴⁸

iv. New Approved Trade Source System

LCH SA proposed to amend Clearing Notice no. 2017/064 regarding the Approved Trade Source Systems to add a new Approved Trade Source System, Bloomberg Trade Facility Ltd.⁴⁹

III. Commission’s Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ Id.

applicable to such organization.⁵⁰ Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.⁵¹ Rule 17Ad-22(e)(1) requires that each 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.⁵² Rule 17Ad-22(e)(4) requires, in relevant part, that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants.⁵³ Rule 17Ad-22(e)(6) requires, in relevant part, a covered clearing agency that provides central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.⁵⁴ For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A of the Act and Rule 17Ad-22(e) thereunder.

⁵⁰ 15 U.S.C. 78s(b)(2)(C).

⁵¹ 15 U.S.C. 78q-1(b)(3)(F).

⁵² 17 CFR 240.17Ad-22(e)(1).

⁵³ 17 CFR 240.17Ad-22(e)(4).

⁵⁴ 17 CFR 240.17Ad-22(e)(6).

a. Straight-Through Processing

The Commission understands that MiFIR and RTS 26 require LCH SA to implement the provisions described above regarding STP. By so amending its Rulebook and Clearing Procedures, LCH SA indicated that it will be able to better ensure that transactions are submitted, accepted, and cleared without undue delay. As a result, the Commission finds that the proposed rule change regarding STP promotes the prompt and accurate clearance and settlement of securities transactions consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁵⁵ Moreover, the Commission further finds the proposed rule change protects investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act⁵⁶ because the expeditious processing of transactions in cleared derivatives reduces the possibility of those transactions being disrupted by intervening events, such as a technological breakdown or a reduction in the financial condition of one of the counterparties.

In addition, because these amendments will maintain the consistency of LCH SA's Rulebook and Procedures with MiFIR and RTS 26, the Commission finds the provisions with regard to STP will help ensure that LCH SA's policies and procedures provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions, consistent with Rule 17Ad-22(e)(1).

b. Indirect Clearing

The Commission similarly finds that the portions of the proposed rule change that seek to implement MiFIR and the Indirect Clearing RTS are consistent with Rule 17Ad-

⁵⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁵⁶ Id.

22(e)(1). As noted above, the Commission understands that MiFIR and the Indirect Clearing RTS require LCH SA to implement provisions regarding indirect clearing, which include establishing two types of indirect clearing accounts and establishing the process for handling the assets of indirect clearing clients in the event of the default of the CCM, the CCM Client, or LCH SA. Furthermore, as noted above, LCH SA has clarified the changes relating to indirect client clearing will not be applicable to LCH SA's FCM Clearing Members or its U.S. Clearing Members, *i.e.* broker-dealers registered with the Commission. LCH SA has explained that FCM Clearing Members "will continue to be required to maintain cleared swaps customer accounts in accordance with the segregation requirements set out in Section 4d(f) of the Commodity Exchange Act and Part 22 of the CFTC's rules, 17 CFR 22.1 et seq."⁵⁷ Similarly, LCH SA explained that a U.S. Clearing Member that is not also an FCM Clearing Member will be required to maintain customer security-based swap accounts in accordance with Commission Rule 15c3-3.⁵⁸ The Commission relies on these particular representations and explanations by LCH SA, and notes that it does not expect LCH SA to create CCP OSAs or CCP GOSAs for its FCM Clearing Members or U.S. Clearing Members. Instead, accounts for LCH SA's FCM Clearing Members or U.S. Clearing Members will be subject to the applicable provisions of the Commodity Exchange Act and the rules and regulations promulgated thereunder and/or the Act and the rules and regulations promulgated thereunder.

The Commission further understands that the proposed amendments to LCH SA's Rulebook and Procedures will bring LCH SA into compliance with the indirect clearing

⁵⁷ See supra note 34.

⁵⁸ 17 CFR 240.15c-3-3.

requirements of MiFIR and the related Indirect Clearing RTS while at the same time leaving unmodified the account structure used for LCH SA's FCM Clearing Members and its U.S. Clearing Members. Therefore, the Commission finds the provisions with regard to STP will help ensure that LCH SA's policies and procedures provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions, consistent with Rule 17Ad-22(e)(1).⁵⁹

c. Other Provisions

With respect to the proposed rule change replacing the definition of "Member Uncovered Risk" with "Group Member Uncovered Risk," the Commission believes the proposed changes will improve LCH SA's ability to identify and measure the risks associated with clearing processes by taking into account the relevant LCH Group Risk Policy and considering whether Clearing Members belong to the same group for purposes of the relevant risk calculations. As a result, the Commission believes that LCH SA will be better situated to collect the level of resources commensurate with the risks associated with affiliated Clearing Members and will thereby be able to more appropriately cover its credit exposures to its participants. Therefore, the Commission finds that the proposed rule change regarding the definition of Group Member Uncovered Risk will further the protection of investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.⁶⁰ For the same reasons, the Commission also finds that the proposed rule change

⁵⁹ 17 CFR 240.17Ad-22(e)(1).

⁶⁰ 15 U.S.C. 78q-1(b)(3)(F).

regarding the definition of Group Member Uncovered Risk is consistent with the applicable requirements of Rules 17Ad-22(e)(4) and (e)(6).⁶¹

The proposed rule change also revises LCH SA's CDS Default Management Process to clarify the responsibilities between a Non-Defaulting Clearing Member and the Auction Member Representative appointed by the Non-Defaulting Clearing Member to act in such Clearing Member's place in the competitive bidding process. In doing so, the Commission finds the proposed rule change facilitates LCH SA's CDS Default Management Process, thereby enabling LCH SA to limit its exposures to potential losses from defaults by its participants and the exposures of non-defaulting participants to losses that they cannot anticipate or control. As a result, the Commission finds that the proposed rule change regarding the responsibilities between a Non-Defaulting Clearing Member and the Auction Member Representative appointed by the Non-Defaulting Clearing Member further the protection of investors and the public interest consistent with Section 17A(b)(3)(F) of the Act.⁶²

In its filing, LCH SA requested that the Commission grant accelerated approval of the proposed rule change pursuant to Section 19(b)(2)(C)(iii) of the Exchange Act.⁶³ Under Section 19(b)(2)(C)(iii) of the Act,⁶⁴ the Commission may grant accelerated approval of a proposed rule change if the Commission finds good cause for doing so. LCH SA believes that accelerated approval is warranted because the proposed rule

⁶¹ 17 CFR 240.17Ad-22(e)(4) and (6).

⁶² 15 U.S.C. 78q-1(b)(3)(F).

⁶³ 15 U.S.C. 78s(b)(2)(C)(iii).

⁶⁴ Id.

change is required as of January 3, 2018 in order to comply with the requirements of MiFIR.

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,⁶⁵ for approving the proposed rule change on an accelerated basis, prior to the 30th day after the date of publication of notice in the Federal Register, because the proposed rule change is required as of January 3, 2018 in order to facilitate LCH SA's efforts to comply with MiFIR, RTS 26, and the Indirect Clearing RTS. Additionally, the Commission notes that the proposed changes regarding indirect clearing do not apply to U.S. customers, and that LCH SA has represented that amending its Rulebook and Procedures to comply with requirements regarding indirect clearing do not impede compliance with relevant U.S. law, including Section 17A(b)(3)(F) of the Act.

IV. Conclusion

⁶⁵

Id.

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act⁶⁶ and the rules and regulations thereunder.

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act⁶⁷ that the proposed rule change (SR-LCH SA-2017-010) be, and hereby is, approved on an accelerated basis.⁶⁸

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁹

Robert W. Errett,
Deputy Secretary.

⁶⁶ 15 U.S.C. 78q-1.

⁶⁷ 15 U.S.C. 78s(b)(2).

⁶⁸ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶⁹ 17 CFR 200.30-3(a)(12).

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