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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98276; File No. SR-LCH SA-2023-005]

### Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to Portfolio Margining

September 1, 2023.

#### I. Introduction

On May 30, 2023, Banque Centrale de Compensation, which conducts business under the name LCH SA (“LCH SA”), filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change (“Proposed Rule Change”) to revise its portfolio margining program (“Program”) and make other unrelated changes. The Proposed Rule Change was published for comment in the **Federal Register** on July 19, 2023. <sup>3</sup> The Commission has not received any comments on the Proposed Rule Change. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

#### II. Description of the Proposed Rule Change

LCH SA is a clearing agency that offers clearing of, among other things, credit-default swaps (“CDS”). <sup>4</sup> LCH SA is registered with the Commission for clearing CDS that are security-based swaps (“SBS”) and with the Commodity Futures Trading Commission (“CFTC”) for clearing CDS that are swaps. As part of its CDS clearing business, LCH offers clearing of CDS submitted by Clearing Members on behalf of their U.S. clients. As part of this U.S. client clearing, LCH

previously proposed, and the Commission approved, certain changes to its rules and procedures to allow for portfolio margining. <sup>5</sup>

Portfolio margining is the practice by which transactions in SBS are cleared and held on a commingled basis with transactions in swaps. Under such a portfolio margining arrangement, Clearing Members are able to maintain reduced levels of margin that are commensurate with the risks of the portfolio based on correlations in a Clearing Member’s cleared CDS positions consisting of both swaps and SBS. LCH is required to conduct its portfolio margining program pursuant to the terms and conditions of an exemptive order issued by the Commission, <sup>6</sup> as well as an exemptive order issued by the Commodity Futures Trading Commission (“CFTC”). <sup>7</sup> Under these orders, LCH SA’s Clearing Members that are registered future commission merchants (“FCM”) and broker-dealers (“BD”) are authorized to clear and hold SBS transactions a commingled basis with cleared swaps on behalf of their clients (“FCM/BD Clients”).

The purpose of the Proposed Rule Change is to revise and update LCH SA’s portfolio margining program (the “Program”). The Proposed Rule Change would amend certain provisions of the Rule Book and Procedures regarding collateral, the client collateral buffer, and the release of collateral to a Clearing Member. The Proposed Rule Change would update LCH SA’s Liquidity Risk Modelling Framework (“LRMF”) with respect to the liquidity resources and requirements applicable to FCM/BD Clearing Members. Finally, The Proposed Rule Change will also make other miscellaneous amendments to LCH SA’s Rule Book and Procedures. These miscellaneous amendments cover Time References, Real Time Session, and Personnel Requirements.

<sup>5</sup> See Order Approving Proposed Rule Change to Adopt ICC’s Enhanced Margin Methodology, Exchange Act Release No. 66001 (Dec. 16, 2011).

<sup>6</sup> Exchange Act Release 34-93501 Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With the Portfolio Margining of Cleared Swaps and Security-Based Swaps That Are Credit Default Swaps”, 86 FR 61357 (November 5, 2021) (“Portfolio Margining Order”). The Portfolio Margining Order replaced a similar Commission order issued in 2012. See Order Granting Conditional Exemptions under the Securities Exchange Act of 1934 in Connection with Portfolio Margining of Swaps and Security-based Swaps, Exchange Act Release No. 68433 (Dec. 12, 2012) 77 FR 75211 (Dec. 19, 2012).

<sup>7</sup> See Treatment of Funds Held in Connection with Clearing by LCH SA of Single-Name Credit Default Swaps, Including Spun-Out Component Transactions (Nov. 1, 2021), available at <https://www.cftc.gov/media/6711/lchsa4dorder11022021/download>.

#### A. Portfolio Margining Program

As discussed above, LCH first established the Program in 2021. Currently, the basis for the Program is primarily Article 6.2.1.1 of the Rule Book and Section 3 of the Procedures. As discussed further below, the Proposed Rule Change would delete Article 6.2.1.1 from the Rule Book, replace it with a new Regulation 7, and revise Section 3 of the Procedures.

Article 6.2.1.1(iii) of the Rule Book and Regulation 7

Article 6.2.1.1(iii) currently provides that an FCM/BD Clearing Member that is both an FCM and a BD may elect to clear and hold FCM/BD Cleared Transactions that are SBS for FCM/BD Clients in the FCM/BD Swaps Client Account Structure on a commingled basis with Cleared Swaps and margin such combined positions on a portfolio basis in compliance with Applicable Laws, provided that each FCM/BD Client is an eligible contract participant as defined in Section 1a(18) of the Commodity Exchange Act. As mentioned, the Proposed Rule Change would delete this provision and replace with a new Regulation 7, as part of the FCM/BD CDS Clearing Regulations. New Regulation 7 would maintain the requirements currently found in Article 6.2.1.1(iii) while also clarifying operation of the program.

Paragraph (a) of Regulation 7, In General, would define Program as the ability of FCM/BD Clearing Members, on behalf of their FCM/BD clients, to portfolio margin FCM/BD Cleared Transactions <sup>8</sup> that are SBS with FCM/BD Cleared Transactions that are Cleared Swaps. <sup>9</sup>

Paragraph (b) of Regulation 7, Participation, would state that FCM/BD Clearing Members may participate in the Program by providing LCH SA materials that LCH SA may require from time to time. <sup>10</sup> This section would also provide that, in providing these materials to LCH SA, the FCM/BD Clearing Member shall be deemed to represent that: (i) it is both an FCM and a BD and neither such status has been

<sup>8</sup> The Proposed Rule Change would define the term “FCM/BD Portfolio Margining Transaction” to mean an FCM/BD Cleared Transaction that is an SBS and which is held in the FCM/BD Swaps Client Account Structure pursuant to the Portfolio Margining Program. The Proposed Rule Change would add references to this new defined term, where relevant, in the Regulations, the Procedures, and the Rule Book.

<sup>9</sup> The Definitions section of the Regulations will be amended to define the “Portfolio Margining Program” by making a direct reference to Regulation 7(a) in the Regulations.

<sup>10</sup> A “Clearing Member” is defined as a general member or a select member, as the context requires.

<sup>21</sup> 17 CFR 200.30-3(a)(12), (59).

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

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

<sup>3</sup> Securities Exchange Act Release No. 97888 (July 13, 2023), 88 FR 46221 (July 19, 2023) (File No. SR-LCH-2023-005) (“Notice”).

<sup>4</sup> Capitalized terms used but not defined herein have the meanings specified in the LCH SA Rule Book (“Rule Book”), CDS Clearing Supplement (“Supplement”), CDS Clearing Procedures (“Procedures”), and FCM/BD CDS Clearing Regulations (“Regulations”), as applicable.

revoked; (ii) it is in compliance with the applicable requirements of the Portfolio Margining Order and the CFTC Portfolio Margining Order; and (iii) each relevant FCM/BD Client is an eligible contract participant as defined in Section 1a(18) of the Commodity Exchange Act.

Paragraph (c) of Regulation 7, Operation, would provide that, following the portfolio margining start date, all FCM/BD Cleared Transactions that are SBS for the relevant FCM/BD Client will be treated as FCM/BD Portfolio Margining Transactions and will be held (along with any associated collateral) in the FCM/BD Swaps Client Account Structure on a commingled basis with FCM/BD Cleared Transactions that are Cleared Swaps for such FCM/BD client. Further, all such FCM/BD Portfolio Margining Transactions will constitute Cleared Swaps for purposes of the CDS Clearing Rules and the resulting combined positions will be margined on a portfolio basis in respect of the relevant FCM/BD Client. Finally, this section would provide that the relevant FCM/BD Client shall be deemed to acknowledge and agree that any property used to margin, guarantee or secure the FCM/BD Portfolio Margining Transactions will not receive customer protection treatment under the Exchange Act or Securities Investor Protection Act of 1970 and will instead receive customer protection treatment under the commodity broker liquidation provisions of the U.S. Bankruptcy Code and the rules and regulations promulgated thereunder.

In addition to new Regulation 7, the Proposed Rule Change would amend other sections of the Regulations to make conforming amendments. In the definitions section, the Proposed Rule Change would add, among other things, add defined terms for Portfolio Margining Program, SEC Portfolio Margining Order, and FCM/BD Portfolio Margining Transaction.<sup>11</sup> The Proposed Rule Change also would amend the definition of the LCH Cleared Swaps Client Segregated Depository Account to include FCM/BD Portfolio Margining Transactions.<sup>12</sup> Similarly, the Proposed

Rule Change would amend the definition of the LCH SBS Client Segregated Depository Account to exclude any FCM/BD Portfolio Margining Transactions.<sup>13</sup>

The Proposed Rule Change also would amend Regulation 2, which covers depository accounts. Going forward, LCH SA will assume that all FCM/BD clients will elect to portfolio margin all their SBS transactions in an FCM/BD Cleared Swaps Client Segregated Depository Account rather than a separate FCM/BD SBS Client Segregated Depository Account. The Proposed Rule Change therefore would amend Regulation 2(a) so that FCM/BD Clearing Members would establish and maintain an FCM/BD SBS Client Segregated Depository Account only if required. The Proposed Rule Change also would amend Regulation 2(b) to similarly provide that LCH SA would only establish and maintain an LCH SBS Client Segregated Depository Account<sup>14</sup> for an FCM/BD Clearing Member upon request. Finally, the Proposed Rule Change would amend Regulation 2(c) to confirm that all Collateral deposited with LCH SA by FCM/BD Clearing Members in connection with cleared swaps will include collateral deposited in connection with FCM/BD Portfolio Margining Transactions and will be held in an LCH cleared swaps segregated depository account.

#### The Procedures

Section 3 of the Procedures covers Collateral, Variation Margin, and Cash

Commodity Exchange Act and Commodity Future Trading Commission ("CFTC") regulations) maintained by LCH SA for the benefit of cleared swaps customers of its FCM/BD Clearing Members.

<sup>13</sup> LCH SBS Client Segregated Depository Account will be defined in the Regulations to mean one or more accounts at one or more Banks which are commingled for purposes of the applicable provisions of the Exchange Act and SEC Regulations) maintained by LCH SA for the benefit of SBS customers of its FCM/BD Clearing Members with a bank, which is segregated in accordance with the Exchange Act and Commission Regulations and contains collateral deposited by such FCM/BD Clearing Members on behalf of their SBS customers in connection with FCM/BD Cleared Transactions that are SBS cleared for such SBS customers by such FCM/BD Clearing Members, excluding any FCM/BD portfolio margining transactions.

<sup>14</sup> The Regulations define an LCH SBS Client Segregated Depository Account to mean an omnibus account (which will consist of one or more accounts at one or more Banks which are commingled for purposes of the applicable provisions of the Exchange Act and SEC Regulations) maintained by LCH SA for the benefit of SBS Customers of its FCM/BD Clearing Members with a Bank, which is segregated in accordance with the Exchange Act and SEC Regulations and contains Collateral deposited by such FCM/BD Clearing Members on behalf of their SBS Customers in connection with FCM/BD Cleared Transactions that are SBS cleared for such SBS Customers by such FCM/BD Clearing Members, excluding any FCM/BD Portfolio Margining Transactions.

Payments. The Proposed Rule Change would revise Section 3 in the expectation that all FCM/BD clients will elect to portfolio margin their SBS transactions.

To that end, the Proposed Rule Change would amend Section 3 so that LCH SA would establish and maintain SBS-related accounts only when required. Specifically, LCH SA would maintain the following accounts only when required: (i) an FCM/BD SBS Client Collateral Account to record the Collateral held by LCH SA for the benefit of such FCM/BD Clearing Member's SBS customers with respect to SBS; (ii) a TARGET2 Account<sup>15</sup> used to make Collateral calls in relation to the Client Margin Requirements with respect to SBS; (iii) a U.S. Dollar ("USD") account to credit USD Cash Collateral which is transferred by FCM/BD Clearing Members to be recorded in their FCM/BD SBS Client Collateral Account; and (iv) a segregated depository account in the Bank of New York Mellon ("BNYM") US to register BNYM eligible collateral<sup>16</sup> which is transferred by FCM/BD Clearing Members in connection with SBS other than SBS that constitute FCM/BD Portfolio Margining Transactions. Going forward, any reference to these accounts would be preceded by the condition that such account is established.

Similarly, the Proposed Rule Change would amend Section 3 so that FCM/BD Clearing Members would establish and maintain SBS-related accounts only when required. Specifically, FCM/BD Clearing Members would maintain the following accounts only when required: (i) a TARGET2 Account for the purposes of the Collateral Calls in respect of its Client Margin Requirements with respect to SBS; (ii) a BNYM cash account for the purposes of satisfying its Cash Payments obligations in respect of its Client Cleared Transactions that are SBS. Going forward, any reference to these accounts would be preceded by the condition that such account is established.

#### Rule Book

The Proposed Rule Change would amend certain definitions set out in the Rule Book to recognize that FCM/BD Portfolio Margining Transactions will be treated as Cleared Swaps and governed by new FCM/BD Regulation 7. As with

<sup>11</sup> As mentioned above, the term "FCM/BD Portfolio Margining Transaction" would mean an FCM/BD Cleared Transaction that is an SBS and which is held in the FCM/BD Swaps Client Account Structure pursuant to the Portfolio Margining Program. The Proposed Rule Change would add references to this new defined term, where relevant, in the Regulations, the Procedures, and the Rule Book. See *supra* note 8.

<sup>12</sup> Cleared Swaps Client Segregated Depository account is defined as the omnibus account (which will consist of one or more accounts at one or more permitted depositories which are commingled for purposes of the applicable provisions of the

<sup>15</sup> As defined in the Rule Book, TARGET2 is the system known as Trans-European Automated Real-time Gross Settlement Express Transfer 2. A "TARGET2 Account" is an account held by a TARGET2 participant in TARGET2 payment module with a Eurosystem Central Bank.

<sup>16</sup> "BNYM US" and "Eligible Collateral" are defined below.

Article 6.2.1.1(iii), discussed earlier, the current definitions implement portfolio margining as adopted by LCH SA in 2021. With the adoption of new FCM/BD Regulation 7, the Proposed Rule Change would revise references to current definitions or Articles in the Rule Book to reflect the new Portfolio Margining Program.<sup>17</sup>

The Proposed Rule Change first would amend the defined term Cleared Swap. Currently, Cleared Swap is defined as an FCM/BD cleared transaction (i) constituting a Cleared Swap as defined in CFTC Regulation 22.1 or (ii) constituting an SBS that is held in the FCM/BD swaps client account structure set out in Article 6.2.1.1(i) in pursuant to Article 6.2.1.1(iii). The Proposed Rule Change would delete most of (ii) and replace with a reference to FCM/BD Portfolio Margining Transaction.<sup>18</sup> Under the Proposed Rule Change, a Cleared Swap would be an FCM/BD cleared transaction (i) constituting a Cleared Swap as defined in CFTC Regulation 22.1 or (ii) constituting an FCM/BD Portfolio Margining Transaction.

The Proposed Rule Change next would the defined term Cleared Swaps Customer. Cleared Swaps Customer is currently defined as (i) a Cleared Swaps Customer, as defined in CFTC Regulation 22.1, of an FCM/BD Clearing Member with respect to Cleared Swaps, that is an eligible contract participant, and (ii) a person that would be a Cleared Swaps Customer of an FCM/BD Clearing Member with respect to any transaction constituting an SBS that is a Cleared Swap. The Proposed Rule Change would amend (ii) to include a person that is treated as a Cleared Swaps Customer in connection with maintaining FCM/BD Portfolio Margining Transactions. Under the Proposed Rule Change, a Cleared Swaps Customer would be (i) a Cleared Swaps Customer, as defined in CFTC Regulation 22.1, of an FCM/BD Clearing Member with respect to Cleared Swaps, that is an eligible contract participant, and (ii) a person that is treated as a

Cleared Swaps Customer in connection with maintaining FCM/BD Portfolio Margining Transactions in the FCM/BD Swaps Client Account Structure of an FCM/BD Clearing Member pursuant to the Portfolio Margining Program.

The Proposed Rule Change would likewise amend the definition of Cleared Swaps Customer Collateral. Currently, Cleared Swaps Customer Collateral is Cleared Swaps Customer Collateral, as defined in CFTC Regulation 22.1, with respect to Cleared Swaps, including with respect to any transaction constituting an SBS that is a Cleared Swap, as if such transaction is a Cleared Swap for purposes of the definition of Cleared Swaps Customer Collateral in CFTC Regulation 22.1. As revised, this definition will provide that Cleared Swaps Customer Collateral is Cleared Swaps Customer Collateral, as defined in CFTC Regulation 22.1, with respect to Cleared Swaps, including with respect to any transaction constituting an SBS that is an FCM/BD Portfolio Margining Transaction.

The Rule Book also contains definitions related to the accounts associated with customer transactions in SBS and Swaps. Among others, these include the FCM/BD SBS Client Collateral Account, FCM/BD Swaps Client Collateral Account, FCM/BD SBS Client Financial Account, FCM/BD Swaps Client Financial Account, FCM/BD SBS Client Margin Account, FCM/BD Swaps Client Margin Account, FCM/BD SBS Client Trade Account, and FCM/BD Swaps Client Trade Account. With respect to these defined terms, the Proposed Rule Change would (i) remove references to Article 6.2.1.1(iii) (which is being deleted, as discussed above) and (ii) add references to the new defined term FCM/BD Portfolio Margining Transaction.

Finally, the Proposed Rule Change would add a new defined term for Portfolio Margining Program. That term would have the same meaning as set out in the Regulations.

#### *B. Collateral and Accounts*

The Proposed Rule Change would also amend provisions of the Rule Book and the Procedures regarding permitted Collateral (including Eligible Collateral and Eligible Currency<sup>19</sup>), the Client

Collateral Buffer, and the release of collateral to a Clearing Member.

#### *Eligible Collateral and Eligible Currency*

With regard to Eligible Collateral, the Proposed Rule Change would amend Section 3 of the Procedures to replace certain references to US Treasury Bills (“US T-Bills”). Specifically, the Proposed Rule Change would delete references to US T-Bills recorded in an FCM/BD Clearing Member’s FCM/BD Client Collateral Account. The Proposed Rule Change would refer instead to BNYM US Eligible Collateral. This new defined term would mean Eligible Collateral to be held in LCH SA’s segregated depository account opened in the books BNYM US. LCH SA is making this particular change because there are also other securities, in addition to US T-Bills, that could be held with BNYM.

With regard to Eligible Currency, the Proposed Rule Change would amend the definition to provide that Pound Sterling is only eligible in certain circumstances. Going forward, Pound Sterling will no longer be an Eligible Currency for purposes of the FCM/BD Client Account Structure of an FCM/BD Clearing Member. As a result, Eligible Currencies for FCM/BD Client Account Structure will be limited to the Euro and USD. Practically speaking, this means going forward CCM Clearing Members<sup>20</sup> can deposit Pound Sterling with respect to their Clients while FCM/BD Clearing Members cannot. LCH is making this change to comply with certain regulatory requirements applicable to client collateral.<sup>21</sup>

Further to this point, the Proposed Rule Change would delete from Section 3.8 provisions that currently require LCH SA to open certain bank accounts. LCH SA uses these bank accounts to

any cash provided in an Eligible Currency which is transferred to LCH SA by way of full title transfer for the purpose of satisfying a Clearing Member’s Margin Requirements and/or its Contribution Requirement and/or novating Original Transactions, as the case may be.

<sup>20</sup> A CCM is a Clearing Member of LCH SA and party to the CDS admission agreement. If a CCM wishes to provide CDS CCM client clearing services, it must either (i) be a general member or (ii) provide such CDS CCM client clearing services to its affiliated firms only. A Clearing Member cannot be admitted as a CCM and an FCM/BD Clearing Member at the same time. See Notice, 88 FR at 46229. The Proposed Rule Change would update the definition of CCM in the Rule Book to replace an incorrect reference to FCM/BD Clearing Member.

<sup>21</sup> LCH SA explained in the Notice that it LCH SA will not allow the transfer of Pound Sterling on behalf of FCM/BD Clients to be credited to an LCH SA’s account opened with Euroclear Bank because Euroclear Bank is not an eligible Permitted Depository within the meaning of CFTC Regulations 22.1 and 22.4. See Notice, 88 FR at 46225.

<sup>17</sup> In particular, the Proposed Rule Change would remove references to Article 6.2.1.1(iii). As noted earlier, with the implementation of the more comprehensive Portfolio Margining Program set out in Section 7 of the Regulations, the Proposed Rule Change would delete Article 6.2.1.1(iii) as unnecessary.

<sup>18</sup> The Proposed Rule Change would add a definition for FCM/BD Portfolio Margining Transaction to the Rule Book. That term would have the same meaning as set out in the Regulations. As discussed above, under the Regulations, an FCM/BD Portfolio Margining Transaction is an FCM/BD Cleared Transaction that is an SBS and which is held in the FCM/BD Swaps Client Account Structure pursuant to the Portfolio Margining Program.

<sup>19</sup> The term “Eligible Collateral” is defined as securities and other types of non-Cash Collateral as set out in Section 3 of the Procedures accepted by LCH SA for the purposes of satisfying a Clearing Member’s Margin Requirements or novating Original Transaction; the term “Eligible Currency” is defined to mean cash in such currencies as set out in Section 3 of the Procedures accepted by LCH SA as Cash Collateral. The term “Collateral” is defined as Eligible Collateral and/or Cash Collateral. The term “Cash Collateral” is defined as

credit non-Euro, non-USD Cash Collateral which is transferred by an FCM/BD Clearing Member to be recorded in its FCM/BD Swaps Client Collateral Account or FCM/BD SBS Client Collateral Account. Because LCH SA will only treat Euro and USD as Eligible Currency for FCB/BD Clients going forward, LCH SA would no longer need to establish these accounts.

The Proposed Rule Change would also make this same change to Client Collateral Buffer, including the FCM/BD Client Collateral Buffer.<sup>22</sup> The Client Collateral Buffer is the value of Collateral transferred by a Clearing Member to LCH SA, which is the Clearing Member's own property, and which allows that Clearing Member to satisfy margin requirements in respect of a Client's account. The Clearing Member could use the buffer, for example, to satisfy the Notional and Collateral Checks performed by LCH SA in respect of Eligible Intraday Transactions comprising one or more Client Trade Legs.

Currently, LCH SA accepts as Client Collateral Buffer only Euro-denominated Cash Collateral. Under the Proposed Rule Change, LCH SA would accept (i) Cash Collateral<sup>23</sup> or Eligible Collateral as CCM Client Collateral Buffer and (i) Cash Collateral or Eligible Collateral as being acceptable by LCH SA to be registered in the FCM/BD Client Collateral Account, as FCM/BD Client Collateral Buffer. As discussed above, Pound Sterling would no longer be an Eligible Currency for purposes of the FCM/BD Client Account Structure of an FCM/BD Clearing Member going forward. Thus, this change would mean

in effect that LCH SA would accept Pound Sterling as CCM Client Collateral Buffer but not as FCM/BD Client Collateral Buffer.

Section 3 of the Procedures addresses how Clearing Members may transfer Collateral to LCH SA. The Proposed Rule Change would amend these provisions to effectuate the distinction between Pound Sterling as collateral, and Euros/USD. Specifically, the Proposed Rule Change would amend Sections 3.7(f), 3.8 (f), 3.8(g), 3.10, 3.15(a), and 3.17(a) to refer specifically to the transfer of Euro-denominated cash, non-Euro denominated Cash Collateral, USD-denominated Cash Collateral, Eligible Collateral provided with full title transfer, Eligible Collateral, and BNYM Eligible Collateral, respectively, to be maintained as Client Collateral Buffer, provided that such Clearing Member is permitted to maintain that type of Collateral as Client Collateral Buffer.

Finally, the Proposed Rule Change would amend Appendix 1 of the Rule Book to effectuate the distinction between Pound Sterling as collateral, and Euros/USD. Appendix 1 of the Rule Book describes LCH SA's default management process for its CDS business. Under Appendix 1 currently, in the event of an Event of Default occurring in respect of a Clearing Member, LCH SA will: (i) if the Defaulting Clearing Member is a CCM, transfer an amount of Cash Collateral denominated in Euro which is equal to the CCM Allocated Client Collateral Buffer for the relevant CCM Client Account Structure from the CCM House Collateral Account to the relevant CCM Client Collateral Account; or (ii) if the Defaulting Clearing Member is an FCM/BD Clearing Member, transfer an amount of Collateral which is equal to the FCM/BD Allocated Client Collateral Buffer for the relevant FCM/BD Client Margin Requirement from the FCM/BD Buffer Financial Account to the relevant FCM/BD Client Financial Account. Since an amount of Collateral equal to the value of the CCM Allocated Client Collateral Buffer needs to be transferred from the House Collateral Account of a Defaulting Clearing Member that is a CCM to the relevant CCM Client Collateral Account, and since the Client Collateral Buffer for CCMs could be maintained in Pounds as well as Euro, LCH SA would need first to liquidate into Euro any Cash Collateral that is not Euro. The Proposed Rule Change would

make equivalent changes to the provisions dealing with the transfer of an amount in Euro equivalent to the CCM Allocated Client Collateral Buffer of a CCM in the event of: (i) an early termination trigger date, in accordance with Article 8.5.2 (a)(i) and (b)(i) of Appendix 1 of the Rule Book and (ii) an LCH Default in accordance with the Article 1.3.1.3 (iv) of the Rule Book, save that under these circumstances, LCH SA would not be permitted to liquidate any pledged Eligible Collateral taken into account in that CCM Client Collateral Buffer.

#### Client Collateral Buffer Threshold and Return of Excess Collateral

Currently, LCH SA allows Clearing Members to set a minimum value of Collateral to maintain as Client Collateral Buffer. This amount is known as the "Client Collateral Buffer Threshold." Currently, if the value of the Collateral attributed to the FCM/BD Buffer Financial Account exceeds the FCM/BD Client Collateral Buffer Threshold, the amount of the excess, if related to Cleared Swaps, will be reclassified as FCM/BD Swaps Unallocated Client Excess Collateral and, if related to SBS will be reclassified as FCM/BD SBS Client Excess Collateral. The Proposed Rule Change would update how Clearing Members can update or increase the amount of the threshold, as well as revise the treatment of Collateral that exceeds the threshold.

With respect to the amount of the threshold, currently Section 2.3(d) of the Procedures provides that a Clearing Member looking to change the Client Collateral Buffer Threshold or House Excess Collateral Threshold<sup>24</sup> must submit a request to LCH on the business day before the intended change. Thus, the change is not implemented until the next business day. The Proposed Rule Change would revise Section 2.3(d) to allow Clearing Members to set or update these thresholds on the business day such request is made, instead of the next business day. LCH SA is making this change to meet Clearing Members' expectations to be able to update their thresholds more quickly than is currently possible.

<sup>22</sup> The FCM/BD Client Collateral Buffer's definition includes both the FCM/BD Swaps Client Collateral Buffer and the FCM/BD SBS Client Collateral Buffer. The FCM/BD Swaps Client Collateral Buffer is defined in the Rule Book to mean the aggregate value of Collateral transferred by an FCM/BD Clearing Member to LCH SA, comprising such FCM/BD Clearing Member's own property, and recorded in such FCM/BD Clearing Member's FCM/BD Swaps Buffer Account which may be used by LCH SA to meet obligations in respect of the Cleared Swaps of Cleared Swaps Customers, including for the purpose of satisfying the notional and collateral checks performed by LCH SA in respect of eligible intraday transactions. The FCM/BD Swaps Client Collateral Buffer is similarly defined.

<sup>23</sup> Cash Collateral is defined in the Rule Book as any cash provided in an Eligible Currency which is transferred to LCH SA by way of full title transfer in accordance with Section 3 of the Procedures for the purpose of satisfying a Clearing Member's Margin Requirements and/or its Contribution Requirement and/or novating Original Transactions, as the case may be.

<sup>24</sup> The House Excess Collateral Threshold is The minimum value of Collateral, that a CCM or FCM/BD Clearing Member wishes to maintain as House Excess Collateral in its House Collateral Account.

Relatedly, the Proposed Rule Change would amend Article 4.2.2.3 of the Rule Book. It currently provides that only a CCM Clearing Member, and not an FCM/BD Clearing Member, may increase the amount of the Client Collateral Buffer. The Proposed Rule Change would amend this article to confirm that an FCM/BD Clearing Member may also increase the amount of Client Collateral Buffer above the Client Collateral Buffer Threshold.<sup>25</sup> LCH SA is making the proposed revisions regarding the possibility for an FCM/BD Clearing Member to increase the amount of FCM/BD Client Collateral Buffer above the FCM/BD Client Collateral Buffer Threshold to provide for the more efficient handling of Collateral held on behalf of FCM/BD Clients.

Given that, under the Proposed Rule Change, Clearing Members would be allowed to increase the Collateral Buffer Threshold, the Proposed Rule Change also would revise how LCH treats Collateral deposited in excess of that threshold. Currently, under Article 4.2.2.5, where (i) the FCM/BD Margin Balance of an FCM/BD Client Financial Account exceeds the relevant FCM/BD Client Margin Requirement prior to the Morning Call or (ii) the value of the Collateral attributed to the FCM/BD Buffer Financial Account exceeds the FCM/BD Client Collateral Buffer Threshold, LCH SA treats such excess as FCM/BD Swaps Unallocated Client Excess Collateral or FCM/BD SBS Client Excess Collateral.<sup>26</sup> An FCM/BD Clearing Member may then request the return of such excess collateral, subject to the conditions set out in Section 3 of the Procedures and Article 6.2.5 of the Rule Book.

The proposed amendments to Article 4.2.2.5 would remove the reclassification of any value of the Collateral above the FCM/BD Client Collateral Buffer Threshold as FCM/BD Swaps Unallocated Client Excess Collateral, or FCM/BD SBS Client Excess Collateral, where appropriate. Instead, if the value of the Collateral attributed to the FCM/BD Buffer Financial Account exceeds the FCM/BD Client Collateral Buffer Threshold, the FCM/BD Clearing Member may request to have such excess returned to it, subject to the conditions set out in Section 3 of the Procedures and Article 6.2.5 of the Rule Book. Moreover,

Article 4.2.2.5 as amended would also give FCM/BD Clearing Members the alternative of requesting the transfer of any FCM/BD Swaps Unallocated Client Excess Collateral, or FCM/BD SBS Client Excess Collateral, where appropriate, to the FCM/BD Buffer Financial Account and its reclassification as FCM/BD Client Collateral Buffer.

Article 6.2.5.1(ii) of the Rule Book currently states that if a FCM/BD Clearing Member delivers Collateral to LCH SA on behalf of one or more FCM/BD clients in an amount that would cause an FCM/BD Swaps Client Financial Account to contain FCM/BD Swaps Client Excess Collateral, then LCH SA may (i) reject the deposit, (ii) transfer the excess back to the Clearing Member, or (iii) accept the deposit and transfer the excess to the FCM/BD Swaps Unallocated Client Collateral Financial Account. The Proposed Rule Change would revise Article 6.2.5.1(ii) so that LCH SA would accept the deposit and treat the excess as FCM/BD Swaps Client Collateral Buffer. Under 6.2.5.1(iii)(c) as amended, the FCM/BD Clearing Member could then request the return of any amount of excess FCM/BD Swaps Client Collateral Buffer, in accordance with Section 3 of the Procedures.

Finally, the Proposed Rule Change would amend 6.2.5.1(iv)(d) to reflect the ability of an FCM/BD Clearing Member to increase the FCM/BD Swaps Client Collateral Buffer and treat excess collateral as Buffer, as discussed above. Currently, Article 6.2.5.1(iv)(d) states that upon the request of an FCM/BD Clearing Member, LCH SA will return FCM/SBS Swaps Unallocated Client Excess Collateral to the Clearing Member. In doing so, the FCM/BD Clearing Member represents that the request complies with CFTC regulations and that the returned Collateral will remain segregated as required by CFTC regulations and LCH SA's Rule Book. As amended, an FCM/BD Clearing Member could request LCH SA to (i) return FCM/BD Swaps Unallocated Client Excess Collateral to it in accordance Section 3 of the Procedures or (ii) reclassify such FCM/BD Swaps Unallocated Client Excess Collateral as FCM/BD Swaps Client Collateral Buffer and record the value of such Collateral to the relevant FCM/BD Swaps Buffer Financial Account. In doing so, the FCM/BD Clearing Member would represent and warrant that the request complies with CFTC Regulations and has been made by an individual who is properly authorized to make the request. If an FCM/BD Clearing Member requests that LCH SA return FCM/BD Swaps

Unallocated Client Excess Collateral to it, the Clearing Member would further represent to LCH SA that the Collateral will remain segregated as by CFTC Regulations and LCH SA's CDS Clearing Rules. If an FCM/BD Clearing Member requests that LCH SA reclassify such FCM/BD Swaps Unallocated Client Excess Collateral as FCM/BD Swaps Client Collateral Buffer and record the value of such Collateral to the relevant FCM/BD Swaps Buffer Financial Account, the Clearing Member would further represent to LCH SA that the request reflects the true characterization of the Collateral, including in particular that the Collateral is the property of the FCM/BD Clearing Member. The FCM/BD Clearing Member would also be required to provide such additional information as LCH SA may reasonably request.

Article 6.2.5.2 of the Rule Book addresses FCM/BD SBS Excess Collateral and FCM/BD SBS Client Collateral Buffer. Article 6.2.5.2 applies to the FCM/BD SBS Client Account Structure, which LCH SA would only establish if required, as discussed above. Article 6.2.5.2 parallels the procedures in Article 6.2.5.1 above with regard to FCM/BD Swaps Client Collateral. The Proposed Rule Change would make the same amendments to Article 6.2.5.2 as it is making to 6.2.5.1.

#### Return of Collateral

The Proposed Rule Change would also amend certain provisions of Section 3 of the Procedures to clarify the process by which a Clearing Member may request the return of Collateral. Specifically, the Proposed Rule Change would make these changes to Section 3.7, 3.8, and 3.15.

Section 3.7 applies to the return Euro-denominated Cash Collateral. Section 3.7(g)(iv) currently describes how an FCM/BD Clearing Member may request the return of FCM/BD Swaps Unallocated Client Excess Collateral that is Euro-denominated Cash Collateral. Section 3.7(g)(v) currently describes how an FCM/BD Clearing Member may request the return of FCM/BD SBS Client Excess Collateral that is Euro-denominated Cash Collateral. In either case, the Clearing Member may request the return of excess collateral provided the amount requested does not exceed the amount of collateral in the account. The Proposed Rule Change would combine 3.7(g)(iv) and (v) into single provision that would apply to any Euro-denominated Cash Collateral recorded in a Clearing Member's FCM/BD Client Collateral Account. As defined in the Rule Book, FCM/BD Client Collateral Account means an

<sup>25</sup> Article 4.2.2.3 of the Rule Book further provides that transfers to the Client Collateral Buffer will be made in accordance with Section 2 and Section 3 of the Procedures.

<sup>26</sup> "Client Excess Collateral" is defined as the CCM Client Excess Collateral or the FCM/BD Client Excess Collateral, as the context requires.

FCM/BD Swaps Client Collateral Account and/or an FCM/BD SBS Client Collateral Account. Thus, this new provision would apply to both Swaps and SBS. Under this new provision, LCH SA would return Euro-denominated Cash Collateral recorded in a Clearing Member's FCM/BD Client Collateral Account if LCH SA determines that it will continue to hold Collateral sufficient to cover the FCM/BD Client Margin Requirement for each FCM/BD Client Margin Account and to satisfy the FCM/BD Clearing Member's Client Collateral Buffer Threshold.

Section 3.8 applies to the return of non-Euro-denominated cash collateral. Here the Proposed Rule Change would carry forward the distinction between Pound Sterling as collateral, and Euros/USD discussed above. For example, the Proposed Rule Change would add a provision to explain how a CCM could request the return of non-Euro-denominated Cash Collateral recorded as CCM Client Collateral Buffer. The Proposed Rule Change also would revise 3.8(i), which describes how an FCM/BD Clearing Member may request the return of USD-denominated Cash Collateral recorded in its FCM/BD Client Account. Under the revised provision, LCH SA would return USD-denominated Cash Collateral recorded in the FCM/BD Client Account if it holds sufficient Collateral (other than that which is to be returned) to cover the FCM/BD Client Margin Requirement for each FCM/BD Client Margin Account and to satisfy the FCM/BD Clearing Member's obligation in respect of its FCM/BD Client Collateral Buffer Threshold. These revisions are a result of CCM Clearing Members being able to use Pound Sterling in their Client Collateral going forward but not FCM/BD Clearing Members.

Like this change to Section 3.8, the Proposed Rule Change would amend Section 3.10.1(c) and Section 3.10.2(d) to set out the same process by which a CCM may request the return of Eligible Collateral transferred with full title, on a bilateral basis, and pursuant to a triparty arrangement, respectively. The Proposed Rule Change would amend Section 3.15(b) in the same way, to set out the process by which a CCM may request the release of Pledged Eligible Collateral.

#### Type of Accounts

The Proposed Rule Change would also amend Section 3 of the Procedures to clarify the use of TARGET2 and BNYM accounts by LCH SA and its Clearing Members.

With regard to TARGET2 accounts, the Proposed Rule Change would

specify in 3.18(b) the TARGET2 accounts that LCH SA would use for making or receiving payments in Euro. The Proposed Rule Change also would specify in 3.18(b) the TARGET2 accounts that would be used for satisfying FCM/BD Clearing Members' cash payment obligations with respect to Client Cleared Transactions. Relatedly, the Proposed Rule Change would amend Section 3.7(d)(iii) to provide that, in respect of the FCM/BD client account structure of an FCM/BD Clearing Member, there will be no aggregation of payments between Euro-denominated cash payments and Euro-denominated Cash Collateral transfers through TARGET2 because Euro-denominated cash payments will be made by using the LCH CCM Client TARGET 2 Account whereas the transfer of Euro-denominated Cash Collateral will be made by using the LCH FCM/BD swaps client TARGET2 account or the LCH FCM/BD SBS Client TARGET2 Account.

With regard to BNYM accounts,<sup>27</sup> the Proposed Rule Change would amend Section 3.18(c) to consolidate the number of accounts that LCH SA maintains. Currently, LCH SA maintains separate accounts for Client transactions in Swaps and Client transactions in SBS. The Proposed Rule Change would remove the separate accounts and consolidate them into one Client account. Thus, going forward, LCH SA will maintain only two BNYM accounts, each for the purpose of debiting or crediting USD to satisfy Cash Payments and/or Variation Margin Collateral Transfer obligations. One account will be for a Clearing Member's own transactions, and the other will be for the transactions of the Clearing Member's Clients. LCH SA is consolidating these accounts in the expectation that all FCM/BD clients will elect to portfolio margin their SBS transactions.

Finally, the Proposed Rule Change would delete from the Procedures references to the former time slot for the cash payments in respect of Client Variation Margin requirements of an FCM/BD Clearing Member given that time slot no longer exists.

#### C. Miscellaneous Amendments

##### i. Time Reference

Article 1.2.8.1 of the Rule Book currently provides that, where reference is made in the CDS Clearing Documentation to a time or deadline, it will mean Central European Time

("CET"), unless otherwise stipulated. The Proposed Rule Change would revise this Article to provide that where reference is made in the CDS Clearing Documentation to a time or deadline, it will be understood to mean Paris Time, unless otherwise stipulated in the CDS Clearing Documentation. The Proposed Rule Change would remove all references to CET from the Procedures and the Supplement. With respect to the Supplement in particular, the Proposed Rule Change would provide instead that any reference to a time of day shall be deemed to be a reference to the time zone as set out in Section 1.2.8 of the Rule Book unless otherwise provided.

The Proposed Rule Change also would amend Section 5.18 of the Procedures in this regard. Section 5.18 currently states that all references to times and deadlines in Section 5.18 are to London local time unless otherwise specified.

##### ii. Real Time Session

LCH SA's "Real Time Session" is, in essence, its operating hours. For example, Article 3.1.4.1 of the Rule Book provides that an Intraday Transaction may be submitted to LCH SA during the Real Time Session on any Clearing Day, and Article 3.1.4.3 states that if an Intraday Transaction is received for clearing by LCH SA outside of the Real Time Session, it will be deemed to have been submitted at the Start of the Real Time Session on the following Clearing Day. Currently, the Rule Book defines "Real Time Session" to mean the period commencing at the Start of Real Time and ending at the End of Real Time in respect of each Clearing Day.<sup>28</sup> Moreover, the Rule Book defines "Start of Real Time" as the time as specific in a Clearing Notice. The Proposed Rule Change would not alter these definitions, but it would adopt a new clearing notice. This new clearing notice would provide that, unless notified otherwise, "Start of Real Time (SoRT)" would mean on each clearing day, the earlier of: (i) the time when all relevant Clearing Members have satisfied the morning call; and (ii) 09.05 (Paris time). Moreover, the new clearing notice would provide that End of Real Time means 16.30 (New York time) instead of 19.30 CET.

Relatedly, the Proposed Rule Change would amend Article 2.3.3.5 of the Rule Book. Article 2.3.3.5 requires each Clearing Member to ensure that appropriate personnel are available for communications with LCH SA during

<sup>27</sup> As noted above, USD is the only Eligible Currency and US Treasury bills are the only Eligible Collateral held in BNYM accounts.

<sup>28</sup> "Start of Real Time" and "End of Real Time" are defined as the time as specified in a clearing notice.

Opening Hours on each Business Day. The Proposed Rule Change would instead require each Clearing Member to have appropriate personnel available for communications with LCH SA during the Real Time Session, instead of only at opening hours.

The Proposed Rule Change would make an equivalent change to Section 5(c) of the Procedures. Currently, Section 5(c) specifies LCH SA's opening hours, provides that the LCH SA operations team is available during those hours, and further provides the hours of availability for LCH SA's technical helpdesk. The Proposed Rule Change would replace these different times with one, under which LCH SA would be open during the Real Time Session and its operations team would be available during the Real Time Session. As a result of these changes, the Proposed Rule Change would remove defined term "Opening Hours" from the definitions section of the Rule Book since it would no longer be used.<sup>29</sup>

### iii. Other Changes

Finally, the Proposed Rule Change would make other minor amendments for consistency or clarity to the Rule Book, the Procedures, and the Regulations.

#### *D. Amendments to Liquidity Risk Modelling Framework*

The Proposed Rule Change would amend LCH SA's LRMF. As discussed below, these amendments would for the most part clarify that FCM/BD clients' funds are segregated. As such, they are not available resources to LCH SA in a default management context unless the liquidity requirement is driven by the FCM/BD Clearing Member of such FCM/BD Clients. LCH SA is making these changes to comply with applicable regulations. The Proposed Rule Change also would make a few amendments to the LRMF to add clarity, as discussed below.

The Proposed Rule Change would first make a clarifying update to Section 1.1.1. Section 1.1.1 explains that the CDS business line gathers clearing activity for a wide selection of Euro index and single names. The Proposed Rule Change would update this description to include clearing activities related to the clearing of US, Australia, and Asia sovereign index and single names. This change would reflect the current composition of LCH SA's CDS business line.

The Proposed Rule Change would amend Section 1.6.1, which addresses

Liquidity Sources. The Proposed Rule Change would clarify that LCH SA has the right to consider available for liquidity purposes cash posted by Clearing Members to meet margin requirements and their excess cash, except cash received from FCM/BD clearing member(s) on behalf of their FCM/BD clients or excess cash for FCM/BD Clients. That cash would be excluded unless the liquidity requirement is driven by the relevant FCM/BD clearing member.

The proposed amendment to 1.6.1 also would clarify that LCH SA has the right to consider available for liquidity purposes all the resources collected if deposited under the full title transfer regime. Collateral deposited by FCM/BD Clearing Members on behalf of their FCM/BD Clients would not be deposited under the full title transfer regime. Instead, such Collateral would be subject to a security interest. Accordingly, the Proposed Rule Change would update a footnote, which currently provides a list of Collateral which is not transferred by way of full title transfer, to add a reference to Collateral received from FCM/BD Clients.

The Proposed Rule Change next would update Section 1.6.1.1, which addresses Collateral transfer to the 3G pool, to reflect the fact that non-cash collateral deposited via a single pledged account is a way to post Collateral for activities not limited to CDS related activities only and to provide that USD securities received from FCM/BD Clients would not be deposited via full title transfer accounts.

The Proposed Rule Change would amend Section 1.6.1.2, which addresses assessment of assets' liquidity, to prohibit LCH SA from re-hypothecating non-cash collateral collected from FCM/BD clients. LCH SA would not be able to use such cash for liquidity unless the FCM/BD Clearing Member of such FCM/BD clients is in default. The Proposed Rule Change would apply the same treatment to securities resulting from FCM/BD Clients' cash which LCH SA invested.

Section 1.6.1.3 contains a table that summarizes LCH SA's liquidity sources. The Proposed Rule Change would add to this table explanations to exclude the following from consideration as liquidity sources: (i) Collateral received from FCM/BD Clearing Members on behalf of FCM/BD Clients; (ii) excess cash for FCM/BD Clients that can be generated on an intraday basis; and (iii) securities resulting from investment of FCM/BD Clients' cash. As mentioned above, these sources would only be available if the liquidity requirement is

driven by the FCM/BD Clearing Member of such FCM/BD Clients.

The Proposed Rule Change next would amend the description of the liquidity need "repayment of excess cash by members" in Section 4.1.2, which covers Model inputs and Variable selection. The Proposed Rule Change would provide that, when calculating the liquid resources available to be compared against the Operational Target,<sup>30</sup> the cash received from the FCM/BD Clearing Members on behalf of their FCM/BD Clients is excluded. In two associated footnotes, the Proposed Rule Change would specify that Securities in DKK, NOK, SEC, AUD, CAD, CHF, JPY are excluded from liquidity assets as well as collateral belonging to FCM/BD clients.

Section 4.1.5 describes certain assumptions that LCH SA makes when the Operational Target as well as certain sources of liquidity that LCH SA uses when calculating the target. One the sources of liquidity is LCH SA's cash deposit at Banque de France overnight. The Proposed Rule Change would specify that this cash deposit does not include cash from FCM/BD Clients. Moreover in Section 4.1.5, paragraph c., the Proposed Rule Change would correct a typographical error in the penultimate sentence.

The Proposed Rule Change would amend Sections 4.2.2, which covers model inputs and variable selection, and 4.2.4, which covers mathematical formula, derivation and algorithm, and numerical approximation, to explain that when LCH SA calculates its liquidity coverage ratio, the resources of FCM/BD clients are segregated and unavailable. LCH SA would only consider these resources to be available where the relevant FCM/BD Clearing Member is assumed to be in default. Even in that case, the possibility to use the resource held on behalf of FCM/BD clients for liquidity purposes would be capped to the obligations of the FCM/BD Client.

The Proposed Rule Change would next amend Section 4.2.5.3, which covers stress scenario selection. Here the Proposed Rule Change would correct a minor typographical error. It would refer to CDSClear rather than CDS when describing the market stress scenario considered in the LCR. The amendment is made for consistency purposes and is not linked to the FCM/BD related initiative.

<sup>30</sup> The Operational Target represents the amount of liquidity to be held to satisfy the liquidity needs related to the operational management of the CCP in a stressed environment that does not lead to a member's default.

<sup>29</sup> "Opening Hours" is currently defined as 8:00 to 19:30 each business day.



In Section 4.3.2, which covers model inputs and variable selection, and 4.3.4, which covers mathematical formula, derivation and algorithm, and numerical approximation, the Proposed Rule Change would specify that, in the calculation of the LCR for the interoperable CCP, the resources held on behalf of FCM/BD clients must be considered segregated and therefore unavailable for liquidity purposes.

Finally, in Appendix 6.3 (Reminder of LCH SA's Sources of Liquidity and Related Risk Drivers), the Proposed Rule Change would add two footnotes to specify that cash held on behalf of FCM/BD clients (allocated and in excess) is excluded unless the liquidity requirement is driven by the relevant FCM/BD Clearing Member. With respect to the source of liquidity coming from Non-Euro non-cash collateral posted in full title transfer, the Proposed Rule Change would specify in a footnote that securities in DKK, NOK, SEK, CAD, AUD, CHF and JPY are excluded from the liquidity resources. This amendment is not linked to the FCM/BD related initiative but made for consistency purposes. With respect to the liquidity source coming from the collateral of investment activity, the Proposed Rule Change would add a footnote to specify that securities coming from FCM/BD clients investment shall be excluded unless the relevant FCM/BD Clearing Member is in default.

### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a Proposed Rule Change of a self-regulatory organization if it finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.<sup>31</sup> For the reasons given below, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,<sup>32</sup> Rule 17Ad-22(e)(21),<sup>33</sup> and Rule 17Ad-22(e)(1)<sup>34</sup> thereunder.

#### A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of LCH SA be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of

securities and funds which are in the custody or control of LCH SA or for which it is responsible.<sup>35</sup> As discussed in more detail below, the Commission finds that the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act.<sup>36</sup>

The proposed changes to the Procedures would require that LCH SA and Clearing Members establish and use certain accounts to hold and transfer cash and other collateral for satisfying margin requirements in connection with client positions in SBS and establish procedures for the return of excess collateral related to client positions in SBS. In requiring the establishment and use of certain accounts to hold and transfer cash and other collateral for satisfying margin requirements, and in establishing procedures for the return of excess collateral related to client positions in SBS, these proposed changes would help to assure the safeguarding of securities and funds in LCH SA's custody and control.

As part of the Portfolio Margining Program, The Proposed Rule Change also would amend the definition of the LCH Cleared Swaps Client Segregated Depository Account to include FCM/BD Portfolio Margining Transactions. Similarly, under the Proposed Rule Change LCH would, upon request, maintain a segregated depository account in BNYM to register BNYM eligible collateral. These requirements should help safeguard client funds by ensuring the funds are held in a segregated account.

The Proposed Rule Change also would amend the Rule Book to require Clearing Members to have appropriate personnel available for communications with LCH SA. It also would amend time references in the CDS clearing documentation to clarify they mean CET, unless otherwise stipulated. Having personnel available should help to ensure that LCH SA can promptly communicate with Clearing Members as needed to clear and settle transactions. Similarly, clarifying references to time should help ensure prompt and accurate settlement.

Therefore, for the reasons discussed above, the Commission finds that the Proposed Rule Change is consistent with the Section 17A(b)(3)(F) of the Act.<sup>37</sup>

#### B. Consistency With Rule 17Ad-22(e)(21) Under the Act

Rule 17Ad-22(e)(21) requires covered clearing agencies to establish,

implement, maintain, and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves, and have the covered clearing agency's management regularly review the efficiency and effectiveness of its clearing and settlement arrangements.<sup>38</sup> In adopting Rule 17Ad-22(e)(21), the Commission provided guidance as to what a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address efficiency and effectiveness.<sup>39</sup>

The Proposed Rule Change, in revising the Program, would give FCM/BD Clearing Members the ability, on behalf of their FCM/BD clients, to portfolio margin FCM/BD Cleared Transactions that are SBS with FCM/BD Cleared Transactions that are Cleared Swaps. Under the Program, Clearing Members and their Clients are able to maintain reduced levels of margin that are commensurate with the risks of the portfolio based on correlations in a Clearing Member's cleared CDS positions consisting of both swaps and SBS. This allows Clearing Members to have increased efficiency by using margin from swaps and SBS by reducing costs for Clearing Members and their Clients.

Additionally, as discussed above, LCH SA also proposes to allow Clearing Members to set or update its house excess Collateral threshold or Client Collateral Buffer Threshold on the business day such request will be made, instead of the next business day. This allows Clearing Members to update Collateral faster, which should allow for more efficient exchange of Collateral.

The Proposed Rule Change would require each Clearing Member to have appropriate personnel available for communications with LCH SA during the Real Time Session, instead of only at opening hours. This change would allow for faster communication between Clearing Members and LCH SA by ensuring there is no delay because of lack of personnel.

The Commission believes, therefore, that the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(21) under the Act.<sup>40</sup>

#### C. Consistency With Rule 17Ad-22(e)(1)

Rule 17Ad-22(e)(1) requires that LCH SA establish, implement, maintain, and

<sup>31</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>32</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>33</sup> 17 CFR 240.17Ad-22(e)(21).

<sup>34</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>35</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>36</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>37</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>38</sup> 17 CFR 240.17Ad-22(e)(21).

<sup>39</sup> See Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70841 (Oct. 13, 2016).

<sup>40</sup> 17 CFR 240.17Ad-22(e)(21).



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>41</sup>

The Commission believes that the other changes related to the Default Management Process, as discussed above, would help to ensure that the legal basis for LCH SA's activities is well-founded and clear. LCH SA proposes to amend Article 4.2.2 regarding the stages of defaults where a Clearing Member is a CCM. Specifically, LCH SA proposes to add additional conditions regarding the transfer of Collateral. This helps to ensure clarity in the CDS Default Management Process.

LCH SA is amending its Procedures and Rule book to create a standard to create an enforceable legal basis for its portfolio margining is the practice by which transactions in SBS are cleared and held on a commingled basis with transactions in swaps. This standard is based on the Portfolio Margining Order and the CFTC Portfolio Margining Order. This Program creates a clear and well-founded legal basis based on the guidance from both the CFTC and the Commission.

As discussed above, LCH SA proposes to make clarifying amendments to its Liquidity Risk Modeling Framework. For example, as discussed above, the Proposed Rule Change would amend the description of the liquidity need repayment of excess cash by members. The Proposed Rule Change would provide that, when calculating the liquid resources available, the cash received from the FCM/BD Clearing Members on behalf of their FCM/BD Clients is excluded. This helps ensure LCH SA has clear standards when calculating liquid resources available.

Thus, the Commission finds that these aspects of the Proposed Rule Change are consistent with Rule 17Ad-22(e)(1).<sup>42</sup>

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Act, and in particular, 17A(b)(3)(F) of the Act,<sup>43</sup> Rule 17Ad-22(e)(21),<sup>44</sup> and Rule 17Ad-22(e)(1).<sup>45</sup> thereunder.

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the Proposed Rule Change (SR-LCH SA-

2023-005) be, and hereby is, approved.<sup>46</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>47</sup>

Sherry R. Haywood,  
Assistant Secretary.

[FR Doc. 2023-19354 Filed 9-7-23; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98277; File No. SR-CBOE-2023-043]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 4.3 (Criteria for Underlying Securities) To Accelerate the Listing of Options on Certain IPOs

September 1, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 24, 2023, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend Rule 4.3. The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

\* \* \* \* \*

Rules of Cboe Exchange, Inc.

\* \* \* \* \*

Rule 4.3. Criteria for Underlying Securities

(a)-(b) No change.

Interpretations and Policies

.01 The [Board of Directors]Exchange has established guidelines to be considered [by the Exchange in]when

<sup>46</sup> In approving the Proposed Rule Change, the Commission considered the proposal's impacts on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>47</sup> 17 CFR 200.30-3(a)(12).

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

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

evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to subparagraphs (a)(1), (a)(2), (b)(1), or (b)(2) listed below, at the time the Exchange selects an underlying security for Exchange option transactions, the following guidelines with respect to the issuer shall be met.

(a) No change.

(b) Guidelines applicable to the market for the security are:

(1) No change.

(2) (A) If the underlying security is a "covered security" as defined under Section 18(b)(1)(A) of the Securities Act of 1933[, (i) the market price per share of the underlying security has been at least \$3.00 for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to the OCC for listing and trading. For purposes of this Interpretation .01(b)(2)(A), the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded; *however, (ii) the requirements set forth in clause (i) will be waived during the three days following an underlying security's initial public offering day if the underlying security has a market capitalization of at least \$3 billion based on upon the offering price of its initial public offering, in which case options on the underlying security may be listed and traded starting on or after the second business day following the initial public offering day.*

\* \* \* \* \*

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

<sup>41</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>42</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>43</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>44</sup> 17 CFR 240.17Ad-22(e)(21).

<sup>45</sup> 17 CFR 240.17Ad-22(e)(1).